



# Notice of Intent to Adopt Rules

Revised July 2016

## 1. General Information

a. Agency/Board Name		
b. Agency/Board Address	c. City	d. Zip Code
e. Name of Contact Person	f. Contact Telephone Number	
g. Contact Email Address		
h. Date of Public Notice	i. Comment Period Ends	
j. Program		

## 2. Rule Type and Information: For each chapter listed, indicate if the rule is New, Amended, or Repealed.

a. If "New," provide the Enrolled Act numbers and years enacted:

b. Provide the Chapter Number, Short Title, and Rule Type of Each Chapter being Created/Amended/Repealed  
*Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification.*

Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed

c.  The Statement of Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

Complete all that apply:

The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):  
\_\_\_\_\_ (Provide chapter numbers)

These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Reasons).  
\_\_\_\_\_ (Provide chapter numbers)

N/A These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

d.  N/A  In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Section 5 of the Rules on Rules).

e. A copy of the proposed rules\* may be obtained:  
 By contacting the Agency at the physical and/or email address listed in Section 1 above.  
 At the following URL: \_\_\_\_\_

\* If Item "d" above is not checked, the proposed rules shall be in strike and underscore format.

**3. Public Comments and Hearing Information**

a. A public hearing on the proposed rules has been scheduled.  Yes  No

	If "Yes:"	Date:	Time:	City:	Location:

b. What is the manner in which interested persons may present their views on the rulemaking action?  
 By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.  
 At the following URL: \_\_\_\_\_

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members.  
Requests for a public hearing may be submitted:  
 To the Agency at the physical and/or email address listed in Section 1 above.  
 At the following URL: \_\_\_\_\_

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Contact Person listed in Section 1 above.

**4. Federal Law Requirements**

a. These rules are created/amended/revoked to comply with federal law or regulatory requirements.  Yes  No

	If "Yes:"	Applicable Federal Law or Regulation Citation:

Indicate one (1):  
 The proposed rules meet, but do not exceed, minimum federal requirements.  
 The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:  
 To the Agency at the physical and/or email address listed in Section 1 above.  
 At the following URL: \_\_\_\_\_

**5. State Statutory Requirements**

a. Indicate one (1):  
 The proposed rule change *MEETS* minimum substantive statutory requirements.  
 The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b. Indicate one (1):  
 The Agency has complied with the requirements of W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:  
 By contacting the Agency at the physical and/or email address listed in Section 1 above.  
 At the following URL: \_\_\_\_\_  
 Not Applicable.

**6. Authorization**

a. I certify that the foregoing information is correct.

<i>Printed Name of Authorized Individual</i>	
<i>Title of Authorized Individual</i>	
<i>Date of Authorization</i>	

Distribution List:

- Attorney General and LSO: Hard copy of Notice of Intent; Statement of Reasons; clean copy of the rules; and strike-through and underline version of rules (if applicable). Electronic copies (PDFs) of all items noted (in addition to hard copies) may be emailed to LSO at [LSO-Rules@wyoleg.gov](mailto:LSO-Rules@wyoleg.gov).
- Secretary of State: Electronic version of Notice of Intent sent to [Rules@wyo.gov](mailto:Rules@wyo.gov).

BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

IN THE MATTER OF REVISIONS TO CHAPTERS	)	
ONE, TWO, THREE, FIVE, AND SEVEN, AND	)	
REPEAL OF CHAPTERS FOUR AND SIX AND	)	STATEMENT OF
ADDITION OF CHAPTER NINE OF THE RULES OF	)	PRINCIPAL REASONS
PRACTICE AND PROCEDURE,	)	FOR ADOPTION

1. The Environmental Quality Council (“Council”), pursuant to the authority vested in it by the Wyoming Environmental Quality Act (“Act”) at W. S. § 35-11-112(a)(i), has revised the following chapters of the Rules of Practice and Procedure: Chapter 1, General Rules; Chapter 2, Hearings in Contested Cases; Chapter 3, Rulemaking; Chapter 5, Petitions for Award of Costs and Expenses Under W.S. § 35-11-437(f); and Chapter 7, Very Rare or Uncommon Areas. The Council has repealed Chapter 4, Rehearing. The Council has Repealed Chapter 6, Review by the Director and renamed and renumbered it as Chapter 9, Director Review of Actions Involving Surface Coal Mining Operations and All Hearings Before the Department.
  
2. On October 17, 2014, the Office of Administrative Hearings promulgated uniform contested case rules for the use of all state agencies, as required by W. S. § 16-3-102(d) (“Uniform Rules”).
  
3. In consideration of Governor Mead’s Streamlining Government Initiative, the Council has evaluated the total number of pages and the total number of chapters affected by the proposed revisions. Chapter 1 decreased from six pages to four. Chapter 2 increased from six pages to ten as a result of incorporating the Uniform Rules. Chapter 3 increased from four pages to five. Chapter 4 decreased from one page to zero as it is proposed for repeal. Chapter 5 stayed at two pages. Chapter 6 decreased from two pages to zero as it is proposed for repeal. Chapter 7 decreased from eight pages to six. Chapter 9 is a new chapter of five pages. In total the page count increased from 29 pages to 32. The total number of chapters was reduced by one.
  
4. Chapters 1 and 2 of the Rules of Practice and Procedure have been revised to adopt the Uniform Rules to the extent they do not conflict with the specific and distinct requirements of the agencies and applicable state and federal law, as required by W.S. § 16-3-103(j). To maintain consistency with previous versions of these regulations, portions of the Uniform Rules have been placed in both Chapters 1 and 2. Certain portions of the Uniform Rules conflict with requirements necessary for the State to retain regulatory primacy over programs delegated under the Clean Air Act, the Clean Water Act, the Surface Mine Control and Reclamation Act, and the Resource Conservation and Recovery Act. Those conflicting portions have not been adopted. Certain portions of the Uniform Rules are inapplicable to the Environmental Quality Council and the

Department of Environmental Quality (“Department”). Those inapplicable portions have not been adopted. General references in the Uniform Rules were replaced with specific references.

- a. Section 1 was not adopted because it is specific to the authority of the Office of Administrative Hearings;
- b. Section 2 was placed in Chapter 2, Section 25, with a corrected electronic web address;
- c. Definitions from Section 3 were placed in Chapter 1, Section 2, with more specific references where applicable;
- d. Section 4 was placed in Chapter 2, Section 3. Subsection (a) was not included because it could conflict with more specific rules related to informal hearings before the Department. The phrase “informal conference” in subsection (b) was deleted because it has a specific meaning under the Surface Mining Control and Reclamation Act. The phrase “settlement conference” was similarly deleted from subsection (c). The 30 day timeline in subsection (b) was deleted because it conflicts with 20-day hearings under W.S. § 35-11-406(k);
- e. Section 5, Subsection (a) was placed in Chapter 2, Section 4. Subsection (b) was placed in Chapter 1, Section 4;
- f. Section 6 was placed in Chapter 2, Section 6;
- g. Section 7 was not adopted because it is not applicable to the Council;
- h. Section 8 was placed in Chapter 2, Section 7. Subsection (a) was clarified to acknowledge that a hearing officer from the Office of Administrative Hearings may only provide a recommended decision. Subsection (b) was not adopted because it is inconsistent with the Act. Section (c) was altered to allow verbal motions of recusal to avoid conflict with specific requirements of the Council, which is a citizen body and not a full-time adjudicative body;
- i. Section 9 was placed in Chapter 2, Section 8;
- j. Section 10 was placed in Chapter 2, Section 10;
- k. Section 11 was placed in Chapter 2, Section 5. Subsection (b) was altered to include information specific to the Council’s electronic docketing system;
- l. Section 12 was placed in Chapter 1, Section 3. Subsection (b) was altered to clarify that certain aspects were inapplicable to rulemaking hearings;
- m. Section 13 was placed into Chapter 2, Section 11;

- n. Section 14 was placed into Chapter 2, Section 12. Subsection (e) was deleted because it conflicts with the specific requirements of the Council and the Department. Under W.S. 35-11-112(d), the Department assists the Council in scheduling locations for hearings;
- o. Section 15 was placed in Chapter 2, Section 13;
- p. Section 16, subsections (a) and (b) were placed in Chapter 2, Section 14. Subsection (c) was placed in Chapter 2, Section 11. The word “request” in subsection (a) was changed to “motion” to avoid potentially confusing citizen practitioners before the Council. The five-day timeline in subsection (a) was not adopted because it could conflict with timings associated with 20-day hearings under W.S. 35-11-406(k). Similarly, subsection (d) was not adopted;
- q. Section 17 was placed in Chapter 2, Section 15;
- r. Section 18 was placed in Chapter 2, Section 16;
- s. Section 19 was placed in Chapter 2, Section 17;
- t. Section 20 was placed in Chapter 2, Section 18;
- u. Section 21 was Placed in Chapter 2, Section 19;
- v. Section 22 was placed in Chapter 2, Section 20;
- w. Section 23 was placed in Chapter 2, Section 21;
- x. Section 24 was placed in Chapter 2, Section 22;
- y. Section 25 was placed in Chapter 2, Section 3(c). This language was altered to reflect specific requirements of the Council and ensure that they receive timely notification of settlements;
- z. Section 26 was placed in Chapter 2, Section 23. Language in subsection (a) related to summary suspensions was not adopted because it is not applicable to the Council or Department;
- aa. Section 27 was placed in Chapter 2, Section 24;
- bb. Section 28 was placed in Chapter 2, Section 25; and
- cc. Section 29 was placed in Chapter 1, Section 5.

5. In addition to changes to adopt the Uniform Rules, Chapter 1 also includes the following changes:
  - a. Updated and additional definitions in section 2;
  - b. Clarifications regarding temporary relief pending appeal in section 8;
  - c. Section 8 also changes the timeline to submit an appeal to the Council from final actions of the Department from sixty days to thirty days. This change will create consistent timelines for review of final agency action, whether pursued before the Council under these regulations, through judicial review under the Act at W. S. § 35-11-1001, or through judicial review under the Administrative Procedure Act at W. S. § 16-3-114;
  - d. Incorporation by reference updates in Section 10;
  - e. Removal of superfluous sections related to the Attorney General's presence, pre-hearing conferences, settlements, deviation and amendment from rules, excluding disorderly attendees, and Robert's Rules of Order.
6. Chapter 3 has been updated to incorporate conclusions from the September 8, 2015 Attorney General Opinion on rulemaking under the Act. The updates to the chapter clarify the rulemaking process and explain how the Department recommends rules to the Council and how the Council adopts rules. The chapter also contains a new definition section.
7. Chapter 4 has been repealed. The chapter, which provided the option of rehearing, was repealed because rehearing was very rarely used and could create confusion when seeking judicial review of final agency actions.
8. Chapter 5 has been updated to reflect that hearings for costs and expenses under W.S. § 35-11-437(f) will be conducted in accordance with the adopted portions of the Uniform Rules. The chapter was revised to provide that these hearings, which occur after contested case hearings, will follow the same procedures as the contested case that preceded them.
9. Chapter 6 has been repealed, but some portions of Chapter 6 were retained and renumbered as Chapter 9. The repealed sections of the chapter provided rules for director review, and the sections were repealed because director review is an informal process permitted by statute that could be complicated by formal rules.
10. Chapter 7 has been updated to reflect the July 1, 2011 amendments to W.S. § 35-11-112(a)(v). Because the Council no longer has the authority to designate very rare or uncommon areas, the portions of Chapter 7 that described this authority were removed.

11. Chapter 9 has been created to provide rules for hearings other than contested case hearings before the Department. The sections of Chapter 6 which provided rules for informal conferences and director review of actions related to surface coal mining operations were relocated to Chapter 9. Additions to the new Chapter 9 include provisions for conducting other hearings before the Department such as variance hearings, water quality standard hearings, public comment hearings, and other types of hearings permitted by the Act.

The Council finds that these regulations are necessary to accomplish the policy and purpose of the Act and that they have been promulgated in accordance with rulemaking provisions of the Wyoming Administrative Procedure Act.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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Hearing Examiner - *Printed Name*  
Wyoming Environmental Quality Council

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Hearing Examiner - *Signed Name*  
Wyoming Environmental Quality Council

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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. 16-3-301 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.

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

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 day  
 56 which is not one of the aforementioned days. When the period of time prescribed or allowed is  
 57 less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded  
 58 in the computation. As used in this rule, "legal holiday" includes any day officially recognized as  
 59 a legal holiday in this state by designation of the legislature or appointment as a holiday by the  
 60 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  
 79 is 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  
 84 by 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 the  
 91 court reporter taking the testimony at such fee as the reporter may charge.

92

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

94

95 Members of the Council shall recuse themselves from contested case proceedings  
 96 involving the review of surface water discharge permits if they derive a significant portion of  
 97 their income directly or indirectly from the permit holder or applicant for the permit subject to

98 review by the Council, in accordance with the Clean Water Act, Section 304(i)(d), 33 U.S.C. §  
99 1314(i)(d), and 40 C.F.R. § 123.25(c).

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

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

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

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

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

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

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

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

131  
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  
137 opportunity 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

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145 (iv) The relief sought is not the issuance of a permit where a permit has been  
146 denied by the Director.

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

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

**Section 10. Incorporation by Reference.**

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

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

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

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

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

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

1  
2 CHAPTER ~~11~~  
3 GENERAL RULES ~~OF PRACTICE AND PROCEDURE~~

4 Section 1. **Authority.**

5  
6 (a) These rules are promulgated as authorized by the Wyoming Administrative  
7 Procedure Act, ~~(W.S. 94-101-16-3-301 through 9-4-115-16-3-115,)~~ and the Wyoming  
8 Environmental Quality Act ~~(W.S. 35-11-101 through 35-11-1104),~~ as defined by W.S. 35-11-  
9 103(a)(xiii). These rules shall apply in all proceedings before the Department of Environmental  
10 Quality and the Environmental Quality Council, ~~and its examiners. Existing Chapters I through~~  
11 ~~IV are hereby repealed. These rules and regulations are effective upon final approval of a state~~  
12 ~~program pursuant to P.L. 95-87.~~

13  
14 (b) In case of conflict between these rules and the provisions of the Wyoming  
15 Administrative Procedure Act or the Wyoming Environmental Quality Act, those acts shall  
16 govern. In case of conflict between the Wyoming Administrative Procedure Act and the  
17 Wyoming Environmental Quality Act, the Wyoming Environmental Quality Act shall govern.

18  
19 (c) All hearings before the Council shall be held pursuant to these rules, the  
20 provisions of the Wyoming Environmental Quality Act, and, to the extent they do not conflict,  
21 the Wyoming Administrative Procedure Act.

22  
23 Section 2. **Definitions.**

24  
25 (a) ~~—All of the definitions set forth and contained in the Wyoming Environmental~~  
26 ~~Quality Act and the Administrative Procedure Act are incorporated herein by reference. In~~  
27 ~~addition, the following definitions are set forth:~~

28  
29 (i) ~~—Applicant: Any person applying for a permit authorized under the~~  
30 ~~Environmental Quality Act or any party petitioning for rulemaking in accordance with W.S. 9-4-~~  
31 ~~106.~~

32  
33 (ii) ~~—Protestant: Any person desiring to protest the application of a permit or~~  
34 ~~any person requesting a hearing before the Environmental Quality Council in accordance with the~~  
35 ~~Environmental Quality Act and who is objecting to an action of the Department of Environmental~~  
36 ~~Quality and desiring affirmative relief.~~

37  
38 (iii) ~~—Presiding officer: The officer designated by the Chairman of the~~  
39 ~~Environmental Quality Council to conduct hearings.~~

40  
41 (iv) ~~—The Wyoming Administrative Procedure Act: W.S. 9-4-101 through 9-4-~~  
42 ~~115, as amended.~~

43  
44 The following definitions are intended to supplement the definitions set forth and  
45 contained in the Wyoming Administrative Procedure Act and the Wyoming Environmental  
46 Quality Act:

47  
48 (a) “Attorney” means an attorney licensed to practice law in the State of Wyoming  
49 or an attorney who is licensed to practice law in another state and who is associated with an

50 attorney licensed to practice law in the State of Wyoming;

51  
52 (b) “Contested case” means a proceeding in which legal rights, duties, or privileges  
53 of a party are required by law to be determined by the Council after an opportunity for hearing;

54  
55 (c) “Council” means the Environmental Quality Council;

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

58  
59 (e) “Office” means the Office of Administrative Hearings;

60  
61 (f) “Petition” means a written request for relief, submitted to the Council, in  
62 accordance with the Wyoming Environmental Quality Act;

63  
64 (g) “Petitioner” means a person who submits a written request for relief to the  
65 Council in accordance with the Wyoming Environmental Quality Act;

66  
67 (h) “Representative” means an individual other than an attorney who is authorized  
68 to function in a representative capacity on behalf of a corporate party to a contested case;

69  
70 Section 3. ~~Initiation of Proceedings~~ Computation of Time.

71  
72 (a) ~~— All hearings before the Council, appeals or others, shall be held pursuant to these~~  
73 ~~rules, the provisions of the Environmental Quality Act W.S. 35-11-101 through 1104 and the~~  
74 ~~Wyoming Administrative Procedure Act.~~

75  
76 (b) ~~— All persons requesting a hearing or protesting a permit shall file two copies of a~~  
77 ~~written petition directed to and served upon both the Chairman of the Council and the Director of~~  
78 ~~the Department.~~

79  
80 (i) ~~— Original service shall be by registered mail, return receipt requested.~~  
81 ~~Thereafter, all service shall be proved in accordance with the Wyoming Rules of Civil Procedure.~~

82  
83 (ii) ~~— Where protestant is objecting to a permit, he shall also serve the permit~~  
84 ~~applicant with a copy of the petition and all other pleadings and motions.~~

85  
86 (c) ~~— The petition for hearing shall set forth:~~

87  
88 (i) ~~— Name and address of the person making the request or protest and the~~  
89 ~~name and address of his attorney, if any.~~

90  
91 (ii) ~~— The action, decision, order or permit upon which a hearing is requested~~  
92 ~~or an objection is made.~~

93  
94 (iii) ~~— A statement in ordinary, but concise language of the facts on which the~~  
95 ~~request or protest is based, including whenever possible particular reference to the statutes, rules~~  
96 ~~or orders that the Applicant or Protestant alleges have been violated.~~

97

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

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100 ~~(d) — The filing of such petition shall constitute the commencement of the proceeding~~  
101 ~~on the date filed.~~

102  
103 ~~(e) — A copy of the petition shall be served on any party who appeared in prior~~  
104 ~~proceedings pertaining to the same matter.~~

105  
106 ~~(formerly Section 10(a))~~ (a) ~~When time prescribed by these rules or by order of the~~  
107 ~~Council for doing any act expires on a Saturday or legal holiday, such time shall extend to and~~  
108 ~~include the next succeeding business day. In computing any period of time prescribed or~~  
109 ~~allowed by these rules, by order or by any applicable statutes or regulations, the day of the~~  
110 ~~act, event, or default from which the designated period of time begins to run shall not be~~  
111 ~~included. The last day of the period so computed shall be included, unless it is a Saturday, a~~  
112 ~~Sunday, or a legal holiday, or, when the act to be done is the filing of a paper, a day on which~~  
113 ~~weather or other conditions have made agency offices inaccessible, in which event the period~~  
114 ~~runs until the end of the following day which is not one of the aforementioned days. When~~  
115 ~~the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays,~~  
116 ~~Sundays, and legal holidays shall be excluded in the computation. As used in this rule, “legal~~  
117 ~~holiday” includes any day officially recognized as a legal holiday in this state by designation of~~  
118 ~~the legislature or appointment as a holiday by the governor.~~

119  
120 ~~(formerly Section 10(b))~~(b) ~~For good cause shown, extensions and continuances of~~  
121 ~~time may be granted or denied in the discretion of the Council. Whenever a party has the right or~~  
122 ~~is required to do some act within a prescribed period after the service of a notice or other paper~~  
123 ~~upon the party, and the notice or paper is served upon the party by mail or by delivery to the~~  
124 ~~agency for service, three (3) days shall be added to the prescribed period. The three-day~~  
125 ~~provision does not apply to rulemaking deadlines.~~

126  
127 Section 4. **Notice of Hearing.**

128  
129 ~~(a) — Notice of hearings shall conform to W.S. 9-4-107(b). The manner and time for~~  
130 ~~giving notice shall be as follows:~~

131  
132 ~~(i) — When the Council determines that it shall hold a hearing on its own~~  
133 ~~motion, it shall give notice as promptly as possible in advance of the hearing date to all parties by~~  
134 ~~registered or certified mail, return receipt requested.~~

135  
136 ~~(ii) — When a party desires that a hearing be held before the Council he shall~~  
137 ~~file his petition and the Council shall forthwith set a date for hearing and notify the applicant~~  
138 ~~thereof.~~

139  
140 (a) The Council or its designee shall provide notice of any hearing, which shall  
141 include:

142  
143 (i) The time, place, and nature of the hearing;

144  
145 (ii) The legal authority and jurisdiction under which the hearing is to be held;

146  
147 (iii) The particular sections of the statutes and rules involved; and

148  
149 (iv) A short and plain statement of the matters asserted. If the Council  
150 is unable to state the matters in detail at the time the notice is provided, the initial notice may be  
151 limited to a statement of the issues involved, and upon a party's request, a more definite  
152 and detailed statement shall be furnished.

153  
154 (b) The Council may provide notice by posting through its website, where allowed  
155 by the Wyoming Administrative Procedure Act.

156  
157 Section 5. ~~Attorney General Presence~~ Record of Proceedings.

158  
159 ~~(a) In all matters before the Council, the Council may request the Attorney General~~  
160 ~~of the State of Wyoming or a representative of his staff to be present throughout the hearing.~~

161  
162 ~~(b) The Council, upon its own motion or the motion of any party, may certify an~~  
163 ~~issue of law to the Attorney General for his opinion. Such opinion shall thereafter be part of the~~  
164 ~~record of any proceeding before the Council, and may, if the court so directs, constitute a finding~~  
165 ~~of the Council with respect to the issuance of final orders or decisions.~~

166  
167 The Council or Department shall make appropriate arrangements to assure that a record  
168 of the proceeding is kept pursuant to W.S. 16-3-107(o) and (p), as appropriate. Copies of the  
169 transcript taken at any hearing may be obtained by any party, interested person, or entity from the  
170 court reporter taking the testimony at such fee as the reporter may charge.

171  
172 Section 6. ~~Record of Proceedings—Reporter~~ Contested Surface Water Discharge  
173 Permit Hearings.

174  
175 ~~(a) Unless otherwise agreed by the parties and consented to by the Council, all~~  
176 ~~hearings, including all testimony, shall be reported verbatim by a competent reporter. The~~  
177 ~~compensation of such reporter shall be paid as required by law and as ordered by the Council.~~  
178 ~~The Council may direct any party or parties to assume the cost of the transcript.~~

179  
180 Members of the shall recuse themselves from contested case proceedings involving the  
181 review of surface water discharge permits if they derive a significant portion of their income  
182 directly or indirectly from the permit holder or applicant for the permit subject to review by the  
183 Council, in accordance with the Clean Water Act, Section 304(i)(d), 33 U.S.C. § 1314(i)(d), and  
184 40 C.F.R. § 123.25(c).

185  
186 Section 7. ~~Record~~ Air Quality Division, State Implementation Plan.

187  
188 ~~(a) The record in all contested cases (Chapter II) shall include:~~

189  
190 ~~(i) All formal and informal notices.~~

191  
192 ~~(ii) Evidence received or considered including matters officially noticed.~~

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

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- ~~(iv) Any proposed findings and objections thereto.~~
- ~~(v) The decision and order of the Council.~~
- ~~(vi) The transcript of all recorded proceedings.~~

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

~~(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

244 person with an interest that is or may be adversely affected may appeal the decision to the  
245 Council for a hearing in accordance with Chapters 1 and 2 of these rules. The Council shall  
246 make a final written decision within thirty (30) days after the hearing and furnish the decision  
247 to the applicant and all parties to the hearing.

248  
249 (c) Where a hearing is requested under subsection (b) of this section, the Council  
250 may, under such conditions as it may prescribe, grant such temporary relief as it deems  
251 appropriate pending final determination of the proceedings if:

252  
253 (i) All parties to the proceedings have been notified and given an  
254 opportunity to be heard on a request for temporary relief;

255  
256 (ii) The persons requesting that relief show that there is a substantial  
257 likelihood that he will prevail on the merits of the final determination of the proceeding;

258  
259 (iii) Such relief will not adversely affect the public health or safety or cause  
260 significant imminent environmental harm to land, air, or water resources; and

261  
262 (iv) The relief sought is not the issuance of a permit where a permit has been  
263 denied by the Director.

264  
265 Section 9. ~~Pre-Hearing Conference~~ **Appeals from Final Council Action.**

266  
267 (a) ~~At a time on or before the day of any hearing, the Council may direct the parties~~  
268 ~~to appear before the Council to consider:~~

269  
270 (i) ~~The implication of the issues.~~

271  
272 (ii) ~~The necessity or desirability of amending the pleadings.~~

273  
274 (iii) ~~The possibility of obtaining admissions of the fact and of documents to~~  
275 ~~avoid unnecessary proof.~~

276  
277 (iv) ~~Formulating procedures to govern the hearing.~~

278  
279 (v) ~~Such other matters as may aid in the disposition of the case.~~

280  
281 (b) ~~Such conferences shall be conducted informally. An order will be prepared which~~  
282 ~~recites the actions taken at the conference, amendments allowed, agreements of the parties and~~  
283 ~~agreements of counsel and the parties. The pre-hearing order will control the court of the hearing~~  
284 ~~unless modified by the presiding officer to prevent manifest injustice.~~

285  
286 (i) ~~If a party determines an order does not fully cover the issues presented,~~  
287 ~~or is unclear, he may petition for a further ruling within ten days after receipt of the order.~~

288  
289 Any party to an action before the Council may seek judicial review of the Council's  
290 final decision, in accordance with applicable law and court rules.

291  
292 Section 10. ~~Time~~ **Incorporation by Reference.**

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

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

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

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

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

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

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

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

~~Section 11. Settlement.~~

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

~~Section 12. Deviation and Amendment.~~

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

~~(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~~

342 ~~complaint with the Council, obtain a full hearing or review upon the merits, which matter shall be~~  
343 ~~heard and tried de novo.~~

344  
345 ~~(b) — Disrespectful, disorderly or contumacious language or contemptuous conduct,~~  
346 ~~refusal to comply with directions, continued use of dilatory tactics, or refusal to adhere to~~  
347 ~~reasonable standards of orderly and ethical conduct, at any hearing before the Council, shall~~  
348 ~~constitute grounds for immediate exclusion before the hearing.~~

349  
350 ~~Section 14. Meeting of Council and Advisory Boards.~~

351  
352 ~~(a) — All meetings of the Council and the Advisory Board shall be conducted in~~  
353 ~~accordance with Robert's Rules of Order.~~

354  
355 ~~(b) — The four regular meetings of the Council and the Advisory Boards required by~~  
356 ~~W.S. 35-11-113 and W.S. 35-11-111(d) of the Act shall be called by the Chairman after~~  
357 ~~consultation and coordination with the Administrator or Director, respectively.~~

358  
359 ~~Section 15. Contested Water Discharge Permit Hearings.~~

360  
361 ~~Members of the Environmental Quality Council who do not comply with the requirements set~~  
362 ~~forth in 40 C.F.R. 123.25 (July 2003) shall recuse themselves from contested case proceedings in~~  
363 ~~which the approval of a surface water discharge permit, or portions of a permit, is being~~  
364 ~~considered by the Council.~~

365  
366 ~~Section 16. Air Quality Division, State Implementation Plan.~~

367  
368 ~~(a) — The following are the only requirements in these procedural rules that are part of~~  
369 ~~the Air Quality Division's State Implementation Plan:~~

370  
371 ~~(i) — The Council shall have at least a majority of members who represent the~~  
372 ~~public interest and do not derive a significant portion of their income from persons subject to~~  
373 ~~Air Quality permits or enforcement orders, as required by the Clean Air Act, Section 128(a)(1),~~  
374 ~~42 U.S.C. § 7428(a)(1);~~

375  
376 ~~(ii) — Members of the Council shall disclose any potential conflicts of interest~~  
377 ~~in a public meeting of the Council, as required by the Clean Air Act, Section 128(a)(2), 42~~  
378 ~~U.S.C. § 7428(a)(2).~~

379  
380 ~~(b) — All other requirements of these procedural rules, except those described in~~  
381 ~~Section 7, are reserved to the authority of the State and are not part of the Air Quality Division's~~  
382 ~~State Implementation Plan.~~

383  
384 ~~Section 17. Appeals to Council.~~

385  
386 ~~(a) — Unless otherwise provided by these Rules or the Environmental Quality Act, all~~  
387 ~~appeals to Council from final actions of the Administrators or Director shall be made within sixty~~  
388 ~~(60) days of such action.~~

389  
390 ~~(b) — Within 30 days after notification of any administrative decision following an~~

391 ~~informal conference relating to a surface coal mining operation, the applicant or any person with~~  
392 ~~an interest which is or may be adversely affected may appeal the decision to the Council for a~~  
393 ~~hearing in accordance with Chapters I and II. The Council shall make a final written decision~~  
394 ~~within thirty (30) days after the hearing and furnish the decision to the applicant and all parties to~~  
395 ~~the hearing.~~

CHAPTER 2  
CONTESTED CASE HEARINGS

Section 1. **Purpose and Scope.**

These rules are promulgated with the intent to adopt as much of the uniform contested case rules that the Office of Administrative Hearings adopted under W.S. 16-3-102(d) as is consistent with the specific and distinct requirements of the Department and the Council and applicable law. These rules shall govern all contested case proceedings before the Council.

Section 2. **Applicability of the Wyoming Rules of Civil Procedure.**

The Council shall conduct all contested case hearings with reference to the Wyoming Rules of Civil Procedure. Section 25 of this chapter specifically incorporates Rules 12(b)(6), 24, 45, 52, 56, and 56.1 of the Wyoming Rules of Civil Procedure.

Section 3. **Informal Proceedings and Alternative Dispute Resolution.**

(a) Parties to a contested case are encouraged to resolve the contested case through settlement, mediation, arbitration, or other means throughout the duration of a contested case. If the parties choose to engage in mediation or arbitration, they shall file a joint request for continuance pending outcome of the mediation or arbitration. If the parties choose to engage in informal settlement discussions, they may file a joint request for continuance pending outcome of the informal settlement discussions.

(b) With the consent of all parties, the hearing officer may assign a contested case to a mediating hearing officer on limited assignment for the purpose of nonbinding alternative dispute resolution methods. Such methods shall be conducted in accordance with the procedures prescribed by the mediating hearing officer.

(c) Parties shall promptly notify the hearing officer of all settlements, stipulations, agency orders, or other action eliminating the need for a contested case hearing. The hearing officer shall forward such notice to the Council. Upon such notice, the Council shall enter an order dismissing the case.

Section 4. **Initiation of Contested Case.**

(a) All persons requesting a contested case hearing or protesting a permit shall file the original written petition with the Council and serve additional copies to the Director of the Department and any other parties.

(i) A person initiating a contested case shall serve the petition by registered mail, return receipt requested. Thereafter, all service shall be proved in accordance with the Wyoming Rules of Civil Procedure.

(ii) Where a person is objecting to a permit, service of all documents shall include the permit applicant when serving the petition and all other pleadings and motions.

(b) The petition for hearing shall set forth:

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(i) Name, phone number, electronic mail address, and physical address of the petitioner and, if applicable, the petitioner’s attorney;

(ii) The action, decision, order, or permit upon which a hearing is requested;

(iii) A statement in ordinary but concise language of the specific allegations on which the petition is based, including references to the statute, rule, or order that the petitioner alleges has been violated, and

(iv) A request for hearing before the Council.

(c) The contested case shall be deemed commenced on the date of filing the petition with the Council.

(d) No responsive pleadings are mandatory prior to the prehearing scheduling conference.

**Section 5. Filing and Service of Papers**

(a) In all contested case proceedings, the parties shall file all original documents, pleadings, and motions with the Council and serve all other parties with true and correct copies of the particular document, pleading, or motion. The original and all copies shall be accompanied by a certificate of service. The Council shall maintain the complete original file, and all parties and the hearing officer shall be provided copies of all contested case documents, pleadings, and motions contained therein.

(b) Filing and service under this rule shall be made by hand delivery, U.S. mail transmittal to the last known address, or electronically uploaded to the relevant docket at <http://wyomingeqc.wyo.gov/>. Where all parties have not consented to receive electronic service, the party electronically filing shall otherwise serve the documents to the parties who have not consented to receive electronic service. Parties may file by means other than those described in this Section upon approval from the hearing officer.

**Section 6. Referral to Office.**

(a) Upon referral to the Office to conduct a contested case in accordance with W.S. 35-11-112(a), the Council shall transmit to the Office copies of appropriate documents reflecting the dispute and the basis thereof, including any written challenge(s) initiating the contested case and a reference to applicable law.

(b) The Council shall submit a transmittal sheet, on a form provided by the Office, sufficiently identifying the contested case, including:

(i) The name of the known parties and their attorneys or representatives;

(ii) A concise statement of the nature of the contested case;

(iii) Notification of any time limits for the setting of a hearing or entry of a

99 decision, location requirements, and anticipated special features or unique requirements; and

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101 (iv) Certification by an authorized officer of the Council that all parties have  
102 been properly served with a true and complete copy of the transmittal form.

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104 **Section 7. Designation and Authority of Hearing Officer; Recusal.**

105  
106 (a) The Chair may refer, assign, or designate a hearing officer to preside over  
107 any contested case unless otherwise provided by law. When appropriate under applicable law  
108 and at the Council’s request, the hearing officer may provide a recommended decision.

109  
110 (b) At any time while a contested case is pending, a hearing officer or Council  
111 member may withdraw from a contested case by filing written notice of recusal or entering a  
112 verbal notice of recusal into the record. As soon as the notice of recusal is entered, the recused  
113 hearing officer or Council member shall not participate in the contested case.

114  
115 (c) Upon motion of any party, recusal of a hearing officer or Council member shall  
116 be for cause. Whenever the grounds for such motion become known, any party may move for  
117 recusal of a hearing officer or Council member on the ground that the hearing officer or Council  
118 member:

119  
120 (i) Has been engaged as counsel in the action prior to being appointed  
121 as hearing officer;

122  
123 (ii) Has a material interest in the outcome of the action;

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125 (iii) Is related by consanguinity to a party;

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127 (iv) Is a witness in the action;

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129 (v) Is biased or prejudiced against the party or the party’s attorney or  
130 representative; or

131  
132 (vi) Any other ground provided by law.

133  
134 (d) A motion for recusal shall be supported by an affidavit or affidavits of any  
135 person or persons stating sufficient facts to show the existence of grounds for the motion. Prior  
136 to a hearing on the motion, any party may file counter-affidavits. The motion shall be heard  
137 by the hearing officer or, at the discretion of the hearing officer, by another hearing officer. If  
138 the motion is granted, the Council Chair shall immediately designate another hearing officer to  
139 preside over the contested case or shall excuse the Council member(s).

140  
141 (e) A hearing officer appointed from outside the Council members shall not be  
142 subject to a voir dire examination by any party.

143  
144 (f) Subject to limitations imposed by the hearing officer, any party may be  
145 permitted to conduct a voir dire examination of a Council member.

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147 **Section 8. Appearances and Withdrawals.**

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(a) A party, whether it be an individual, corporation, partnership, governmental organization, or other entity may appear through an attorney or representative. An individual may represent himself/herself. An individual or entity seeking to intervene in a contested case under Rule 24 of the Wyoming Rules of Civil Procedure may appear through an attorney or representative prior to a ruling on the motion to intervene.

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(b) Prior to withdrawing from a contested case, an attorney shall file a motion to withdraw. The motion for an attorney's withdrawal shall include a statement indicating the manner in which notification was given to the client and setting forth the client's last known address and telephone number. The hearing officer shall not grant the motion to withdraw unless the attorney has made reasonable efforts to give actual notice to the client that:

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(i) The attorney wishes to withdraw;

(ii) The client has the burden of keeping the hearing officer informed of the address where notices, pleadings, or other papers may be served;

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(iii) The client has the obligation to prepare, or to hire another attorney or representative to prepare, for the contested case and the dates of proceedings;

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(iv) The client may suffer an adverse determination in the contested case if the client fails or refuses to meet these burdens;

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(v) The pleadings and papers in the case shall be served upon the client at the client's last known address; and

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(vi) The client has the right to object within fifteen (15) days of the date of notice.

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(c) Prior to withdrawing from a contested case, a representative shall provide written notice of withdrawal to the Council.

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### Section 9. **Intervention.**

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(a) Any person interested in obtaining the relief sought by a party or otherwise interested in the determination of a proceeding, other than surface coal mining operations pending before the Council, may file a motion to intervene before or at the hearing, but not thereafter except for good cause shown. The motion shall set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and affirmative relief sought. Leave shall not be granted unless the Council determines that the movant is adversely affected by the action and has a legal right to intervene, under the standards set out in W.R.C.P. Rule 24.

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(b) For proceedings related to surface coal mining operations, any person may file a motion for leave to intervene as a full party or in a limited capacity at any stage of a proceeding conducted by the Council. The motion shall include the basis for intervention and shall be granted to any person who either could have initiated the proceeding or has an interest that may be adversely affected by the outcome of the proceeding. Regardless of these bases, intervention

197 may be granted whenever appropriate after considering the nature of the issues, the adequacy of  
 198 the existing parties' representation of movant's interest, the ability of the movant to present  
 199 relevant evidence and argument, and the effect of intervention on the implementation of the  
 200 Wyoming Environmental Quality Act. The extent and terms of participation by an intervenor in  
 201 a limited capacity shall be determined by the Council.  
 202

203 (c) If the motion to intervene is granted, the movant becomes an intervenor and a  
 204 party to the proceeding with the right to have notice, appear at the taking of testimony, produce  
 205 and cross-examine witnesses, and be heard on the argument of the case. The party  
 206 intervening shall give notice of intervention to all other parties.  
 207

#### 208 Section 10. **Ex Parte Communications.**

209  
 210 Except as authorized by law, a party or a party's attorney or representative shall not  
 211 communicate with any Council member in connection with any issue of fact or law concerning  
 212 any pending contested case, except upon notice and opportunity for all parties to participate.  
 213 Should ex parte communication occur, the Council member shall advise all parties of the  
 214 communication as soon as possible thereafter and, if requested, shall allow any party an  
 215 opportunity to respond prior to ruling on the issue.  
 216

#### 217 Section 11. **Motions and Motion Practice.**

218  
 219 (a) Unless these rules or an order of the hearing officer establish time limitations  
 220 other than those contained herein, all motions except motions for enlargement of time and  
 221 motions made during hearing shall be served at least ten (10) days prior to the hearing on the  
 222 motion. A party affected by the motion may serve a response together with affidavits, if  
 223 any, at least three (3) days before the hearing on the motion or within twenty (20) days after  
 224 service of the motion, whichever is earlier. Unless the hearing officer permits service at some  
 225 other time, the moving party may serve a reply, if any, at least one day prior to the hearing on  
 226 the motion or within fifteen (15) days after service of the response, whichever is earlier. Unless  
 227 the hearing officer otherwise orders, any party may serve supplemental memoranda or  
 228 rebuttal affidavits at least one day prior to the hearing on the motion.  
 229

230 (b) Unless the hearing officer otherwise orders, a request for a hearing on the motion  
 231 may be served by the moving party or any party affected by the motion within twenty (20)  
 232 days after service of the motion. The hearing officer may determine such motion without a  
 233 hearing.  
 234

235 (c) Prior to filing any non-dispositive motion, a moving party shall make  
 236 reasonable efforts to contact all other parties, representatives, and attorneys. Any such non-  
 237 dispositive motion shall include a statement concerning efforts made to confer with the other  
 238 party(s) and position(s) on the motion.  
 239

240 (d) All written motions filed with the Council shall be accompanied by a proposed  
 241 order.  
 242

#### 243 Section 12. **Setting Hearings and Other Proceedings.**

244 (a) The hearing officer or Chair of the Council, as applicable, shall assign a docket  
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246 number to each contested case. All papers, pleadings, motions, and orders filed thereafter shall  
247 contain:

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249 (i) A conspicuous reference to the assigned docket number;

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251 (ii) A caption setting forth the title of the contested case and a brief  
252 designation describing the document filed; and

253

254 (iii) The name, address, telephone number, and signature of the person  
255 who prepared the document.

256

257 (b) The hearing officer shall set the course of proceedings through the issuance of a  
258 scheduling order. This may include, but is not limited to, pre-hearing conferences,  
259 confidentiality issues, summary disposition deadlines, motion practice,  
260 settlement conferences, and the evidentiary hearing.

261

262 (c) Prehearing conferences may be held at the discretion of the hearing officer. Any  
263 party may request a prehearing conference to address issues such as discovery, motion  
264 deadlines, scheduling orders, or case status.

265

266 (d) At the hearing officer's discretion and unless otherwise provided by the  
267 Council, telephone or videoconference calls may be used to conduct any proceeding. At the  
268 discretion of the hearing officer, parties or their witnesses may be allowed to participate in  
269 any hearing by telephone or videoconference.

270

### 271 Section 13. **Consolidation.**

272

273 A party may seek consolidation of two or more contested cases by filing a motion to  
274 consolidate in each case sought to be consolidated. If consolidation is ordered and unless  
275 otherwise ordered by the hearing officer, all subsequent filings shall be in the case first filed,  
276 and all previous filings related to the consolidated cases shall be placed together under that  
277 docket number. Consolidation may be ordered on a hearing officer's own motion.

278

### 279 Section 14. **Continuances and Extensions of Time.**

280

281 (a) A motion for a continuance of any scheduled hearing shall be in writing, state  
282 the reasons for the motion, and be filed and served on all parties and the hearing officer. A  
283 motion for a continuance shall be granted only upon a showing of good cause.

284

285 (b) A motion for an extension of time for performing any act prescribed or  
286 allowed by these rules or by order of the hearing officer shall be filed and served on all parties  
287 and the hearing officer prior to the expiration of the applicable time period. A motion for  
288 extension of time shall be granted only upon a showing of good cause.

289

290 (c) For contested cases conducted regarding objections pursuant to W.S. 35-11-  
291 406(k), a motion for continuance may not be granted if the motion would continue the hearing  
292 beyond the 20-day period provided in that statute unless the parties stipulate to a different period.

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### 294 Section 15. **Discovery.**

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(a) The taking of depositions and discovery shall be in accordance with W.S. 16-3-107(g).

(b) Unless the hearing officer orders otherwise, parties shall not file discovery requests, answers, and deposition notices with the Council.

**Section 16. Subpoenas.**

Any party may request the hearing officer to issue a subpoena to compel the attendance of a witness or for the production of documents. Requests for a subpoena shall be accompanied by a completed subpoena that conforms to Rule 45 of the Wyoming Rules of Civil Procedure.

**Section 17. Summary Disposition.**

Rules 12(b)(6), 52(c), 56.1, and 56, Wyoming Rules of Civil Procedure, apply to contested cases.

**Section 18. Prehearing Procedures.**

(a) Unless otherwise ordered by the hearing officer, each party to a contested case shall file and serve on all other parties and the hearing officer a prehearing disclosure statement setting forth:

(i) A complete list of all witnesses who will or may testify, together with information on how that witness may be contacted, and a brief description of the testimony the witness is expected to give in the case. If a deposition is to be offered into evidence, the original shall be filed with the Council;

(ii) A statement of the specific claims, defenses, and issues which the party asserts are before the hearing officer for hearing, based on the party's initial filing;

(iii) A statement of the burden of proof to be assigned in the contested case with reference to specific regulatory, statutory, constitutional, or other authority established by relevant case law;

(iv) A statement of stipulated facts. If the parties are unable to stipulate to facts, the parties shall indicate what efforts have been made to stipulate to facts and the reasons facts cannot be stipulated;

(v) A complete list of all documents, statements, etc., which the party will or may introduce into evidence; and

(vi) An approximation of the time required for the hearing.

(b) Parties shall file and serve prehearing disclosure statements on or before the date established by the hearing officer.

344 (c) The information provided in a prehearing disclosure statement shall be binding  
345 on each party throughout the course of the contested case unless modified for good cause.  
346

347 (d) Additional witnesses or exhibits may be added only if the need to do so was  
348 not reasonably foreseeable at the time of filing of the prehearing disclosure statement, it would  
349 not unfairly prejudice other parties, and good cause is shown.  
350

351 (e) The hearing officer may modify the requirements of a prehearing disclosure  
352 statement.  
353

354 (f) Failure to file a prehearing disclosure statement may result in the hearing  
355 officer's striking of witnesses, exhibits, claims and defenses, or dismissal of the contested case.  
356

357 (g) If a prehearing order is entered, the prehearing order shall control the  
358 course of the hearing.  
359

360 Section 19. **Burden of Proof.**

361 The hearing officer shall assign the burden of proof in accordance with applicable  
362 law.  
363

364 Section 20. **Evidence.**

365 (a) The hearing officer shall rule on the admissibility of evidence in accordance  
366 with the following:  
367

368 (i) Evidence of the type commonly relied upon by reasonably prudent  
369 persons in the conduct of their serious affairs shall be admissible. Irrelevant, immaterial, or  
370 unduly repetitious evidence shall be excluded.  
371

372 (ii) Evidence may be offered through witness testimony or in  
373 documentary form;  
374

375 (iii) Testimony shall be given under oath administered by the hearing  
376 officer. Deposition testimony and other pre-filed testimony may be submitted as evidence,  
377 provided the testimony is given under oath administered by an appropriate authority, and is  
378 subject to cross-examination by all parties;  
379

380 (iv) The rules of privilege recognized by Wyoming law shall be given  
381 effect; and  
382

383 (v) A hearing officer may take administrative notice of judicially  
384 cognizable facts, provided the parties are properly notified of any material facts noticed.  
385

386 (b) Each party shall have the opportunity to cross-examine witnesses. The  
387 hearing officer may allow cross-examination on matters not covered on direct examination. Each  
388 party shall have the opportunity to perform re-direct examination of witnesses on matters  
389 covered during cross-examination.  
390  
391  
392

393 (c) The hearing officer or Council member, when applicable, may ask questions of  
394 any party or witness.

395

396 Section 21. **Contested Case Hearing Procedure.**

397

398 (a) The hearing officer shall conduct the contested case and shall have discretion to  
399 direct the order of the proceedings.

400

401 (b) Unless otherwise provided by law, and at the hearing officer’s discretion, the  
402 party with the burden of proof shall be the first to present evidence. All other parties  
403 shall be allowed to cross-examine witnesses in an orderly fashion. When that party rests, other  
404 parties shall then be allowed to present their evidence. Rebuttal and surrebuttal evidence shall  
405 be allowed only at the discretion of the hearing officer.

406

407 (c) The hearing officer shall have discretion to allow opening statements and  
408 closing arguments.

409

410 Section 22. **Default.**

411

412 Unless otherwise provided by law, a hearing officer may enter an order of default or  
413 an order affirming agency action for a party’s failure to appear at a lawfully noticed hearing.

414

415 Section 22. **Expedited Hearing.**

416

417 (a) At the hearing officer’s or Council’s discretion and when allowed by applicable  
418 law, a contested case may be heard as an expedited hearing upon the motion of any party.

419

420 (b) An expedited hearing shall be decided on written arguments, evidence, and  
421 stipulations submitted by the parties. A hearing officer or the Council may permit oral  
422 arguments upon the request of any party.

423

424 (c) The hearing officer may require an evidentiary hearing in any case in which  
425 it appears that facts material to a decision in the case cannot be properly determined by an  
426 expedited hearing.

427

428 Section 24. **Recommended Decision.**

429

430 In those contested cases where the hearing officer makes a recommended decision, the  
431 hearing officer shall file the recommended decision with the Council and serve copies of the  
432 recommended decision on all parties to the contested case. Unless otherwise ordered, parties shall  
433 have ten (10) days to file written exceptions to the hearing officer’s recommended decision.  
434 Written exceptions shall be filed with the Council and served on all parties.

435

436 Section 25. **Final Decision.**

437

438 (a) A final decision containing findings of fact, conclusions of law, and an order  
439 entered by the Council shall be in writing and served upon all parties to the contested case  
440 and the hearing officer, if applicable.

441

442 (b) A final decision shall include findings of fact and conclusions of law, separately  
443 stated. When the hearing officer allows the parties to submit a proposed final order, the parties  
444 shall file the original with the Council and serve copies of the proposed order on all other  
445 parties and the hearing officer.

446  
447 (c) A hearing office may at any time prior to judicial review correct clerical errors  
448 in final decisions or other parts of the record. A party may move that clerical errors or  
449 other parts of the record be corrected. During the pendency of judicial review, such errors may  
450 be corrected only with leave of the court having jurisdiction.

451  
452 **Section 26. Incorporation by Reference.**

453  
454 (a) The code, standard, rule, or regulation below is incorporated by reference and  
455 can be found at:

456  
457 [http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING\\_RULES\\_OF\\_CIVIL\\_PROCEDURE.pdf](http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULES_OF_CIVIL_PROCEDURE.pdf)  
458

459  
460 (i) Rule 12(b)(6), Wyoming Rules of Civil Procedure, adopted by the  
461 Wyoming Supreme Court and in effect on April 11, 1995;

462  
463 (ii) Rule 24, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
464 Supreme Court and in effect on February 11, 1975;

465  
466 (iii) Rule 45, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
467 Supreme Court and in effect on October 1, 2009;

468  
469 (iv) Rule 52, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
470 Supreme Court and in effect on July 1, 2000;

471  
472 (v) Rule 56, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
473 Supreme Court and in effect on October 11, 1964;

474  
475 (vi) Rule 56.1, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
476 Supreme Court and in effect on July 1, 2008.

477  
478 (b) No later amendments to a code, standard, rule, or regulation listed in subsection  
479 (a) of this Section are incorporated by reference.

480  
481 (c) These rules do not incorporate later amendments or editions of the incorporated  
482 matter.

483  
484 (d) All incorporated matter is available for public inspection at the Department's  
485 Cheyenne office. Contact information for the Cheyenne Office may be obtained at  
486 <http://deq.wyoming.gov> or from (307) 777-7937.

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CHAPTER 2  
~~RULES OF PRACTICE AND PROCEDURE APPLICABLE TO~~  
~~HEARINGS IN CONTESTED CASES~~  
CONTESTED CASE HEARINGS

Section 1. ~~Answer or appearance~~ Purpose and Scope.

(a) ~~—The Director or Applicant shall promptly file a responsive pleading to the petition directed to and served upon the opposing party and the Council, not later than five days before the hearing date.~~

These rules are promulgated with the intent to adopt as much of the uniform contested case rules that the Office of Administrative Hearings adopted under W.S. 16-3-102(d) as is consistent with the specific and distinct requirements of the Department and the Council and applicable law. These rules shall govern all contested case proceedings before the Council.

Section 2. ~~Docket~~ Applicability of the Wyoming Rules of Civil Procedure.

~~(formerly Section 2(a)) When a hearing is instituted, it shall be assigned a number and entered with the date of its filing on a separate page of a docket provided for such purpose. The Council shall establish a separate file for each such docketed case, in which shall be systematically placed all papers, pleadings, documents, transcripts, evidence and exhibits pertaining thereto, and all such items shall have noted thereon the docket number assigned, and the date of filing.~~

~~(Formerly Section 14(a)) The Wyoming Rules of Civil Procedure, insofar as the same may be applicable and not inconsistent with the laws of the state and these rules shall apply to matters before the Council.~~ The Council shall conduct all contested case hearings with reference to the Wyoming Rules of Civil Procedure. Section 25 of this chapter specifically incorporates Rules 12(b)(6), 24, 45, 52, 56, and 56.1 of the Wyoming Rules of Civil Procedure.

Section 3. ~~Motions~~ Informal Proceedings and Alternative Dispute Resolution.

(a) Parties to a contested case are encouraged to resolve the contested case through settlement, mediation, arbitration, or other means throughout the duration of a contested case. If the parties choose to engage in mediation or arbitration, they shall file a joint request for continuance pending outcome of the mediation or arbitration. If the parties choose to engage in informal settlement discussions, they may file a joint request for continuance pending outcome of the informal settlement discussions.

(b) With the consent of all parties, the hearing officer may assign a contested case to a mediating hearing officer on limited assignment for the purpose of nonbinding alternative dispute resolution methods. Such methods shall be conducted in accordance with the procedures prescribed by the mediating hearing officer.

(c) Parties shall promptly notify the hearing officer of all settlements, stipulations, agency orders, or other action eliminating the need for a contested case hearing. The hearing officer shall forward such notice to the Council. Upon such notice, the Council shall enter an order dismissing the case.

50  
51 Section 4. ~~Order of Procedure at Hearings~~ Initiation of Contested Case.  
52

53 ~~(a) — As nearly as possible, hearings shall be conducted in accordance with the~~  
54 ~~following order of procedure:~~  
55

56 ~~(i) — The presiding officer shall announce that the Council is open to transact~~  
57 ~~business and call by docket number and title the case to be heard.~~  
58

59 ~~(ii) — The parties will each be allowed an opening statement to briefly explain~~  
60 ~~their position to the Council and outline the evidence they propose to offer together with purpose~~  
61 ~~thereof.~~  
62

63 ~~(iii) — Parties' evidence will be heard. Witnesses may be cross-examined by the~~  
64 ~~opposing party or his attorney and by members of the Council and legal counsel for the Council.~~  
65

66 ~~(iv) — The presiding officer may offer any evidence necessary on behalf of the~~  
67 ~~Council subject to cross examination.~~  
68

69 ~~(v) — The presiding officer may allow, in his discretion, evidence to be offered~~  
70 ~~in any order.~~  
71

72 ~~(vi) — The Council may allow, after service of copies on all parties of record,~~  
73 ~~the direct testimony of a witness to be in writing, either narrative or question and answer form,~~  
74 ~~upon the witness being sworn and identifying the written testimony. It may be received into the~~  
75 ~~record as if read, in accordance with W.S. 9-4-108. The witness giving such testimony in writing~~  
76 ~~shall be subject to cross-examination and such evidence shall be received into the record subject~~  
77 ~~to a motion to strike. The written testimony must be served on all other parties in advance to~~  
78 ~~allow a reasonable time to prepare cross-examination.~~  
79

80 ~~(vii) — Closing arguments of the parties will be made in the manner set by the~~  
81 ~~hearing officer.~~  
82

82 ~~(viii) — Time for oral argument may be limited by the presiding officer.~~  
83

84 ~~(ix) — The presiding officer may recess the hearing as required.~~  
85

86 ~~(x) — After all interested parties have been offered the opportunity to be heard,~~  
87 ~~the presiding officer shall declare the evidence closed and excuse all witnesses. The evidence~~  
88 ~~may be reopened at a later date, for good cause shown, by order of the Council upon motion by a~~  
89 ~~party or on the Council's own motion.~~  
90

91 ~~(b) — The presiding officer may, at his discretion, require parties to tender written~~  
92 ~~briefs and set the time for filing such briefs.~~  
93

94 ~~(c) — The presiding officer may declare that the matter is taken under advisement and~~  
95 ~~that the decision and order of the Council will be announced at a later date.~~  
96

97 ~~(d) — The Council may, at its discretion, appoint a presiding officer, who will then~~  
98 ~~preside during the course of such hearing.~~

99                    ~~(i) — The presiding officer shall, for purposes of that hearing, have all~~  
100 ~~necessary powers normally vested in the Chairman.~~

101  
102                    (a) All persons requesting a contested case hearing or protesting a permit shall file  
103 the original written petition with the Council and serve additional copies to the Director of the  
104 Department and any other parties.

105  
106                    (i) A person initiating a contested case shall serve the petition by registered  
107 mail, return receipt requested. Thereafter, all service shall be proved in accordance with the  
108 Wyoming Rules of Civil Procedure.

109  
110                    (ii) Where a person is objecting to a permit, service of all documents shall  
111 include the permit applicant when serving the petition and all other pleadings and motions.

112  
113                    (b) The petition for hearing shall set forth:

114  
115                    (i) Name, phone number, electronic mail address, and physical address of  
116 the petitioner and, if applicable, the petitioner’s attorney;

117  
118                    (ii) The action, decision, order, or permit upon which a hearing is requested;

119  
120                    (iii) A statement in ordinary but concise language of the specific allegations  
121 on which the petition is based, including references to the statute, rule, or order that the petitioner  
122 alleges has been violated, and

123  
124                    (iv) A request for hearing before the Council.

125  
126                    (c) The contested case shall be deemed commenced on the date of filing the petition  
127 with the Council.

128  
129                    (d) No responsive pleadings are mandatory prior to the prehearing scheduling  
130 conference.

131  
132                    Section 5. ~~Witnesses at Hearings to be Sworn~~ Filing and Service of Papers

133  
134                    ~~(a) — All persons testifying at any hearing before the Council shall stand and be~~  
135 ~~administered the following oath or affirmation by the presiding officer:~~

136  
137                    ~~“Do you swear (or affirm) to tell the truth, the whole truth, and nothing but the truth in~~  
138 ~~the matter now before the Council, so help you God?”~~

139  
140                    ~~(i) No testimony will be received from a witness except under oath or~~  
141 ~~affirmation.~~

142  
143                    (a) In all contested case proceedings, the parties shall file all original documents,  
144 pleadings, and motions with the Council and serve all other parties with true and correct copies of  
145 the particular document, pleading, or motion. The original and all copies shall be accompanied by  
146 a certificate of service. The Council shall maintain the complete original file, and all parties and  
147 the hearing officer shall be provided copies of all contested case documents, pleadings, and

148 motions contained therein.

149  
150 (b) Filing and service under this rule shall be made by hand delivery, U.S. mail  
151 transmittal to the last known address, or electronically uploaded to the relevant docket at  
152 http://wyomingeqc.wyo.gov/. Where all parties have not consented to receive electronic service,  
153 the party electronically filing shall otherwise serve the documents to the parties who have not  
154 consented to receive electronic service. Parties may file by means other than those described in  
155 this Section upon approval from the hearing officer.

156  
157 Section 6. ~~Appearance~~ **Referral to Office.**

158  
159 (a) Upon referral to the Office to conduct a contested case in accordance with W.S.  
160 35-11-112(a), the Council shall transmit to the Office copies of appropriate documents reflecting  
161 the dispute and the basis thereof, including any written challenge(s) initiating the contested case  
162 and a reference to applicable law.

163  
164 (b) The Council shall submit a transmittal sheet, on a form provided by the  
165 Office, sufficiently identifying the contested case, including:

166  
167 (i) The name of the known parties and their attorneys or representatives;

168  
169 (ii) A concise statement of the nature of the contested case;

170  
171 (iii) Notification of any time limits for the setting of a hearing or entry of a  
172 decision, location requirements, and anticipated special features or unique requirements; and

173  
174 (iv) Certification by an authorized officer of the Council that all parties have  
175 been properly served with a true and complete copy of the transmittal form.

176  
177 Section 7. ~~Intervention~~ **Designation and Authority of Hearing Officer; Recusal.**

178  
179 (a) The Chair may refer, assign, or designate a hearing officer to preside over any  
180 contested case unless otherwise provided by law. When appropriate under applicable law and at  
181 the Council's request, the hearing officer may provide a recommended decision.

182  
183 (b) At any time while a contested case is pending, a hearing officer or Council  
184 member may withdraw from a contested case by filing written notice of recusal or entering a  
185 verbal notice of recusal into the record. As soon as the notice of recusal is entered, the recused  
186 hearing officer or Council member shall not participate in the contested case.

187  
188 (c) Upon motion of any party, recusal of a hearing officer or Council member shall be  
189 for cause. Whenever the grounds for such motion become known, any party may move for  
190 recusal of a hearing officer or Council member on the ground that the hearing officer or Council  
191 member:

192  
193 (i) Has been engaged as counsel in the action prior to being appointed as  
194 hearing officer;

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196 (ii) Has a material interest in the outcome of the action;

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(iii) Is related by consanguinity to a party;

(iv) Is a witness in the action;

(v) Is biased or prejudiced against the party or the party's attorney or representative; or

(vi) Any other ground provided by law.

(d) A motion for recusal shall be supported by an affidavit or affidavits of any person or persons stating sufficient facts to show the existence of grounds for the motion. Prior to a hearing on the motion, any party may file counter-affidavits. The motion shall be heard by the hearing officer or, at the discretion of the hearing officer, by another hearing officer. If the motion is granted, the Council Chair shall immediately designate another hearing officer to preside over the contested case or shall excuse the Council member(s).

(e) A hearing officer appointed from outside the Council members shall not be subject to a voir dire examination by any party.

(f) Subject to limitations imposed by the hearing officer, any party may be permitted to conduct a voir dire examination of a Council member.

Section 8. **General Hearing Rules** Appearances and Withdrawals.

~~(a) Every party shall be accorded the right to appear and testify in person or by counsel or other duly qualified representative. If testifying on behalf of another person or several persons, such person shall present to the hearing officer evidence he is a qualified representative thereof.~~

~~(b) Every person testifying shall, at the Council's discretion, be qualified prior to testifying. Such qualification will include ascertaining the residency, occupation, background, education, and expertise of said person.~~

~~(c) All parties shall have the right to respond and present evidence and argument on all issues involved.~~

~~(d) No person shall be required to report, inspect, or perform any investigative act except as authorized by law.~~

~~(e) All persons required to submit data or evidence shall be either entitled to retain the data or evidence or upon payment of a reasonable cost may procure a copy thereof.~~

~~(f) All irrelevant, immaterial, or unduly repetitious evidence may be excluded.~~

~~(g) Effect to the rules of privilege shall be given as recognized by law. Documentary evidence may be received in the form of copies of excerpts, if the original is not available. All copies are subject to being compared with the original.~~

- 246           ~~(h) — The presiding officer shall:~~  
247  
248           ~~(i) Administer oaths and affirmations.~~  
249  
250           ~~(ii) — Issue subpoenas.~~  
251  
252           ~~(iii) — Rule upon offers of proof and receive relevant evidence.~~  
253  
254           ~~(iv) — Take or cause to be taken depositions.~~  
255  
256           ~~(v) — Preside over the hearing and regulate its proceedings.~~  
257  
258           ~~(vi) — Preside over and set the time for such pre-hearing conferences as he~~  
259 ~~deems necessary.~~  
260  
261           ~~(vii) — Dispose of procedural requests. The presiding officer may be assisted by~~  
262 ~~a representative of the Attorney General’s Office when such assistance is deemed necessary.~~  
263  
264           ~~(viii) — The presiding officer shall officially open and officially close the~~  
265 ~~hearing.~~  
266  
267           ~~(Formerly Section 6(a)) — Appearances and representation of parties shall be made~~  
268 ~~as follows:~~  
269           ~~— (Formerly 6(a)(i)) An individual may appear and be heard in his own behalf~~  
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271           ~~— (Formerly 6(a)(ii)) — A co-partnership may appear and be represented by a co-~~  
272 ~~partner.~~  
273  
274           ~~— (Formerly 6(a)(iii)) — A corporation may appear and be represented by a~~  
275 ~~corporate officer or a full-time employee of said corporation.~~  
276  
277           ~~— (Formerly 6(a)(iv)) — A municipal corporation or its Board of Public Utilities~~  
278 ~~may appear and be represented by a municipal officer, a member of said Board or a full-time~~  
279 ~~employee of said municipality or Board.~~  
280  
281           ~~— (Formerly 6(a)(v)) — An unincorporated association may appear and be~~  
282 ~~represented by any bona fide general officer or full-time employee of such association.~~  
283  
284           ~~— (Formerly 6(a)(vi)) — The Department of Environmental Quality may appear~~  
285 ~~and be represented by the Director or Administrator of the relative division, or by the Attorney~~  
286 ~~General or his representative.~~  
287  
288           ~~— (Formerly 6(a)(vii)) — Any party to a proceeding may appear and be~~  
289 ~~represented therein by an attorney at law who is duly admitted to practice in Wyoming and an~~  
290 ~~active member of the Wyoming State Bar. Any attorney who is not duly licensed to practice law~~  
291 ~~in Wyoming shall not be entitled to enter his appearance in, prosecute or defend any action or~~  
292 ~~proceeding pending before the Council unless he shall have associated with him in such action or~~  
293 ~~proceeding an active member of the Wyoming State Bar.~~  
294

295 (Formerly 6(a)(i-vii)) (a) A party, whether it be an individual, corporation,  
296 partnership, governmental organization, or other entity may appear through an attorney or  
297 representative. An individual may represent himself/herself. An individual or entity seeking to  
298 intervene in a contested case under Rule 24 of the Wyoming Rules of Civil Procedure may appear  
299 through an attorney or representative prior to a ruling on the motion to intervene.  
300

301 ~~(Formerly 6(b)) Any person appearing in a proceeding before the Council shall conform~~  
302 ~~to the recognized standards of ethical conduct.~~  
303

304 (b) Prior to withdrawing from a contested case, an attorney shall file a motion to  
305 withdraw. The motion for an attorney's withdrawal shall include a statement indicating the  
306 manner in which notification was given to the client and setting forth the client's last known  
307 address and telephone number. The hearing officer shall not grant the motion to withdraw unless  
308 the attorney has made reasonable efforts to give actual notice to the client that:  
309

310 (i) The attorney wishes to withdraw;  
311

312 (ii) The client has the burden of keeping the hearing officer informed of the  
313 address where notices, pleadings, or other papers may be served;  
314

315 (iii) The client has the obligation to prepare, or to hire another attorney or  
316 representative to prepare, for the contested case and the dates of proceedings;  
317

318 (iv) The client may suffer an adverse determination in the contested case if  
319 the client fails or refuses to meet these burdens;  
320

321 (v) The pleadings and papers in the case shall be served upon the client at  
322 the client's last known address; and  
323

324 (vi) The client has the right to object within fifteen (15) days of the date of  
325 notice.  
326

327 (c) Prior to withdrawing from a contested case, a representative shall provide written  
328 notice of withdrawal to the Council.  
329

330 Section 9. ~~Subpoenas~~ Intervention.  
331

332 (Formerly Section 7(a)) (a) Any person interested in obtaining the relief sought by a  
333 party or otherwise interested in the determination of a proceeding, ~~relating to~~ other than surface  
334 coal mining operations pending before the Council, may ~~petition for leave~~ file a motion for leave  
335 to intervene in such proceeding prior to before or at the date of hearing, but not thereafter except  
336 for good cause shown. The petition motion shall set forth the grounds of the proposed  
337 intervention, the position and interest of the petitioner in the proceeding, and if affirmative relief  
338 is sought, the same should conform to the requirements for a formal petition. Leave will shall not  
339 be granted unless the Council shall determines that the party requesting to intervene movant is  
340 adversely affected by the action and has a legal right to intervene, has a legal right under the  
341 Environmental Quality Act or the Wyoming Administrative Procedure Act , under the standards  
342 set out in W.R.C.P. Rule 24.  
343

344 (Formerly 7(b)) (b) For proceedings related to surface coal mining operations, any  
345 person may ~~petition~~ file a motion for leave to intervene as a full party or ~~;~~ ~~if desired~~ in a limited  
346 capacity; at any stage of a proceeding conducted by the Council. The ~~petition~~ motion shall  
347 include the basis for intervention and shall be granted to any person who either could have  
348 initiated the proceeding or has an interest ~~which~~ that may be adversely affected by the outcome of  
349 the proceeding. Regardless of these bases, intervention may be granted whenever appropriate;  
350 after ~~consideration of~~ considering the nature of the issues, the adequacy of the existing parties'  
351 representation of ~~petitioner's~~ movant's interest, the ability of the ~~petitioner~~ movant to present  
352 relevant evidence and argument, and the effect of intervention on the implementation of the  
353 Wyoming Environmental Quality Act. The extent and terms of participation by an intervenor in a  
354 limited capacity shall be determined by the Council.-  
355

356 (Formerly 7(c)) (c) If ~~leave~~ the motion to intervene is granted, the ~~petitioner~~ movant  
357 becomes an intervenor and a party to the proceeding with the right to have notice, appear at the  
358 taking of testimony, produce and cross-examine witnesses, and be heard on the argument of the  
359 case. The party intervening shall give notice of intervention to all other parties.  
360

361 ~~(Formerly 7(d)) ——— The party intervening must give notice of such intervention to all~~  
362 ~~other parties to the appeal.~~  
363

#### 364 Section 10. ~~Depositions~~ Ex Parte Communications.

365  
366 ~~(a) ——— In all contested areas coming before the Council, the taking of depositions and~~  
367 ~~discovery shall be available to the parties and to the Council on its own motion in accordance~~  
368 ~~with the provisions of W.S. 9-4-107(g).~~  
369

370 ~~(b) ——— The Council, for the purposes of allowing orderly presentation of evidence, may~~  
371 ~~govern the conduct of discovery and the time limitations involved.~~  
372

373 Except as authorized by law, a party or a party's attorney or representative shall not  
374 communicate with any Council member in connection with any issue of fact or law concerning  
375 any pending contested case, except upon notice and opportunity for all parties to participate.  
376 Should ex parte communication occur, the Council member shall advise all parties of the  
377 communication as soon as possible thereafter and, if requested, shall allow any party an  
378 opportunity to respond prior to ruling on the issue.  
379

#### 380 Section 11. ~~Witness Fees~~ Motions and Motion Practice.

381  
382 ~~(a) ——— Witnesses who are summoned before the Council are entitled to the same fees as~~  
383 ~~are paid for like service in the District Courts of the State of Wyoming. Such fees shall be paid by~~  
384 ~~the party at whose insistence the testimony was taken.~~  
385

386 ~~(formerly Section 3(a)) (a) The Council or presiding officer may, upon reasonable~~  
387 ~~notice to all parties, hear orally, or otherwise, any motion filed in connection with hearings under~~  
388 ~~these rules. Unless these rules or an order of the hearing officer establish time limitations other~~  
389 ~~than those contained herein, all motions except motions for enlargement of time and motions~~  
390 ~~made during hearing shall be served at least ten (10) days prior to the hearing on the motion. A~~  
391 ~~party affected by the motion may serve a response together with affidavits, if any, at least three~~  
392 ~~(3) days before the hearing on the motion or within twenty (20) days after service of the motion.~~

393 whichever is earlier. Unless the hearing officer permits service at some other time, the moving  
394 party may serve a reply, if any, at least one day prior to the hearing on the motion or within  
395 fifteen (15) days after service of the response, whichever is earlier. Unless the hearing officer  
396 otherwise orders, any party may serve supplemental memoranda or rebuttal affidavits at least one  
397 day prior to the hearing on the motion.

398  
399 (b) Unless the hearing officer otherwise orders, a request for a hearing on the motion  
400 may be served by the moving party or any party affected by the motion within twenty (20) days  
401 after service of the motion. The hearing officer may determine such motion without a hearing.

402  
403 (c) Prior to filing any non-dispositive motion, a moving party shall make reasonable  
404 efforts to contact all other parties, representatives, and attorneys. Any such non- dispositive  
405 motion shall include a statement concerning efforts made to confer with the other party(s) and  
406 position(s) on the motion.

407  
408 (d) All written motions filed with the Council shall be accompanied by a proposed  
409 order.

410  
411 Section 12. ~~Decision and Order~~ Setting Hearings and Other Proceedings.

412  
413 ~~(a) — The Council shall make a written decision and order in all cases, which decision~~  
414 ~~shall contain findings of fact and conclusions of law based exclusively on the record and include~~  
415 ~~the vote on the decision. The decision and order of the Council shall be placed in the record of the~~  
416 ~~case which shall be retained by the Council.~~

417  
418 ~~(formerly Section 2(a)) (a) — When a hearing is instituted, The hearing officer or~~  
419 ~~Chair of the Council, as applicable, it shall be assigned a docket number and entered with the date~~  
420 ~~of its filing on a separate page of a docket provided for such purpose to each contested case. The~~  
421 ~~Council shall establish a separate file for each such docketed case, in which shall be~~  
422 ~~systematically placed all papers, pleadings, documents, transcripts, evidence and exhibits~~  
423 ~~pertaining thereto, and all such items shall have noted thereon the docket number assigned, and~~  
424 ~~the date of filing. All papers, pleadings, motions, and orders filed thereafter shall contain:~~

425  
426 (i) A conspicuous reference to the assigned docket number;

427  
428 (ii) A caption setting forth the title of the contested case and a brief  
429 designation describing the document filed; and

430  
431 (iii) The name, address, telephone number, and signature of the person who  
432 prepared the document.

433  
434 (b) The hearing officer shall set the course of proceedings through the issuance of a  
435 scheduling order. This may include, but is not limited to, pre-hearing conferences, confidentiality  
436 issues, summary disposition deadlines, motion practice,  
437 settlement conferences, and the evidentiary hearing.

438  
439 (c) Prehearing conferences may be held at the discretion of the hearing officer. Any  
440 party may request a prehearing conference to address issues such as discovery, motion deadlines,  
441 scheduling orders, or case status.

442  
443 (d) At the hearing officer's discretion and unless otherwise provided by the Council,  
444 telephone or videoconference calls may be used to conduct any proceeding. At the discretion of  
445 the hearing officer, parties or their witnesses may be allowed to participate in any hearing by  
446 telephone or videoconference.

447  
448 Section 13. Consolidation.

449  
450 ~~(a) The Council may, in its discretion, allow any pleadings to be amended or~~  
451 ~~corrected, or any omission therein to be supplied.~~

452  
453 A party may seek consolidation of two or more contested cases by filing a motion to  
454 consolidate in each case sought to be consolidated. If consolidation is ordered and unless  
455 otherwise ordered by the hearing officer, all subsequent filings shall be in the case first filed, and  
456 all previous filings related to the consolidated cases shall be placed together under that docket  
457 number. Consolidation may be ordered on a hearing officer's own motion.

458  
459 Section 14. ~~Applicability of Rule of Civil Procedure~~ Continuances and Extensions of  
460 Time.

461  
462 (a) A motion for a continuance of any scheduled hearing shall be in writing, state the  
463 reasons for the motion, and be filed and served on all parties and the hearing officer. A motion for  
464 a continuance shall be granted only upon a showing of good cause.

465  
466 (b) A motion for an extension of time for performing any act prescribed or allowed by  
467 these rules or by order of the hearing officer shall be filed and served on all parties and the  
468 hearing officer prior to the expiration of the applicable time period. A motion for extension of  
469 time shall be granted only upon a showing of good cause.

470  
471 (c) For contested cases conducted regarding objections pursuant to W.S. 35-11-  
472 406(k), a motion for continuance may not be granted if the motion would continue the hearing  
473 beyond the 20-day period provided in that statute unless the parties stipulate to a different period.

474  
475 Section 15. Discovery.

476  
477 (a) The taking of depositions and discovery shall be in accordance with  
478 W.S. 16-3-107(g).

479  
480 (b) Unless the hearing officer orders otherwise, parties shall not file discovery  
481 requests, answers, and deposition notices with the Council.

482  
483 Section 16. Subpoenas.

484  
485 ~~Formerly Section 9(a) Subpoenas requiring the attendance of witnesses from~~  
486 ~~any place in the State of Wyoming at any designated place of hearing or for the production of~~  
487 ~~books, papers, or other documents may be issued by the presiding officer upon written application~~  
488 ~~of any party or upon motion of the presiding officer in accordance with the Wyoming Rules of~~  
489 ~~Civil Procedure and Administrative Procedure Act.~~

491 ~~(Formerly Section 9(a)(i)) — Items sought shall be set forth with particularity.~~

492

493 ~~(Formerly Section 9(a)(ii)) — All subpoenas shall be served by personal~~  
494 ~~delivery or by certified mail return receipt required, to the party served.~~

495 ~~(Formerly Section 9(a)(iii)) Cost of the subpoenas shall be paid by the party requesting~~  
496 ~~the service.~~

497

498 Any party may request the hearing officer to issue a subpoena to compel the attendance  
499 of a witness or for the production of documents. Requests for a subpoena shall be accompanied  
500 by a completed subpoena that conforms to Rule 45 of the Wyoming Rules of Civil Procedure.

501

502 Section 17. Summary Disposition.

503

504

505 Rules 12(b)(6), 52(c), 56.1, and 56, Wyoming Rules of Civil Procedure, apply to  
506 contested cases.

507

508 Section 18. Prehearing Procedures.

509

510 (a) Unless otherwise ordered by the hearing officer, each party to a contested case  
511 shall file and serve on all other parties and the hearing officer a prehearing disclosure statement  
512 setting forth:

513

514 (i) A complete list of all witnesses who will or may testify, together with  
515 information on how that witness may be contacted, and a brief description of the testimony the  
516 witness is expected to give in the case. If a deposition is to be offered into evidence, the original  
517 shall be filed with the Council;

518

519 (ii) A statement of the specific claims, defenses, and issues which the party  
520 asserts are before the hearing officer for hearing, based on the party's initial filing;

521

522 (iii) A statement of the burden of proof to be assigned in the contested case  
523 with reference to specific regulatory, statutory, constitutional, or other authority established by  
524 relevant case law;

525

526 (iv) A statement of stipulated facts. If the parties are unable to stipulate to  
527 facts, the parties shall indicate what efforts have been made to stipulate to facts and the reasons  
528 facts cannot be stipulated;

529

530 (v) A complete list of all documents, statements, etc., which the party will or  
531 may introduce into evidence; and

532

533 (vi) An approximation of the time required for the hearing.

534

535 (b) Parties shall file and serve prehearing disclosure statements on or before the date  
536 established by the hearing officer.

537

538 (c) The information provided in a prehearing disclosure statement shall be binding on  
539 each party throughout the course of the contested case unless modified for good cause.

540  
541 (d) Additional witnesses or exhibits may be added only if the need to do so was not  
542 reasonably foreseeable at the time of filing of the prehearing disclosure statement, it would not  
543 unfairly prejudice other parties, and good cause is shown.

544  
545 (e) The hearing officer may modify the requirements of a prehearing disclosure  
546 statement.

547  
548 (f) Failure to file a prehearing disclosure statement may result in the hearing  
549 officer's striking of witnesses, exhibits, claims and defenses, or dismissal of the contested case.

550  
551 (g) If a prehearing order is entered, the prehearing order shall control the course of  
552 the hearing.

553  
554 **Section 19. Burden of Proof.**

555  
556 The hearing officer shall assign the burden of proof in accordance with applicable law.

557  
558 **Section 20. Evidence.**

559  
560 (a) The hearing officer shall rule on the admissibility of evidence in accordance  
561 with the following:

562  
563 (i) Evidence of the type commonly relied upon by reasonably prudent  
564 persons in the conduct of their serious affairs shall be admissible. Irrelevant, immaterial, or  
565 unduly repetitious evidence shall be excluded.

566  
567 (ii) Evidence may be offered through witness testimony or in documentary  
568 form;

569  
570 (iii) Testimony shall be given under oath administered by the hearing  
571 officer. Deposition testimony and other pre-filed testimony may be submitted as evidence,  
572 provided the testimony is given under oath administered by an appropriate authority, and is  
573 subject to cross- examination by all parties;

574  
575 (iv) The rules of privilege recognized by Wyoming law shall be given  
576 effect; and

577  
578 (v) A hearing officer may take administrative notice of judicially  
579 cognizable facts, provided the parties are properly notified of any material facts noticed.

580  
581 (b) Each party shall have the opportunity to cross-examine witnesses. The hearing  
582 officer may allow cross-examination on matters not covered on direct examination. Each party  
583 shall have the opportunity to perform re-direct examination of witnesses on matters covered  
584 during cross-examination.

585  
586 (c) The hearing officer or Council member, when applicable, may ask questions of  
587 any party or witness.

588

589           Section 21. Contested Case Hearing Procedure.

590  
591           (a) The hearing officer shall conduct the contested case and shall have discretion to  
592 direct the order of the proceedings.

593  
594           (b) Unless otherwise provided by law, and at the hearing officer's discretion, the  
595 party with the burden of proof shall be the first to present evidence. All other parties shall be  
596 allowed to cross-examine witnesses in an orderly fashion. When that party rests, other parties  
597 shall then be allowed to present their evidence. Rebuttal and surrebuttal evidence shall be allowed  
598 only at the discretion of the hearing officer.

599  
600           (c) The hearing officer shall have discretion to allow opening statements and closing  
601 arguments.

602  
603           Section 22. Default.

604  
605           Unless otherwise provided by law, a hearing officer may enter an order of default or an  
606 order affirming agency action for a party's failure to appear at a lawfully noticed hearing.

607  
608           Section 23. Expedited Hearing.

609  
610           (a) At the hearing officer's or Council's discretion and when allowed by applicable  
611 law, a contested case may be heard as an expedited hearing upon the motion of any party.

612  
613           (b) An expedited hearing shall be decided on written arguments, evidence, and  
614 stipulations submitted by the parties. A hearing officer or the Council may permit oral arguments  
615 upon the request of any party.

616  
617           (c) The hearing officer may require an evidentiary hearing in any case in which it  
618 appears that facts material to a decision in the case cannot be properly determined by an  
619 expedited hearing.

620  
621           Section 24. Recommended Decision.

622  
623           In those contested cases where the hearing officer makes a recommended  
624 decision, the hearing officer shall file the recommended decision with the Council and serve  
625 copies of the recommended decision on all parties to the contested case. Unless otherwise  
626 ordered, parties shall have ten (10) days to file written exceptions to the hearing officer's  
627 recommended decision. Written exceptions shall be filed with the Council and served on all  
628 parties.

629  
630           Section 25. Final Decision.

631  
632           (a) A final decision containing findings of fact, conclusions of law, and an order  
633 entered by the Council shall be in writing and served upon all parties to the contested case and the  
634 hearing officer, if applicable.

635  
636           (b) A final decision shall include findings of fact and conclusions of law, separately  
637 stated. When the hearing officer allows the parties to submit a proposed final order, the parties

638 shall file the original with the Council and serve copies of the proposed order on all other parties  
639 and the hearing officer.

640  
641 (c) A hearing office may at any time prior to judicial review correct clerical errors in  
642 final decisions or other parts of the record. A party may move that clerical errors or other parts of  
643 the record be corrected. During the pendency of judicial review, such errors may be corrected  
644 only with leave of the court having jurisdiction.

645  
646 **Section 26. Incorporation by Reference.**

647  
648 (a) The code, standard, rule, or regulation below is incorporated by reference and  
649 can be found at:

650  
651 [http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING\\_RULES\\_OF](http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULES_OF)  
652 [CIVIL\\_PROCEDURE.pdf](http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULES_OF)

653  
654 (i) Rule 12(b)(6), Wyoming Rules of Civil Procedure, adopted by the  
655 Wyoming Supreme Court and in effect on April 11, 1995;

656  
657 (ii) Rule 24, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
658 Supreme Court and in effect on February 11, 1975;

659  
660 (iii) Rule 45, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
661 Supreme Court and in effect on October 1, 2009;

662  
663 (iv) Rule 52, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
664 Supreme Court and in effect on July 1, 2000;

665  
666 (v) Rule 56, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
667 Supreme Court and in effect on October 11, 1964;

668  
669 (vi) Rule 56.1, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
670 Supreme Court and in effect on July 1, 2008.

671  
672 (b) No later amendments to a code, standard, rule, or regulation listed in subsection  
673 (a) of this Section are incorporated by reference.

674  
675 (c) These rules do not incorporate later amendments or editions of the incorporated  
676 matter.

677  
678 (d) All incorporated matter is available for public inspection at the Department's  
679 Cheyenne office. Contact information for the Cheyenne Office may be obtained at  
680 <http://deq.wyoming.gov> or from (307) 777-7937.

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CHAPTER 3  
RULEMAKING

Section 1. **Authority.**

The Council may promulgate rules necessary for the administration of the Wyoming Environmental Quality Act after receiving a recommendation to adopt a proposed rule or rules from the Director under W.S. 35-11-112(a)(i). The Department may begin preliminary rulemaking on its own, in response to a suggestion from the Council or advisory boards, or in response to a petition for rulemaking.

Section 2. **Definitions.**

The following definitions supplement the definitions found in the Wyoming Administrative Procedure Act and the Wyoming Environmental Quality Act.

(a) “Initiate rulemaking” means to submit notice of the intent to adopt, amend, or repeal any rule, other than an interpretive rule or statement of general policy, to the Secretary of State’s Office, the Legislative Service Office, and the Attorney General’s Office, as required by W.S. 16-3-103(a)(i).

(b) “Preliminary rulemaking” is the rule development process that occurs at the Department prior to initiating rulemaking.

(c) “Preliminary rule” is a rule that the Department has not filed with the Council.

(d) “Proposed rule” is a rule that the Department has filed with the Council.

Section 3. **Petition for Rulemaking.**

Any interested person may petition the Council or the Department requesting the promulgation, amendment, or repeal of any rule. The Director shall be copied on any petition directed to the Council and the Chair of the Council shall be copied on any petition directed to the Department.

(a) Each petition shall identify the rule or rules to be promulgated, amended, or repealed and shall provide support for the proposed rulemaking in the form of argument, data, legal citation, or other justification, as appropriate.

(b) For any petition that is directed to the Council, the Council shall, as soon as practicable, either deny or redirect the petition to the Director.

(i) The Council may hold a hearing to request additional information from the petitioner or members of the public before acting on a petition.

(ii) If the Council denies the petition, the Council shall notify the petitioner in writing, setting forth the reasons for denial. The Council shall provide a copy of the denial to the Director.

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(iii) If the Council redirects the petition to the Director, the Council shall provide a copy of that determination to the petitioner.

(c) Upon receiving a petition from a member of the public or one that is redirected by the Council, the Director shall, as soon as practicable, either deny the petition in writing or begin preliminary rulemaking.

(i) The Director may request additional information from the petitioner before acting on the petition and may seek additional input from members of the public through public meetings, hearings, or other outreach.

(ii) If the Director denies the petition, the Director shall notify the petitioner in writing, setting forth the reasons for the denial.

(iii) If the Director begins preliminary rulemaking in response to a petition, the Director shall notify the petitioner in writing of that determination.

(iv) If the Director begins preliminary rulemaking in response to a petition and subsequently decides not to initiate rulemaking, the Director shall notify the petitioner in writing of that decision, setting forth the reasons for doing so. The decision not to initiate rulemaking is a denial of the rulemaking petition.

(v) The Director shall provide the Council with a copy of all notices required by this subsection.

(d) A written denial of any rulemaking petition is final agency action and is not subject to judicial review.

**Section 4. Preliminary Rulemaking Hearings before the Advisory Boards.**

(a) The air, land, solid and hazardous waste management, and water divisions of the Department may conduct preliminary rulemaking hearings before their related advisory boards by submitting the following materials to the affected board:

(i) Strike and underscore and clean copies of the preliminary rule;

(ii) Copies of all public comments received to date and proposed responses, if applicable; and

(iii) Any additional materials that the divisions and advisory boards believe are necessary to explain the content of the preliminary rules.

(b) The Department may not initiate rulemaking and submit a proposed rule to the Council for consideration without first securing a recommendation to adopt the preliminary rule from the affected advisory board. At the conclusion of a preliminary rulemaking hearing, an advisory board may:

96  
97 (i) Choose to continue discussion of the preliminary rule at the next  
98 regularly scheduled meeting or schedule a special meeting specifically to discuss the proposed  
99 rule, retaining the ability in either situation, to also re-open and extend the public comment  
100 period for the proposed rule;

101  
102 (ii) Remand the preliminary rule to the division for further action, including  
103 addressing questions regarding specific aspects of the preliminary rule; or

104  
105 (iii) Recommend that the Department initiate rulemaking and submit the  
106 preliminary rule to the Council for adoption.

107  
108 (c) When preliminary rules involve more than one of the divisions of the  
109 Department, the Director may call a joint meeting of the affected advisory boards. The advisory  
110 boards shall select one member to preside over the joint meeting. Any formal action taken on a  
111 preliminary rule discussed during a joint meeting of the advisory boards must be voted on  
112 individually by each advisory board.

113  
114 (d) The divisions may consult with the advisory boards through special meetings  
115 after preliminary rulemaking hearings. The divisions may incorporate suggestions that arise  
116 during preliminary rulemaking hearings or any subsequent special meetings without conducting  
117 additional preliminary rulemaking hearings.

118  
119 **Section 5. Promulgating Rules.**

120  
121 (a) When the Department initiates rulemaking, it shall file the following with the  
122 Council:

123  
124 (i) Strike and underscore and clean copies of the proposed rule;

125  
126 (ii) Proposed Statement of Principal Reasons for adopting the proposed rule;

127  
128 (iii) Copies of all public comments received to date and proposed responses,  
129 if applicable;

130  
131 (iv) Record or minutes of any public hearings or meetings conducted by the  
132 Department and the affected advisory board or boards;

133  
134 (v) Statement from the Director indicating that the proposed rule was  
135 recommended for adoption by the affected advisory board or boards through the affected division  
136 administrator or administrators;

137  
138 (vi) Recommendation from the Director that the Council adopt the proposed  
139 rule; and

140  
141 (vii) Any additional materials that the Department believes are necessary to  
142 explain the contents of the proposed rule.

143

144 (b) When initiating rulemaking, the Department shall provide the Council with an  
145 index of materials relied upon to develop the proposed rule.

146  
147 (i) The Department may update the index until the public comment period  
148 on the proposed rule, as required by W.S. 16-3-103(a)(i), is closed. After the comment period is  
149 closed, the Department may only update the index with responses to comments.

150  
151 (ii) All indexed materials shall be open for inspection by any person at  
152 reasonable times during business hours of the Department.

153  
154 (c) In the case of judicial review of any rule adopted by the Council, all indexed  
155 materials shall be included in the administrative record submitted to the court, together with any  
156 additional materials considered by the Council during rulemaking hearings.

157  
158 **Section 6. Rulemaking Hearings before the Council.**

159  
160 (a) The Council chair shall assign a hearing officer from among the Council  
161 members by filing a notice of appointment with the Council within thirty (30) days of the  
162 Department filing the proposed rule with the Council. The appointed hearing officer shall preside  
163 over all proceedings before the Council related to the proposed rule. If the assigned Council  
164 member leaves the Council through resignation, expiration of membership, or otherwise, the chair  
165 shall assign a hearing officer as a replacement and shall serve as the hearing officer in the interim  
166 before the substitute assignment is made.

167  
168 (b) Any member of the public, subject to reasonable time restrictions established by  
169 the presiding officer, may address the Council at any meeting in which the Council is considering  
170 proposed rules. The Council shall allow meaningful opportunity for public comment at each  
171 rulemaking hearing.

172  
173 (i) No person may address the Council without first being recognized by the  
174 presiding officer.

175  
176 (ii) The Council may provide a telephonic or internet-based method to  
177 receive public comments during Council proceedings.

178  
179 (iii) Members of the public may not directly address each other in  
180 proceedings before the Council, and shall address any questions to the hearing officer.

181  
182 (iv) Members of the public seeking recognition in proceedings before the  
183 Council shall state their name and whether they are speaking on behalf of an organization. The  
184 Council shall consider all comments to be made in a person's individual capacity unless an  
185 affiliation is disclosed to the Council.

186  
187 (v) In considering proposed rules, the Council shall consider all properly  
188 submitted public comments.

189  
190 (vi) Comments shall be directed to the Council as a whole and not to  
191 individual Council members. If a member of the public approaches an individual Council member  
192 to discuss a proposed rule, that member shall direct the person to submit a comment for full

193 consideration by the Council. If a Council member receives information through informal contact  
194 with a member of the public, that member shall disclose the contact and the information received  
195 to the rest of the Council in an open meeting. If the information is reduced to writing in physical  
196 or electronic format, the Council member shall provide the information to the other Council  
197 members and the writing shall become part of the record.  
198

199 (c) The Council may make changes to proposed rules based on its independent  
200 analysis of the form and substance of the proposed rules. In doing so, the Council may consider  
201 testimony received during a rulemaking hearing and materials submitted to the rulemaking  
202 docket.

203  
204 (i) In considering potential changes to proposed rules, the Council shall  
205 consider the following:

206  
207 (A) Whether the contemplated change meets all procedural  
208 requirements of the Wyoming Administrative Procedure Act, including whether the change is a  
209 logical outgrowth of the proposed rule;

210  
211 (B) Whether the opportunity for public participation was meaningful  
212 and sufficient given the nature of the contemplated change to the proposed rule;

213  
214 (C) Whether the contemplated change imposes an unwarranted  
215 administrative burden on the Department; and

216  
217 (D) Whether the contemplated change impacts the Department's  
218 ability to maintain primacy over the relevant regulatory area. The Council shall allow the  
219 Department to provide a primacy analysis in the context of any contemplated changes.  
220

221 (ii) The Council shall not modify a proposed rule if the Council determines  
222 that:

223  
224 (A) The contemplated change conflicts with state or federal law;

225  
226 (B) The contemplated change is not a logical outgrowth of the  
227 proposed rule; or

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229 (C) The opportunity for public participation was not meaningful or  
230 sufficient given the nature of the contemplated change.

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CHAPTER ~~III~~ 3  
~~RULES OF PRACTICE AND PROCEDURE APPLICABLE~~  
~~TO RULE MAKING HEARINGS OR HEARINGS~~  
~~BY AN ADMINISTRATOR OF A DIVISION OF DEQ~~  
RULEMAKING

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Section 1. Authority.

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~~Except as otherwise directed by the Council, the provisions of the Rules contained in this Chapter (III), (Sections 1 et seq.), shall govern:~~

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(a) ~~Any hearings conducted pursuant to a petition (within the meaning of W.S. 9-4-106) for the promulgation, amendment, or repeal of any rules (as defined in W.S. 9-4-101(a)(vii)).~~

(b) ~~Any hearings conducted pursuant to W.S. 9-4-103 for the promulgation of rules and regulations recommended by the Director or Administrator.~~

(c) ~~Any hearings by the Administrator on land, air or water quality or solid waste management permits held because of significant public comment.~~

(d) ~~Any hearings by the Administrator for a variance under W.S. 35-11-601, excluding SO<sub>2</sub> variances.~~

(e) ~~Any hearings by the Council to consider the designation of areas of unique and irreplaceable historical, archaeological, scenic or natural value pursuant to W.S. 35-11-112(a)(v).~~

(f) ~~Any informal conference held by the administrator of Land Quality on a permit application. However, a record shall be made of the conference, unless waived by all parties. Such record shall be maintained and shall be accessible to the parties until final release of the performance bond.~~

The Council may promulgate rules necessary for the administration of the Wyoming Environmental Quality Act after receiving a recommendation to adopt a proposed rule or rules from the Director under W.S. 35-11-112(a)(i). The Department may begin preliminary rulemaking on its own, in response to a suggestion from the Council or advisory boards, or in response to a petition for rulemaking.

Section 2. Definitions.

The following definitions supplement the definitions found in the Wyoming Administrative Procedure Act and the Wyoming Environmental Quality Act.

(a) “Initiate rulemaking” means to submit notice of the intent to adopt, amend, or repeal any rule, other than an interpretive rule or statement of general policy, to the Secretary of State’s Office, the Legislative Service Office, and the Attorney General’s Office, as required by W.S. 16-3-103(a)(i).

49 (b) “Preliminary rulemaking” is the rule development process that occurs at the  
50 Department prior to initiating rulemaking.

51  
52 (c) “Preliminary rule” is a rule that the Department has not filed with the Council.

53  
54 (d) “Proposed rule” is a rule that the Department has filed with the Council.  
55

56 Section 3. ~~Informal Conference.~~ Petition for Rulemaking.

57  
58 ~~(formerly Section 3(a)) Any request that the Administrator hold an informal conference~~  
59 ~~on any application for a surface coal mining permit shall briefly state the issues to be discussed,~~  
60 ~~whether the requester desires the conference to be held in the locality of the proposed mining~~  
61 ~~operation, and whether access to the proposed permit area is desired. If requested, the~~  
62 ~~Administrator may arrange with the applicant to grant parties to the conference access to the~~  
63 ~~permit area for the purpose of gathering information relative to the conference. The conference~~  
64 ~~shall be held in the locality of the operation or at the state capitol, at the option of the requester,~~  
65 ~~within 20 days after the final date for filing objections unless a different period is stipulated to by~~  
66 ~~the parties. If all parties requesting the conference reach agreement and withdraw their request,~~  
67 ~~the conference need not be held.~~

68  
69 (b) ~~Where a hearing is requested pursuant to Chapter I, Section 16b, the Council~~  
70 ~~may, under such conditions as it may prescribe, grant such temporary relief as it deems~~  
71 ~~appropriate pending final determination of the proceedings if:~~

72  
73 (i) ~~All parties to the proceedings have been notified and given an~~  
74 ~~opportunity to be heard on a request for temporary relief;~~

75  
76 (ii) ~~The person requesting that relief shows that there is a substantial~~  
77 ~~likelihood that he will prevail on the merits of the final determination of the proceeding;~~

78  
79 (iii) ~~Such relief will not adversely affect the public health or safety or cause~~  
80 ~~significant imminent environmental harm to land, air or water resources; and~~

81  
82 (iv) ~~The relief sought is not the issuance of a permit where a permit has been~~  
83 ~~denied by the Administrator.~~

84  
85 (formerly Section 2) Any interested person party may petition the Council or the  
86 Department to promulgate requesting the promulgation, amend amendment, or repeal of any rule  
87 or rules. ~~(formerly Section 2(a)) Each petition must be submitted in duplicate to the~~  
88 ~~Chairman of the Environmental Quality Council and to the Director of the Department of~~  
89 ~~Environmental Quality. The Director shall be copied on any petition directed to the Council and~~  
90 ~~the Chair of the Council shall be copied on any petition directed to the Department.~~

91  
92 (a) Each petition shall identify the rule or rules to be promulgated, amended, or  
93 repealed and shall provide support for the proposed rulemaking in the form of argument, data,  
94 legal citation, or other justification, as appropriate.

95  
96 ~~(formerly Section 2(b)) Except as otherwise provided by the Council, the filing of a~~  
97 ~~petition under this section shall not stay the effectiveness of any rule or rules.~~

98  
99 ~~(formerly Section 2(c)) After filing of the petition, the Council may hold a~~  
100 ~~prehearing conference to review the petition and its persuasiveness.~~

101  
102 ~~(formerly Section 2(e)) Before the adoption, issuance, amendment, or repeal of any rule,~~  
103 ~~or the commencement of any hearing on such proposed rule making, the Council shall cause~~  
104 ~~notice to be given in accordance with the provisions of W.S. 9-4-103.~~

105  
106 (b) For any petition that is directed to the Council, the Council shall, as soon as  
107 practicable, either deny or redirect the petition to the Director.

108  
109 (i) The Council may hold a hearing to request additional information from  
110 the petitioner or members of the public before acting on a petition.

111  
112 ~~formerly Section 2(d)) (ii) As soon as practicable, the Council~~  
113 ~~shall deny the petition in writing (stating its reasons for the denial) or initiate rule making~~  
114 ~~procedures.~~If the Council denies the petition, the Council shall notify the petitioner in writing,  
115 setting forth the reasons for denial. The Council shall provide a copy of the denial to the Director.

116  
117 (iii) If the Council redirects the petition to the Director, the Council shall  
118 provide a copy of that determination to the petitioner.

119  
120 (c) Upon receiving a petition from a member of the public or one that is redirected  
121 by the Council, the Director shall, as soon as practicable, either deny the petition in writing or  
122 begin preliminary rulemaking.

123  
124 (i) The Director may request additional information from the petitioner  
125 before acting on the petition and may seek additional input from members of the public through  
126 public meetings, hearings, or other outreach.

127  
128 (ii) If the Director denies the petition, the Director shall notify the petitioner  
129 in writing, setting forth the reasons for the denial.

130  
131 (iii) If the Director begins preliminary rulemaking in response to a petition,  
132 the Director shall notify the petitioner in writing of that determination.

133  
134 (iv) If the Director begins preliminary rulemaking in response to a petition  
135 and subsequently decides not to initiate rulemaking, the Director shall notify the petitioner in  
136 writing of that decision, setting forth the reasons for doing so. The decision not to initiate  
137 rulemaking is a denial of the rulemaking petition.

138  
139 (v) The Director shall provide the Council with a copy of all notices required  
140 by this subsection.

141  
142 (d) A written denial of any rulemaking petition is final agency action and is not  
143 subject to judicial review.

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Section 4. Preliminary Rulemaking Hearings before the Advisory Boards.

~~(formerly Section 4(a)) The provisions of W.S. 9-4-107 through 9-4-112 (relating to the conduct of hearings for contested cases) do not apply to hearings held under this Chapter (III) of these Rules. As a fact-finding legislative proceeding, each hearing is nonadversary and there are no formal pleadings or adverse parties.~~

~~(formerly 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) day public comment period after the last publication. 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.~~

~~(formerly 4(c)) The hearing is directed to receiving factual evidence and expert opinion testimony relative to the issues in the proceeding.~~

~~(formerly 4(d)) The Council, upon its own motion or upon the motion of any party, to promote the orderly presentation of evidence, may adopt one or more of the provisions contained in Chapter II of these Rules governing procedures in contested cases. Such action by the Council shall not constitute an agreement that the proceeding before the Council is in the nature of a contested case.~~

~~(formerly 4(e)) The Council or Administrator may impose time limitations upon oral presentations.~~

(a) The air, land, solid and hazardous waste management, and water divisions of the Department may conduct preliminary rulemaking hearings before their related advisory boards by submitting the following materials to the affected board:

(i) Strike and underscore and clean copies of the preliminary rule;

(ii) Copies of all public comments received to date and proposed responses, if applicable; and

(iii) Any additional materials that the divisions and advisory boards believe are necessary to explain the content of the preliminary rules.

(b) The Department may not initiate rulemaking and submit a proposed rule to the Council for consideration without first securing a recommendation to adopt the preliminary rule from the affected advisory board. At the conclusion of a preliminary rulemaking hearing, an advisory board may:

(i) Choose to continue discussion of the preliminary rule at the next regularly scheduled meeting or schedule a special meeting specifically to discuss the proposed rule, retaining the ability in either situation, to also re-open and extend the public comment period for the proposed rule;

192 (ii) Remand the preliminary rule to the division for further action, including  
193 addressing questions regarding specific aspects of the preliminary rule; or

194  
195 (iii) Recommend that the Department initiate rulemaking and submit the  
196 preliminary rule to the Council for adoption.

197  
198 (c) When preliminary rules involve more than one of the divisions of the  
199 Department, the Director may call a joint meeting of the affected advisory boards. The advisory  
200 boards shall select one member to preside over the joint meeting. Any formal action taken on a  
201 preliminary rule discussed during a joint meeting of the advisory boards must be voted on  
202 individually by each advisory board.

203  
204 (d) The divisions may consult with the advisory boards through special meetings  
205 after preliminary rulemaking hearings. The divisions may incorporate suggestions that arise  
206 during preliminary rulemaking hearings or any subsequent special meetings without conducting  
207 additional preliminary rulemaking hearings.

208  
209 Section 5. ~~Witnesses~~ Promulgating Rules.

210  
211 ~~(formerly Section 5(a)) The Council, designated hearing officer, or Administrator may~~  
212 ~~direct that summaries to the testimony of witnesses be prepared in advance of the hearing. If so~~  
213 ~~directed, copies of such summaries shall be served upon the members of the Council or~~  
214 ~~Administrator or upon any other party as the designated hearing officer may direct.~~

215  
216 ~~(formerly 5(b)) Witnesses will be permitted to read summaries of their testimony into~~  
217 ~~the record or make other oral statements as they so desire. Witnesses shall not be available for~~  
218 ~~cross-examination, but will be permitted to answer questions directed to them by members of the~~  
219 ~~Council or Administrator.~~

220  
221 ~~(formerly 5(c)) When necessary to prevent undue prolongation of the hearing, the~~  
222 ~~presiding officer may limit the number of times any witness may testify.~~

223  
224 (a) When the Department initiates rulemaking, it shall file the following with the  
225 Council:

226  
227 (i) Strike and underscore and clean copies of the proposed rule;

228  
229 (ii) Proposed Statement of Principal Reasons for adopting the proposed rule;

230  
231 (iii) Copies of all public comments received to date and proposed responses,  
232 if applicable;

233  
234 (iv) Record or minutes of any public hearings or meetings conducted by the  
235 Department and the affected advisory board or boards;

236  
237 (v) Statement from the Director indicating that the proposed rule was  
238 recommended for adoption by the affected advisory board or boards through the affected division  
239 administrator or administrators;

240

241 (vi) Recommendation from the Director that the Council adopt the proposed  
242 rule; and

243  
244 (vii) Any additional materials that the Department believes are necessary to  
245 explain the contents of the proposed rule.

246  
247 (b) When initiating rulemaking, the Department shall provide the Council with an  
248 index of materials relied upon to develop the proposed rule.

249  
250 (i) The Department may update the index until the public comment period  
251 on the proposed rule, as required by W.S. 16-3-103(a)(i), is closed. After the comment period is  
252 closed, the Department may only update the index with responses to comments.

253  
254 (ii) All indexed materials shall be open for inspection by any person at  
255 reasonable times during business hours of the Department.

256  
257 (c) In the case of judicial review of any rule adopted by the Council, all indexed  
258 materials shall be included in the administrative record submitted to the court, together with any  
259 additional materials considered by the Council during rulemaking hearings.

260  
261 Section 6. ~~Comments~~ Rulemaking Hearings before the Council.

262  
263 ~~(formerly Section 6 (a)) All timely comments shall be considered by the Council before~~  
264 ~~final action is taken on any proposal to promulgate, amend, or repeal any rule. Late filed~~  
265 ~~comments may be considered so far as possible without incurring additional expenses or delay.~~

266  
267 (a) The Council chair shall assign a hearing officer from among the Council  
268 members by filing a notice of appointment with the Council within thirty (30) days of the  
269 Department filing the proposed rule with the Council. The appointed hearing officer shall preside  
270 over all proceedings before the Council related to the proposed rule. If the assigned Council  
271 member leaves the Council through resignation, expiration of membership, or otherwise, the chair  
272 shall assign a hearing officer as a replacement and shall serve as the hearing officer in the interim  
273 before the substitute assignment is made.

274  
275 (b) Any member of the public, subject to reasonable time restrictions established by  
276 the presiding officer, may address the Council at any meeting in which the Council is considering  
277 proposed rules. The Council shall allow meaningful opportunity for public comment at each  
278 rulemaking hearing.

279  
280 (i) No person may address the Council without first being recognized by the  
281 presiding officer.

282  
283 (ii) The Council may provide a telephonic or internet-based method to  
284 receive public comments during Council proceedings.

285  
286 (iii) Members of the public may not directly address each other in  
287 proceedings before the Council, and shall address any questions to the hearing officer.  
288

289 (iv) Members of the public seeking recognition in proceedings before the  
290 Council shall state their name and whether they are speaking on behalf of an organization. The  
291 Council shall consider all comments to be made in a person's individual capacity unless an  
292 affiliation is disclosed to the Council.

293  
294 (v) In considering proposed rules, the Council shall consider all properly  
295 submitted public comments.

296  
297 (vi) Comments shall be directed to the Council as a whole and not to  
298 individual Council members. If a member of the public approaches an individual Council member  
299 to discuss a proposed rule, that member shall direct the person to submit a comment for full  
300 consideration by the Council. If a Council member receives information through informal contact  
301 with a member of the public, that member shall disclose the contact and the information received  
302 to the rest of the Council in an open meeting. If the information is reduced to writing in physical  
303 or electronic format, the Council member shall provide the information to the other Council  
304 members and the writing shall become part of the record.

305  
306 (c) The Council may make changes to proposed rules based on its independent  
307 analysis of the form and substance of the proposed rules. In doing so, the Council may consider  
308 testimony received during a rulemaking hearing and materials submitted to the rulemaking  
309 docket.

310  
311 (i) In considering potential changes to proposed rules, the Council shall  
312 consider the following:

313  
314 (A) Whether the contemplated change meets all procedural  
315 requirements of the Wyoming Administrative Procedure Act, including whether the change is a  
316 logical outgrowth of the proposed rule;

317  
318 (B) Whether the opportunity for public participation was meaningful  
319 and sufficient given the nature of the contemplated change to the proposed rule;

320  
321 (C) Whether the contemplated change imposes an unwarranted  
322 administrative burden on the Department; and

323  
324 (D) Whether the contemplated change impacts the Department's  
325 ability to maintain primacy over the relevant regulatory area. The Council shall allow the  
326 Department to provide a primacy analysis in the context of any contemplated changes.

327  
328 (ii) The Council shall not modify a proposed rule if the Council determines  
329 that:

330  
331 (A) The contemplated change conflicts with state or federal law;

332  
333 (B) The contemplated change is not a logical outgrowth of the  
334 proposed rule; or

335  
336 (C) The opportunity for public participation was not meaningful or  
337 sufficient given the nature of the contemplated change.

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~~Section 7.~~ **Decision.**

~~(a) As soon as practicable after receipt of the official transcript or as soon as practicable after the expiration of the time set for the submittal of written comments, the Council or Administrator shall render a written decision on the issues presented at the hearing.~~

CHAPTER IV  
REHEARING

REPEALED

~~CHAPTER IV  
REHEARING~~

~~Section 1. **Petition for Rehearing.**~~

~~(a) — Any party seeking any change in any decision of the Council may file a petition for rehearing within twenty (20) days after the written decision of the Council has been issued.~~

~~(b) — Any petition for rehearing filed under this section must be confined to new questions raised by the decision and upon which the petitioner had no opportunity to argue before the Council.~~

~~(c) — Any petition for rehearing must specify whether the prayer is for reconsideration, rehearing, further hearing, modification of effective date, vacation, suspension or otherwise.~~

~~(d) — Except as the Council may otherwise direct, the filing of a petition under this section shall not stay the effectiveness of any decision respecting the promulgation, amendment, or repeal of any rule or rules.~~

~~Section 2. **Scope.**~~

~~(a) — A petition for rehearing may be filed in hearings conducted under Chapter II or Chapter III.~~

~~(b) — The granting of a petition to rehear is solely within the discretion of the Council.~~

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CHAPTER 5  
PETITIONS FOR AWARD OF COSTS AND EXPENSES UNDER W.S. 35-11-437(f)

Section 1. **Petition and Answer.**

(a) As described in W.S. 35-11-437(f), a petition for award of costs and expenses must be filed with the Council within forty-five (45) days of receipt of a final order from the Council, in accordance with Chapter 2, Section 5 of these rules. Any person served with a copy of the petition shall have thirty (30) days from service within which to file an answer to the petition. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

(b) The petition shall contain the petitioner’s name and a detailed accounting, including receipts, of all costs and expenses authorized under W.S. 35-11-437(f). Where attorneys’ fees are claimed, the petition shall include evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual(s) performing the services.

(c) Any proceeding to award costs under W.S. 35-11-437(f) shall follow the contested case procedures outlined in Chapter 2 of these rules.

Section 2. **Who May Receive an Award.**

(a) Appropriate costs and expenses including attorneys’ fees may be awarded:

(i) To a permittee from any person, but only if the Council finds that:

(A) The person initiated or participated in enforcement action in bad faith for the purpose of harassing or embarrassing the permittee.

(ii) To a permittee from the Department, but only if the Council finds that:

(A) The Department issued an order of cessation, a notice of violation, or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee.

(iii) To any person from the permittee, but only if the Council finds that:

(A) The person initiated or participated in an administrative proceeding reviewing enforcement actions;

(B) A violation of the Wyoming Environmental Quality Act, regulations, or permit has occurred, or that an imminent hazard existed; and

(C) The person substantially contributed to a full and fair determination of the issues.

(iv) To any person, other than a permittee or its representative, from the Department, but only if the Council finds that:

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(A) The person initiated or participated in a contested case proceeding under the Wyoming Environmental Quality Act as it provides for regulation of surface coal mining and reclamation operations in accordance with P.L. 95-87;

(B) The person prevailed in whole or part, achieving at least some degree of success on the merits;

(C) The person substantially contributed to a full and fair determination of the issues.

(v) To the Department from a person, but only if the Council finds that:

(A) The Department has demonstrated that a person initiated or participated in reviewing of any enforcement action in bad faith for the purpose of harassing or embarrassing the Department.

**Section 3. Awards.**

(a) An award under this chapter may include:

(i) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under the Wyoming Environmental Quality Act as it provides for regulation of surface coal mining and reclamation operations in accordance with P.L. 95-87.

(ii) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award before the council.

1 CHAPTER ~~4~~ 5  
2 PETITIONS FOR AWARD OF COSTS AND EXPENSES UNDER W.S. 35-11-437(f)  
3

4 Section 1. **Petition and Answer.**  
5

6 (a) As described in W.S. 35-11-437(f), ~~any person may file~~ a petition for award of  
7 costs and expenses must be filed with the Council within forty-five (45) days of receipt of a final  
8 order from the Council, in accordance with Chapter 2, Section 5 of these rules. Any person served  
9 with a copy of the petition shall have thirty (30) days from service within which to file an answer  
10 to the petition. ~~Failure to make a timely filing of the petition may constitute a waiver of the right~~  
11 ~~to such an award.~~

12  
13 (b) The petition shall contain the petitioner's name and a detailed accounting,  
14 including receipts, of all costs and expenses authorized under W.S. 35-11-437(f). Where  
15 attorneys' fees are claimed, the petition shall include evidence concerning the hours expended on  
16 the case, the customary commercial rate of payment for such services in the area, and the  
17 experience, reputation and ability of the individual(s) performing the services.  
18

19 (c) Any proceeding to award costs under W.S. 35-11-437(f) shall follow the  
20 contested case procedures outlined in Chapter 2 of these rules.  
21

22 Section 2. **Who May Receive an Award.**  
23

24 (a) Appropriate costs and expenses including attorneys' fees may be awarded:  
25

26 (i) (formerly 2(a)(ii)) To a permittee from any person, but only if the  
27 Council finds that:  
28

29 (A) (formerly 2(a)(ii)(A)) The person initiated or participated in  
30 enforcement action in bad faith for the purpose of harassing or embarrassing the permittee.  
31

32  
33 (ii) formerly 2(a)(i)(iv)) To a permittee from the Department but only if the  
34 Council finds that:  
35

36 (A) formerly 2(a)(i)(iv)) ~~when the Council finds that~~ the Department  
37 issued an order of cessation, a notice of violation or an order to show cause why a permit should  
38 not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the  
39 permittee.  
40

41 (iii) (formerly 2(a)(i)) ~~From the permittee to any person~~ To any person from  
42 the permittee, but only if the Council finds that:  
43

44 (A) (formerly 2(a)(i)) ~~if he~~ The person initiates~~d~~ or participates~~d~~ in any  
45 administrative proceeding reviewing enforcement actions, ~~but only if the Council finds that:~~  
46

47 (B) (formerly 2(a)(i)(A)) A violation of the Wyoming Environmental  
48 Quality Act, regulations, or permit has occurred, or that an imminent hazard existed; and  
49

50 (C) (formerly 2(a)(i)(B)) The petitioner substantially contributed to a  
51 full and fair determination of the issues.

52  
53  
54 (iv) ((formerly 2(a)(i)(iii)) To any person, other than a permittee or ~~his~~ its  
55 representative, from the Department but only if the Council finds that:

56  
57 (A) ((formerly 2(a)(i)(iii)) ~~if~~ The person initiates or participates in any  
58 contested case proceeding under the Wyoming Environmental Quality Act as it provides for  
59 regulation of surface coal mining and reclamation operations in accordance with P.L. 95-87;

60  
61 (B) ((formerly 2(a)(i)(iii)) The person ~~who~~ prevailed ed in whole or part,  
62 achieving at least some degree of success on the merits;

63  
64 (C) ((formerly 2(a)(i)(iii)) ~~and the Council finds that~~ The person  
65 substantially contributed to a full and fair determination of the issues.

66  
67 (v) To the Department ~~where it demonstrates that a person~~ from a person,  
68 but only if the Council finds that:

69  
70 (A) (formerly 2(a)(v)) The Department has demonstrated that a person  
71 initiated or participated in reviewing of any enforcement action in bad faith for the purpose of  
72 harassing or embarrassing the Department.

73  
74 Section 3. **Awards.**

75  
76 (a) An award under this chapter may include:

77  
78 (i) All costs and expenses, including attorneys' fees and expert witness fees,  
79 reasonably incurred as a result ~~of~~ initiation and/or participation in a proceeding under the  
80 Wyoming Environmental Quality Act as it provides for regulation of surface coal mining and  
81 reclamation operations in accordance with P.L. 95-87.

82  
83 (ii) All costs and expenses, including attorneys' fees and expert witness fees,  
84 reasonably incurred in seeking the award before the council.

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CHAPTER VI  
REVIEW BY THE DIRECTOR

REPEALED



47 ~~———— (a) ——— Where an appeal to the Council of the Administrator’s decision is afforded, a~~  
48 ~~petition should be filed with the Council within the time provided by law. This proceeding will be~~  
49 ~~stayed if an informal conference with the Director is requested until the Director has made his~~  
50 ~~determination. If the petitioner is not satisfied with the Director’s determination, he shall inform~~  
51 ~~the Council that he wishes to proceed with appeal to the Council. The Council shall conduct the~~  
52 ~~hearing as if the informal hearing had not occurred, provided however, that the Director’s~~  
53 ~~decision may be introduced into evidence.~~

54  
55 ~~———— (b) ——— At formal review proceedings before the Council, no evidence as to statements~~  
56 ~~made or evidence produced by one participant at a conference shall be introduced as evidence by~~  
57 ~~another participant.~~

58  
59 ~~———— Section 5. ——— Miscellaneous.~~

60  
61 ~~———— (a) ——— This Chapter shall not be construed to allow the Director to review matters or~~  
62 ~~issues and grant relief either in areas which are within the exclusive jurisdiction of the Council, or~~  
63 ~~from any informal conference proceeding requested and held pursuant to W.S. 35-11-406(k).~~

64  
65 ~~———— (b) ——— Unless review by the Director is required by law, failure to seek review shall not~~  
66 ~~be construed as a failure to exhaust administrative remedies.~~

67  
68 ~~———— (c) ——— For the purposes of this Chapter, “Administrator” shall also include the Solid~~  
69 ~~Waste Management Program Supervisor.~~

CHAPTER 7  
VERY RARE OR UNCOMMON AREAS

Section 1. **Purpose and Scope**

These rules are intended to provide a process to implement W.S. 35-11-112(a)(v), which provides that the Council may remove rare and uncommon designations made prior to July 1, 2011.

Section 2. **Definitions.**

(a) “Critical habitat” means fish and wildlife habitat designated as critical by the United States Secretary of the Interior or Secretary of Commerce, for the survival and recovery of listed threatened and endangered species.

(b) “Fragile lands” means geographic areas containing natural, ecologic, scientific or aesthetic resources that could be damaged or destroyed by mining operations.

Section 3. **General Procedure.**

(a) The rules in this Chapter govern petitions to remove designation of lands pursuant to W.S. 35-11-112(a)(v).

(b) The hearing under this chapter is not a contested case proceeding. Hearings shall be conducted consistent with rules hearings before the Council under Chapter 3 of the Rules of Practice and Procedure.

Section 4. **Initiation of Proceedings.**

(a) Any person may file a petition to remove an existing designation. The petition shall contain the following:

- (i) The name, address, phone number, and email address for the petitioner;
- (ii) The location by legal description, including section, township, and range, of the area the petitioner is proposing to be removed;
- (iii) The names, if any, by which an area is locally known;
- (iv) The distance from the area to the nearest city or town;
- (v) The county in which the area is located;
- (vi) An original U.S. Geological Survey topographic map showing the area reflecting the surface land ownership pattern (private, state, federal) in the area;
- (vii) A list of the names and addresses of the surface and mineral owners whose lands are included within the area proposed for removal with a description of the

49 ownership interest of each surface and mineral owner including a legal description of the lands in  
50 which each person has an interest;

51  
52 (viii) A concise statement of the reasons for the removal including an  
53 explanation of the substantial change in circumstances that has occurred since designation;

54  
55 (ix) A description of the current and historical land use in the area;

56  
57 (x) A list of any special designations or descriptions of the area made by  
58 other governmental agencies, including, but not limited to, designations by the Department of  
59 Interior, Bureau of Land Management, or Office of Surface Mining, designations by the U.S. Fish  
60 and Wildlife Service, and designations by the Wyoming Department of Game and Fish;

61  
62 (xi) The names and addresses of all expert witnesses whose work or whose  
63 testimony may be offered by the petitioner to support the petition;

64  
65 (xii) The names and addresses of the surface owners of lands contiguous to  
66 the area proposed for removal; and

67  
68 (xiii) A list of any scientific documents to be offered by the petitioner to  
69 support the petition that discuss the area to be removed.

70  
71 (b) Petitioner shall submit eight (8) copies of the petition to the Chair of the  
72 Environmental Quality Council at the Council's office in Cheyenne, Wyoming. The petition shall  
73 be considered to be filed in the Council's office as of the date it is received in that office.

74  
75 (c) The Council shall consider the petition at a regularly scheduled Council meeting  
76 and shall notify the petitioner and surface and mineral owners whose lands or minerals are within  
77 the area of the time, date, and location of the meeting. The Council's consideration shall be  
78 limited to whether the petition should be accepted or dismissed.

79  
80 (d) The Council may dismiss a petition if, after review, the Council determines that  
81 the petition does not provide the information required by these rules or that the petition does not  
82 provide sufficient information to support the conclusion that the area may be removed if the  
83 Council were to proceed.

84  
85 (e) If the Council votes to dismiss the petition, the Council shall issue a brief  
86 statement of the reasons for dismissal.

87  
88 **Section 5. Hearing and Notice.**

89  
90 (a) The Council shall:

91  
92 (i) Set the time, date, and location of a hearing on the petition, and

93  
94 (ii) Schedule the hearing within the county in which the lands or a major  
95 portion thereof are located.

96

97 (b) Subject to the review and approval of the form of the public notice by the  
98 Council or the hearing officer assigned to the petition, the petitioner shall:  
99

100 (i) Publish notice of the hearing once per week for four (4) consecutive  
101 weeks beginning at least forty-five (45) days before the hearing in a newspaper of statewide  
102 circulation and a newspaper of general circulation in the vicinity of the area proposed for  
103 removal;

104 (ii) Provide notice of the hearing by personal service or by certified mail,  
105 including a copy of the petition, to all surface and mineral owners whose lands or mineral  
106 interests are included within the area proposed for removal;

107 (iii) Provide notice of the hearing by regular mail to all surface owners whose  
108 lands are contiguous to the area proposed for removal; and  
109

110 (iv) Provide notice of the hearing by regular mail to the county  
111 commissioners of the counties that contain lands proposed to be removed, the Attorney General's  
112 Office, and the Governor's Office.  
113

114 (c) Petitioner shall pay costs of publishing and mailing notices of the proceedings.  
115

116 (d) A party electing to have the hearing transcribed by a certified court reporter shall  
117 make the necessary arrangements and bear the cost.  
118

119  
120  
121 **Section 6. Decision.**  
122

123 (a) The Council may direct the petitioner, the Council's staff, or others to analyze  
124 the oral and written comments.  
125

126 (b) An analysis of comments shall be in writing, submitted at a time to be set by the  
127 Council, and be a part of the record. The analysis may include recommendations to modify the  
128 petition.  
129

130 (c) The Council shall issue a written decision. The decision may be to grant or deny  
131 the petition. The Council shall issue a written order stating the reasons for the decision.  
132

133 **Section 7. Criteria for Removal**  
134

135 (a) In considering removing designations, the Council shall follow a two-tiered  
136 review process. First, the Council shall determine whether the area is no longer eligible for  
137 designation by virtue of the existence of one or more of the particular values specified in the  
138 statute. Secondly, the Council must determine whether any particular value that was previously  
139 found to exist either no longer exists or is no longer very rare or uncommon.  
140

141 (b) For an area to be eligible for removal, the Council must make an initial finding  
142 that the area at issue no longer possesses particular historical, archaeological, wildlife, surface  
143 geological, botanical or scenic value. For purposes of making the initial finding, or refusing to  
144 make the initial finding, the Council shall consider the significance and the weight of all  
145 specifically identified factors that are set forth in these criteria.

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(c) For purposes of determining whether an area of the State may be considered to have particular historical, prehistorical, or archaeological value the Council shall consider the following factors:

(i) Whether the area is mentioned prominently in historic journals or other historic literature;

(ii) Whether the area is important because it is associated with cultural or religious traditions and practices;

(iii) Whether the area has received designation pursuant to state or federal laws that provide for special protection and management due to outstanding historic or prehistoric values such as national historic landmarks, national historic sites, or the National Register of Historic Places; or

(iv) Whether the area contains buildings, structures, artifacts, or other features that are significant in the history or prehistory of the state.

(d) For purposes of determining whether an area has particular wildlife value the Council shall consider the following factors:

(i) Whether the area includes lands that are considered irreplaceable fish or wildlife habitat;

(ii) Whether the area includes preserves or easements that have been established and used for the protection for habitat for wildlife;

(iii) Whether the area includes lands that the Game and Fish Department has designated as crucial or vital habitat for resident species;

(iv) Whether the area contains or may affect fisheries classified as class I by the Wyoming Game and Fish Department;

(v) Whether the area includes fragile lands that offer unique wildlife or scientific values;

(vi) Whether the area includes federally designated critical habitat for threatened or endangered plant or animal species which is determined by the U.S. Fish and Wildlife Service or the Wyoming Game and Fish Department to be of essential value and where the presence of threatened or endangered species has been scientifically documented;

(vii) Whether the area contains a bald or golden eagle nest or nest site that is determined to be active and includes all or a portion of a buffer zone of land around the nest which has been evaluated and approved by the U.S. Fish and Wildlife Service;

(viii) Whether the area includes bald and golden eagle roost and concentration areas used during migration and wintering;

195 (ix) Whether the area contains a falcon (excluding kestrel) cliff nesting site  
196 with an active nest and a buffer zone around the nest site which has been evaluated and approved  
197 by the U.S. Fish and Wildlife Service; or

198  
199 (x) Whether the area includes lands that are high priority habitat for  
200 migratory birds of high federal interest on a regional or national basis as determined by the U.S.  
201 Fish and Wildlife Service.

202  
203 (e) For purposes of determining whether an area has particular surface geological  
204 value the Council shall consider the following factors:

205  
206 (i) Whether the area has unique surface geological formations that expose  
207 upheavals and faults that are indicative of sub-surface geological features;

208  
209 (ii) Whether the area has significant paleontological resources; or

210  
211 (iii) Whether the area has geologic features with unusual or substantial  
212 recreational, aesthetic, or scientific value.

213  
214 (f) For purposes of determining whether an area has particular botanical value the  
215 Council shall consider the following factors:

216  
217 (i) Whether the area is critical habitat for endangered or threatened plant  
218 species as designated by state or federal agencies;

219  
220 (ii) Whether the area contains stands of a rare native vegetation type, or  
221 contains stands of a native vegetation type that is now rare, or contains stands of a native  
222 vegetation type in pristine condition for which pristine stands are unusual; or

223  
224 (iii) Whether the area contains plant species and habitat determined to be  
225 crucial or vital for resident wildlife species.

226  
227 (g) For purposes of determining whether an area has particular scenic value the  
228 Council shall consider the following factors:

229  
230 (i) Whether the area includes lands within or adjacent to a corridor for a  
231 river designated as a National Wild and Scenic River or a corridor for a National Scenic Byway;

232  
233 (ii) Whether the area has been the subject of substantial artistic attention in  
234 the works of artists, sculptors, photographers, or writers; or

235  
236 (iii) Whether the area has substantial aesthetic value and its value would be  
237 apparent to a reasonable person.

238  
239 (h) An area shall be removed from designation under W.S. §35-11-112(a)(v) if, in  
240 addition to finding that the area is no longer eligible for designation, the Council finds that the  
241 area is no longer very rare or uncommon. For purposes of determining if an area is very rare or  
242 uncommon the Council shall consider the following:

243

244 (i) Whether the area exhibits historical, archaeological, wildlife, surface  
245 geological, botanical, or scenic values that are very rare or uncommon when compared with other  
246 areas of the state or a region therein;

247  
248 (ii) Whether the area contains historical, archaeological, wildlife, surface  
249 geological, botanical, or scenic values seldom found within the state or a region therein; or  
250

251 (iii) Whether the area contains historical, archaeological, wildlife, surface  
252 geological, botanical, or scenic values known or suspected to be declining which, if left  
253 unprotected, could become extinct or extirpated.

1 CHAPTER ~~VII~~ 7  
2 ~~DESIGNATION OF AREAS PURSUANT TO W.S. §35-11-112(a)(v)~~  
3 VERY RARE OR UNCOMMON AREAS  
4

5 Section 1. ~~Authority~~ Purpose and Scope.  
6

7 These rules are ~~promulgated by authority of the Environmental Quality Act, W.S. §35-11-112 and~~  
8 ~~W.S. §16-3-103, intended to provide a process to implement W.S. 35-11-112(a)(v), which provides that~~  
9 ~~the Council may remove rare and uncommon designations made prior to July 1, 2011.~~

10  
11 ~~(formerly Section 2) These rules are intended to provide a process to implement W.S. §35-11-~~  
12 ~~112(a)(v) of the Environmental Quality Act which provides that the Council shall designate those areas of~~  
13 ~~the state that are very rare or uncommon and have particular historical, archaeological, wildlife, surface~~  
14 ~~geological, botanical or scenic value. These rules apply only to the Land Quality Article, Article 4, of the~~  
15 ~~Environmental Quality Act. The scope of these rules is limited to areas sought to be designated for~~  
16 ~~purposes related to the permit approval and denial process contained in W.S. §35-11-406(m) for noncoal~~  
17 ~~mining operations. Included in these rules are criteria to be used in evaluating lands of the state that are~~  
18 ~~being considered for this designation. The hearing procedure is similar to that of Chapter III of these~~  
19 ~~rules, and is authorized by W.S. §16-3-103.~~

20  
21 Section 2. ~~Purpose~~ Definitions.  
22

23 ~~(Formerly Section 4(a)) (a) “Critical habitat” as defined in Section §35-11-103(e)(xxix)~~  
24 ~~means only that fish and wildlife habitat designated as critical by the United States Secretary of the~~  
25 ~~Interior or Secretary of Commerce, for the survival and recovery of listed threatened and endangered~~  
26 ~~species.~~

27  
28 ~~(Formerly 4(b)) ——— “Important habitat” or “Crucial habitat” as defined in Section §35-11-~~  
29 ~~103(e)(xxx) means that fish and wildlife habitat, exclusive of agricultural lands, which in limited~~  
30 ~~availability, increases the species diversity of a localized area and fulfills one (1) or more of the essential~~  
31 ~~living requirements of important wildlife species.~~

32  
33 ~~(Formerly 4(e)) (b) “Fragile lands” means geographic areas containing natural, ecologic,~~  
34 ~~scientific or aesthetic resources that could be damaged or destroyed by mining operations. For examples~~  
35 ~~of fragile lands see Section 1.(a), Chapter XXVIII, Land Quality Rules and Regulations.~~

36  
37 Section 3. ~~Applicability~~ General Procedure.  
38

39 ~~(a) ——— Areas designated pursuant to these rules are subject to the limitation contained in Section~~  
40 ~~§35-11-406(m). A designation under Chapter VII shall not bar issuance of a coal mining permit~~  
41 ~~under Section §35-11-406(n).~~

42  
43 ~~(b) No areas subject to existing mining operations for which the Department of Environmental~~  
44 ~~Quality shall have issued a permit shall be affected by a designation so long as the permit remains~~  
45 ~~in effect.~~

46  
47 ~~(c) ——— No area subject to an application for a noncoal mining permit shall be considered for~~  
48 ~~designation if the petition to designate is filed after the close of the public comment period~~  
49 ~~allowed by Section §35-11-406(k).~~

50

51 (d) ~~—A designation as very rare or uncommon shall not restrict non-mining agricultural~~  
52 ~~operations. Nor shall such designation restrict activities excluded from the Environmental Quality Act,~~  
53 ~~Section §35-11-401(e) and Section §35-11-1104.~~

54  
55 (Formerly Section 5(a)) (a) The rules in this Chapter ~~shall supersede the rules of Chapter III,~~  
56 ~~Section 1.e. for petitions for designation of lands pursuant to W.S. §35-11-112(a)(v) govern petitions to~~  
57 ~~remove designation of lands pursuant to W.S. 35-11-112(a)(v).~~

58  
59 (Formerly 5(b)) (b) The hearing under this ~~e~~Chapter is not a contested case proceeding ~~but is~~  
60 ~~a non-adversarial legislative proceeding except where the surface and/or mineral owner objects to the~~  
61 ~~designation. Under those circumstances all parties shall be entitled to cross-examine witnesses and~~  
62 ~~proceed under contested case procedures. Hearings shall be conducted consistent with rules hearings~~  
63 ~~before the Council under Chapter 3 of the Rules of Practice and Procedure.~~

64  
65 (Formerly 5(e)) ~~The Council, on its own motion or on the motion of any person, in the interests~~  
66 ~~of developing information about the area considered for designation, may adopt one or more of the~~  
67 ~~provisions contained in Chapter II of the rules governing procedures in contested cases. Such action by~~  
68 ~~the Council shall not constitute a finding that the proceeding before the Council is in the nature of a~~  
69 ~~contested case.~~

70  
71 Section 4. **Initiation of Proceedings.**

72  
73 (Formerly Section 6(a)) (a) Any person may file a petition ~~to designate lands as very rare or~~  
74 ~~uncommon pursuant to W.S. §35-11-112(a)(v) or a petition to modify or to modify or terminate~~ remove  
75 an existing designation. The petition shall contain the following:

76  
77 (Formerly 6(a)(i)) (i) The name, address, phone number, and email address for the  
78 petitioner;

79  
80 (Formerly 6(a)(ii)) (ii) The location by legal description, including section, township,  
81 and range, of the area the petitioner is proposing to be removed;

82  
83 (Formerly 6(a)(iii)) (iii) The names, if any, by which an area ~~may be known locally~~ is  
84 locally known;

85  
86 (Formerly 6(a)(iv)) (iv) The distance from the area to the nearest city or town;

87  
88 (Formerly 6(a)(iv)) (v) ~~and~~ v The county in which the area is located;

89  
90 (Formerly 6(a)~~(v)~~(vi)) (vi) An original ~~USGS-U.S. Geological Survey~~ USGS-U.S. Geological Survey topographic map  
91 showing the area ~~in question which reflects~~ reflecting the surface land ownership pattern (private, state,  
92 federal) in the area;

93  
94 (Formerly 6(a)(vi)) ~~(vi)~~(vii) A list of the names and addresses of the surface and  
95 mineral owners whose lands are included within the area proposed for ~~designation, modification, or~~  
96 ~~termination~~ removal with a description of the ownership interest of each surface and mineral owner,  
97 including a legal description of the lands in which each person has an interest;

98  
99 (Formerly 6(a)(vii)) ~~(vii)~~(viii) A concise statement of the reasons ~~the area is alleged to~~  
100 ~~be very rare or uncommon and a description of the archaeological, surface geological, historical, wildlife,~~

101 ~~botanical, or scenic attributes of the area, or, if the petition seeks to modify or terminate an existing~~  
102 ~~designation, a concise statement of the reasons for the modification or termination~~ for the removal  
103 including an explanation of the substantial change in circumstances that has occurred since designation;

104  
105 (Formerly 6(a)(viii)) ~~(viii)~~(ix) A description of the current and historical land use in the  
106 area;

107  
108 (Formerly 6(a)(ix)) ~~(ix)~~(x) A list of any special designations or descriptions of the  
109 area made by other governmental agencies, including, but not limited to, designations by the Department  
110 of Interior, Bureau of Land Management, or Office of Surface Mining, designations by the U.S. Fish and  
111 Wildlife Service, and designations by the Wyoming Department of Game and Fish;

112  
113 (Formerly 6(a)(x)) ~~(x)~~(xi) The names and addresses of all expert witnesses whose  
114 work or whose testimony may be offered by the petitioner to support the petition;

115  
116 (Formerly 6(a)(xi)) ~~(xi)~~(xii) The names and addresses of the surface owners of lands  
117 contiguous to the area proposed for ~~designation, modification, or termination~~ removal; and

118  
119 (Formerly 6(a)(xii)) ~~(xii)~~(xiii) A list of any scientific documents to be offered by the  
120 petitioner to support the petition that discuss the area to be ~~designated, modified, or terminated; and~~  
121 removed.

122  
123 (Formerly 6(a)(xiii)) ~~(xiii)~~(b) ~~At the time of filing, eight (8) copies of the petition shall be~~  
124 ~~submitted~~ Petitioner shall submit eight (8) copies of the petition to the ~~Chairman~~ Chair of the  
125 Environmental Quality Council at the Council's office in Cheyenne, Wyoming. The petition shall be  
126 considered to be filed in the Council's office as of the date it is received in that office.

127  
128 (Formerly 6(b)) ~~(b)~~(c) ~~Upon receipt of a petition under these rules~~ The Council shall  
129 consider the petition at a regularly scheduled Council meeting and shall notify the petitioner and surface  
130 and mineral owners whose lands or minerals are within the area ~~proposed for designation~~ of the time,  
131 date, and location of the meeting. The Council's consideration shall be limited to whether the petition  
132 should be accepted or dismissed.

133  
134 (Formerly 6(c)) ~~(c)~~(d) The Council may dismiss a petition if, after review ~~of the petition~~, the  
135 Council determines that the petition does not provide the information required by these rules or that the  
136 petition does not provide sufficient information to support the conclusion that the area may be ~~designated,~~  
137 ~~modified, or terminated~~ removed if the Council were to proceed.

138  
139 (Formerly 6(d)) ~~(d)~~(e) If the Council votes to dismiss the petition, ~~a brief statement of the~~  
140 ~~reasons for dismissal of a petition shall be served on the petitioner.~~ the Council shall issue a brief  
141 statement of the reasons for dismissal. ~~The petitioner may file an amended petition at any time.~~

142  
143 ~~(Formerly 6(e)) If the Council votes to consider a petition, the Council shall initiate formal~~  
144 ~~hearing procedures in accordance with these rules.~~

## 145 Section 5. **Hearing and Notice.**

146  
147 (Formerly Section 7(a)) (a) The Council shall:

148  
149 (Formerly 7(a)(i)) (i) Set the time, date, and location of a hearing on the petition, and  
150

151  
152 (Formerly 7(a)(ii)) (ii) Schedule the hearing within the county in which the lands or a  
153 major portion thereof are located.

154  
155 (Formerly 7(b)) (b) Subject to the review and approval of the form of the public notice by the  
156 Council or the hearing officer assigned to the petition, the petitioner shall:

157  
158 (Formerly 7(b)(i))(i) Publish notice of the hearing once per week for four (4)  
159 consecutive weeks beginning at least forty-five (45) days ~~in advance of~~ before the hearing in a newspaper  
160 of statewide circulation and a newspaper of general circulation in the vicinity of the area proposed for  
161 ~~designation, modification, or termination~~ removal;

162  
163 (Formerly 7(b)(ii)) (ii) ~~Serve~~ Provide notice of the hearing by personal service or by  
164 certified mail, ~~which notice shall include~~ including a copy of the petition, to all surface and mineral  
165 owners whose lands ~~and/or~~ mineral interests are included within the area proposed for ~~designation,~~  
166 ~~modification, or termination~~ removal;

167  
168 (Formerly 7(b)(iii)) (iii) ~~Serve~~ Provide notice of the hearing by regular mail to all surface  
169 owners whose lands are contiguous to the area proposed for ~~designation, modification, or termination~~  
170 removal; and

171  
172 (Formerly 7(b)(iv)) (iv) ~~Serve~~ Provide notice of the hearing by regular mail to the county  
173 commissioners of the counties ~~wherein that contain~~ lands proposed to be ~~designated, or a designation may~~  
174 ~~be modified or terminated, lie,~~ removed, the Attorney General's Office, and the Governor's Office, ~~and~~

175  
176  
177 ~~(Formerly 7(b)(v)) — Except as otherwise provided in these rules, notice shall be served in~~  
178 ~~accordance with the Wyoming Rules of Civil Procedure.~~

179  
180 (Formerly Section 7(c)) (c) ~~Costs of the publication and mailing of notice of the proceedings~~  
181 ~~shall be borne by the petitioner.~~ Petitioner shall pay costs of publishing and mailing notices of the  
182 proceedings.

183  
184 (d) A party electing to have the hearing transcribed by a certified court reporter shall make  
185 the necessary arrangements and bear the cost.

186  
187 Section 6. ~~Initiation of Proceedings~~ Decision.

188  
189 (a) The Council may direct the petitioner, the Council's staff, or others to analyze the oral  
190 and written comments.

191  
192 (b) An analysis of comments shall be in writing, submitted at a time to be set by the Council,  
193 and be a part of the record. The analysis may include recommendations to modify the petition.

194  
195 (c) The Council shall issue a written decision. The decision may be to grant or deny the  
196 petition. The Council shall issue a written order stating the reasons for the decision.

197  
198 Section 7. ~~Hearing and Notice~~ Criteria for Removal.

200 (Formerly Section 11(a))(a) In considering removing designations, the Council shall follow a  
201 two-tiered review process. First, the Council shall determine whether the area is no longer eligible for  
202 designation by virtue of the existence of one or more of the particular values specified in the statute.  
203 Secondly, the Council must determine whether any particular value that ~~is found~~ was previously found to  
204 exist is either no longer exists or is no longer very rare or uncommon.  
205

206 (Formerly 11(b)) (b) For an area to be eligible for removal, the Council must make an initial  
207 finding that the area at issue no longer possesses particular historical, archaeological, wildlife, surface  
208 geological, botanical or scenic value. For purposes of making the initial finding, or refusing to make the  
209 initial finding, the Council shall consider the significance and the weight of all specifically identified  
210 factors that are set forth in these criteria.  
211

212 (Formerly 11(c)) (c) For purposes of determining whether an area of the State may be  
213 considered to have particular historical, prehistorical, or archaeological value the Council shall consider  
214 the following factors:  
215

216 (Formerly 11(c)(i)) (i) Whether the area is mentioned prominently in historic journals  
217 or other historic literature;  
218

219 (Formerly 11(c)(ii)) (ii) Whether the area is important because it is associated with  
220 cultural or religious traditions and practices;  
221

222 (Formerly 11(c)(iii)) (iii) Whether the area has received designation pursuant to  
223 state or federal laws that provide for special protection and management due to outstanding historic or  
224 prehistoric values such as national historic landmarks, national historic sites, or the National Register of  
225 Historic Places; or  
226

227 (Formerly 11(c)(iv)) (iv) Whether the area contains buildings, structures, artifacts,  
228 or other features that are significant in the history or prehistory of the state.  
229

230 (Formerly 11(d)) (d) For purposes of determining whether an area has particular wildlife value  
231 the Council shall consider the following factors:  
232

233 (Formerly 11(d)(i)) (i) Whether the area includes lands that are considered irreplaceable  
234 fish or wildlife habitat;  
235

236 (Formerly 11(d)(ii)) (ii) Whether the area includes preserves or easements ~~which~~ that  
237 have been established and used for the protection for habitat for wildlife;  
238

239 (Formerly 11(d)(iii)) (iii) Whether the area includes lands that the Game and Fish  
240 Department has designated as crucial or vital habitat for resident species;  
241

242 (Formerly 11(d)(iv)) (iv) Whether the area contains or may affect fisheries  
243 classified as class I by the Wyoming Game and Fish Department;  
244

245 (Formerly 11(d)(v)) (v) Whether the area includes fragile lands that offer unique wildlife  
246 or scientific values;  
247

248 (Formerly 11(d)(vi)) (vi) Whether the area includes federally designated critical  
249 habitat for threatened or endangered plant or animal species which is determined by the U.S. Fish and

250 Wildlife Service or the Wyoming Game and Fish Department to be of essential value and where the  
251 presence of threatened or endangered species has been scientifically documented;

252  
253 (Formerly 11(d)(vii)) (vii) Whether the area contains a bald or golden eagle nest or  
254 nest site that is determined to be active and includes all or a portion of a buffer zone of land around the  
255 nest which has been evaluated and approved by the U.S. Fish and Wildlife Service;

256  
257 (Formerly 11(d)(viii)) (viii) Whether the area includes bald and golden eagle roost  
258 and concentration areas used during migration and wintering;

259  
260 (Formerly 11(d)(ix)) (ix) Whether the area contains a falcon (excluding kestrel)  
261 cliff nesting site with an active nest and a buffer zone around the nest site which has been evaluated and  
262 approved by the U.S. Fish and Wildlife Service; or

263  
264 (Formerly 11(d)(x)) (x) Whether the area includes lands ~~which~~ that are high priority  
265 habitat for migratory birds of high federal interest on a regional or national basis as determined by the  
266 U.S. Fish and Wildlife Service.

267  
268 (Formerly 11(e)) (e) For purposes of determining whether an area has particular surface  
269 geological value the Council shall consider the following factors:

270  
271 (Formerly 11(e)(i)) (i) Whether the area has unique surface geological formations that  
272 expose upheavals and faults that are indicative of sub-surface geological features;

273  
274 (Formerly 11(e)(ii)) (ii) Whether the area has significant paleontological resources; or

275  
276 (Formerly 11(e)(iii)) (iii) Whether the area has geologic features with unusual or  
277 substantial recreational, aesthetic, or scientific value.

278  
279 (Formerly 11(f)) (f) For purposes of determining whether an area has particular botanical  
280 value the Council shall consider the following factors:

281  
282 (Formerly 11(f)(i)) (i) Whether the area is critical habitat for endangered or threatened  
283 plant species as designated by state or federal agencies;

284  
285 (Formerly 11(f)(ii)) (ii) Whether the area contains stands of a rare native vegetation type,  
286 or contains stands of a native vegetation type that is now rare, or contains stands of a native vegetation  
287 type in pristine condition for which pristine stands are unusual; or

288  
289 (Formerly 11(f)(iii)) (iii) Whether the area contains plant species and habitat  
290 determined to be crucial or vital for resident wildlife species.

291  
292 (Formerly 11(g)) (g) For purposes of determining whether an area has particular scenic value  
293 the Council shall consider the following factors:

294  
295 (Formerly 11(g)(i)) (i) Whether the area ~~includes~~ includes lands within or adjacent to a  
296 corridor for a river designated as a National Wild and Scenic River or a corridor for a National Scenic  
297 Byway;

298  
299 (Formerly 11(g)(ii)) (ii) Whether the area has been the subject of substantial artistic  
300 attention in the works of artists, sculptors, photographers, or writers; or

301  
302 (Formerly 11(g)(iii)) (iii) Whether the area has substantial aesthetic value and its  
303 value would be apparent to a reasonable person.

304  
305 (Formerly 11(h)) (h) An area shall be ~~designated~~ removed from designation under ~~pursuant to~~  
306 W.S. §35-11-112(a)(v) if, in addition to finding that the area is no longer eligible for designation, the  
307 Council finds that the area is no longer very rare or uncommon. For purposes of determining if an area is  
308 very rare or uncommon the Council shall consider the following:

309  
310 (Formerly 11(h)(i)) (i) Whether the area exhibits historical, archaeological, wildlife,  
311 surface geological, botanical, or scenic values that are very rare ~~of~~ or uncommon when compared with  
312 other areas of the state or a region therein;

313  
314 (Formerly 11(h)(ii)) (ii) Whether the area contains historical, archaeological, wildlife,  
315 surface geological, botanical, or scenic values seldom found within the state or a region therein; or

316  
317 (Formerly 11(h)(iii)) (iii) Whether the area contains historical, archaeological,  
318 wildlife, surface geological, botanical, or scenic values known or suspected to be declining which, if left  
319 unprotected, could become extinct or extirpated.

320  
321 ~~Section 8. Witnesses.~~

322  
323 ~~(a) Any person may comment on a proposed designation, modification, or termination either~~  
324 ~~by appearing at the hearing and entering comments into the record orally, or by submitting written~~  
325 ~~comments within a time period set by the Council.~~

326  
327 ~~(b) Witnesses submitting testimony in writing shall submit one (1) copy, and are requested~~  
328 ~~to submit 8 copies, of their complete testimony to the Council.~~

329  
330 ~~(c) Witnesses will not be cross-examined except by the Council, the Council's staff, or other~~  
331 ~~persons designated by the Council.~~

332  
333 ~~(d) Whenever the Council allows testimony to be submitted in writing, the testimony shall be~~  
334 ~~considered to be timely filed if it is received in the office of the Environmental Quality Council by the~~  
335 ~~end of the business day on the date set by the Council. Late submittals shall not be considered by Council~~  
336 ~~members unless the Council votes to reopen the record.~~

337  
338 ~~(e) Witnesses may be called by the Council, and expenses of these witnesses will be paid by~~  
339 ~~the Council.~~

340  
341 ~~(f) The Council may impose time limitations on oral presentations at hearings.~~

342  
343 ~~Section 9. Record.~~

344  
345 ~~The hearing proceedings including all testimony shall be reported verbatim stenographically or by~~  
346 ~~other appropriate means determined by the Council. A copy of the proceedings will be furnished to any~~  
347 ~~person upon written request and the payment of a reasonable fee. If a person elects to have the hearing~~

348 ~~transcribed by a certified court reporter, he or she must make the necessary arrangements and bear the~~  
349 ~~cost thereof.~~

350  
351 ~~Section 10. — Decision.~~

352  
353 ~~(a) — The Council, in its discretion, may direct the petitioner, the Council's staff, or others to~~  
354 ~~analyze the oral and written comments.~~

355  
356 ~~(b) — An analysis of comments shall be in writing, shall be submitted at a time to be set by the~~  
357 ~~Council, and shall be a part of the record of the designation proceedings. The analysis may include~~  
358 ~~recommendations to modify the petition to designate.~~

359  
360 ~~(c) — The Council shall issue a written decision. The decision may be to designate all or a~~  
361 ~~portion of the area or to deny the petition. The Council shall issue a written statement of reasons for the~~  
362 ~~decision.~~

363  
364 ~~(d) — The petitioner shall be served with a copy of the Council's decision and statement of~~  
365 ~~reasons.~~  
366

1 CHAPTER 9  
2 DIRECTOR REVIEW OF ACTIONS INVOLVING SURFACE COAL MINING  
3 OPERATIONS AND ALL HEARINGS BEFORE THE DEPARTMENT  
4

5 Section 1. **Scope.**  
6

7 This Chapter shall apply to any hearings, informal conferences, or review before the  
8 Department, the Director, an Administrator, or any combination thereof. This Chapter does not  
9 apply to rulemaking hearings, contested case hearings, or other hearings before the Council.  
10

11 Section 2. **Requests for Informal Conferences Involving Surface Coal Mining**  
12 **Operations.**  
13

14 (a) Unless otherwise specified in the Wyoming Environmental Quality Act, and in  
15 accordance with W.S. 35-11-406, a request for an informal conference shall be in writing and, at  
16 a minimum, contain:

17 (i) The name(s) and contact information of the person requesting the  
18 informal conference;  
19

20 (ii) A brief statement identifying the purpose of the request;  
21

22 (iii) A brief statement of the issues to be discussed or details supporting the  
23 written objection to the application for the surface coal mining operation;  
24

25 (iv) A brief statement on whether the person desires the informal conference  
26 to be held in the locality of the proposed mining operation; and  
27

28 (v) A brief statement on whether the person desires access to the proposed  
29 permit area.  
30

31 (b) The Director shall inform the applicant and the person requesting the informal  
32 conference, in writing, whether the request is granted or denied.  
33

34 (c) If requested, the Director may arrange with the applicant to grant parties to the  
35 informal conference access to the permit area for the purpose of gathering information relevant to  
36 the informal conference.  
37

38 (d) The informal conference shall be held in accordance with W.S. 35-11-406(k) in  
39 the locality of the proposed mining operation or in Cheyenne, at the option of the requesting  
40 person.  
41

42 (e) The procedure for the informal conference shall be informal. The Director may  
43 accept oral or written statements and any other relevant information from any party to the  
44 informal conference. An electronic or stenographic record shall be made of the informal  
45 conference, unless waived by all parties. The record shall be maintained and shall be accessible to  
46 the parties until final release of the performance bond.  
47  
48

49 (f) If all parties requesting the informal conference withdraw their request before the  
50 conference is held, the informal conference may be cancelled.

51  
52 **Section 3. Requests for Informal Disposition Conferences and Conferences to**  
53 **Review Notices for Abatement and Cessation Orders Involving Surface Coal Mining**  
54 **Operations.**

55  
56 (a) Unless otherwise specified in the Wyoming Environmental Quality Act, and in  
57 accordance with W.S. 35-11-437, a request for the Director or his authorized representative to  
58 review and affirm, modify, vacate, or terminate a notice for abatement or cessation order shall be  
59 in writing and, at a minimum, contain:

60  
61 (i) The name(s) and contact information of the person requesting the  
62 affirmation, modification, vacation, or termination of the notice for abatement or cessation order;

63  
64 (ii) If applicable, the permit number;

65  
66 (iii) A copy of the notice for abatement or cessation order; and

67  
68 (iv) A brief statement identifying whether the person is requesting  
69 affirmation, modification, vacation, or termination of the notice or order, the facts on which that  
70 request is based, the reasoning for the request, and reference to any applicable statutes, rules, or  
71 orders supporting the request.

72  
73 (b) Unless otherwise specified in the Wyoming Environmental Quality Act, and in  
74 accordance with W.S. 35-11-902, a request for an informal disposition conference shall be in  
75 writing and, at a minimum, contain:

76  
77 (i) The name(s) and contact information of the person requesting the  
78 informal disposition conference;

79  
80 (ii) If applicable, the permit number;

81  
82 (iii) A copy of the notice for abatement or cessation order;

83  
84 (iv) A copy of the notice of assessment of the penalty;

85  
86 (v) A brief statement identifying whether the dispute is over the amount of  
87 the penalty or the occurrence of the violation; and

88  
89 (vi) A brief statement describing why the violation or the amount of the  
90 penalty is unwarranted.

91  
92 (c) A request for a conference to review a notice for abatement or cessation order  
93 shall be filed within thirty (30) days. A request for an informal disposition conference shall be  
94 filed within the time period provided under W.S. 35-11-902(d).

95

96 (d) If the Director grants a request under subsections (a) or (b) of this section, the  
97 Director shall inform the requesting person. If the Director denies a request under subsections (a)  
98 or (b) of this section, the denial shall be in writing.  
99

100 (e) If an informal disposition conference or a conference to review a notice for  
101 abatement or cessation order is held, any person has the right to attend and participate in the  
102 conference. The procedure for the conference shall be informal with no pre-hearing conference,  
103 discovery, or cross-examination. The Director may record the conference by audio recording or  
104 court reporter and shall make any such recording available to all participants.  
105

106 (f) The Director shall provide the participants:

107  
108 (i) A written statement of any action taken or decisions rendered as a result  
109 of the conference; and  
110

111 (ii) A notice of any available appeal to the Council.  
112

113 (g) The terms of subsections (d), (e), and (f) of this section shall also apply to  
114 decisions made, or proceedings held, by the Director's authorized representative.  
115

116 (h) At formal review proceedings before the Council that may follow an informal  
117 disposition conference or conference to review a notice for abatement or cessation order, no  
118 evidence as to statements made or evidence produced by one participant at the conference or  
119 review shall be introduced as evidence by another participant.  
120

121 **Section 4. Requests for Hearings Before the Department.**  
122

123 (a) Requests for hearings in accordance with Section 1 of this chapter before the  
124 Department, the Director, an Administrator, or any combination thereof provided for under the  
125 Wyoming Environmental Quality Act shall be in writing and contain:  
126

127 (i) The name(s) and contact information of the person(s) requesting the  
128 hearing;  
129

130 (ii) A brief statement identifying the purpose of the request; and  
131

132 (iii) A brief statement of the issues to be discussed.  
133

134 (b) Within thirty (30) days of the request, the Department shall grant or deny the  
135 request. If the Department grants the request, it shall schedule the hearing and notify the  
136 requesting party in writing. If the Department denies the request, it shall provide the requesting  
137 party a brief statement in writing of the reasons for denial.  
138

139 **Section 5. General Procedures for Hearings Before the Department.**  
140

141 (a) The Department shall designate a presiding officer for the hearing. The presiding  
142 officer shall adopt whatever procedures are reasonable and necessary for the conduct of the  
143 hearing.  
144

145 (b) Unless otherwise stated in statute, such hearings are non-adversarial in nature and  
146 require no pleadings. Any interested persons shall be given the opportunity to appear and make  
147 their views known to the Department. Oral and written statements may be presented without  
148 regard to the rules of evidence.

149  
150 (c) No cross-examination is permitted, but persons appearing to make statements or  
151 present information may answer questions from or through the presiding officer. Questions for  
152 the person appearing to make statements or present information may be submitted to the presiding  
153 officer orally or in writing, and the presiding officer may direct appropriate questions to the  
154 person presenting. The presiding officer may limit the questioning and length of oral statements  
155 in the interest of conducting the hearing in an efficient and orderly manner.

156  
157 (d) The Department may record the meeting by audio recording or court reporter and  
158 shall make any such recording available to all participants.

159  
160 (e) The Department shall designate a location for any hearing before the Department  
161 and may provide an opportunity for interested persons to attend a hearing remotely.

162  
163 (f) At the conclusion of the hearing, the Department shall issue:

164  
165 (i) A written statement of any action taken or decisions rendered as a result  
166 of the hearing, if applicable; and

167  
168 (ii) A notice of any available appeal to the Director or to the Council.

169  
170 **Section 6. Hearing Notice.**

171  
172 (a) Unless otherwise specified in the Wyoming Environmental Quality Act, the  
173 Department shall provide written notice by email or regular mail to the person requesting the  
174 hearing and shall post a notice of the hearing on its website.

175  
176 (b) The notice shall include:

177  
178 (i) The name(s) of the person(s) requesting the hearing, if any;

179  
180 (ii) A brief statement identifying the purpose of the hearing;

181  
182 (iii) A brief statement of the issues to be discussed;

183  
184 (iv) The date, time, and location of the hearing;

185  
186 (v) The method for remote attendance, if applicable; and

187  
188 (vi) A copy of the request for a hearing. The Department shall redact  
189 personal contact information such as the requesting person's address and phone number.

190  
191 **Section 7. Variance Hearings Before the Department.**

192  
193 (a) The Department shall hold variance hearings pursuant to W.S. 35-11-601.

194  
195  
196  
197  
198

(b) Following the hearing, the relevant Administrator(s) shall consider the views of the persons who may be affected by the grant of the variance and approve or deny the variance with the Director's approval.



49 (f) If all parties requesting the informal conference withdraw their request before the  
50 conference is held, the informal conference may be cancelled.

51  
52 Section 3. Requests for Informal Disposition Conferences and Conferences to  
53 Review Notices for Abatement and Cessation Orders Involving Surface Coal Mining  
54 Operations.

55  
56 (a) Unless otherwise specified in the Wyoming Environmental Quality Act, and in  
57 accordance with W.S. 35-11-437, a request for the Director or his authorized representative to  
58 review and affirm, modify, vacate, or terminate a notice for abatement or cessation order shall be  
59 in writing and, at a minimum, contain:

60  
61 (i) The name(s) and contact information of the person requesting the  
62 affirmation, modification, vacation, or termination of the notice for abatement or cessation order;

63  
64 (ii) If applicable, the permit number;

65  
66 (iii) A copy of the notice for abatement or cessation order; and

67  
68 (iv) A brief statement identifying whether the person is requesting  
69 affirmation, modification, vacation, or termination of the notice or order, the facts on which that  
70 request is based, the reasoning for the request, and reference to any applicable statutes, rules, or  
71 orders supporting the request.

72  
73 (b) Unless otherwise specified in the Wyoming Environmental Quality Act, and in  
74 accordance with W.S. 35-11-902, a request for an informal disposition conference shall be in  
75 writing and, at a minimum, contain:

76  
77 (i) The name(s) and contact information of the person requesting the  
78 informal disposition conference;

79  
80 (ii) If applicable, the permit number;

81  
82 (iii) A copy of the notice for abatement or cessation order;

83  
84 (iv) A copy of the notice of assessment of the penalty;

85  
86 (v) A brief statement identifying whether the dispute is over the amount of  
87 the penalty or the occurrence of the violation; and

88  
89 (vi) A brief statement describing why the violation or the amount of the  
90 penalty is unwarranted.

91  
92 (c) A request for a conference to review a notice for abatement or cessation order  
93 shall be filed within thirty (30) days. A request for an informal disposition conference shall be  
94 filed within the time period provided under W.S. 35-11-902(d).

96 (d) If the Director grants a request under subsections (a) or (b) of this section, the  
97 Director shall inform the requesting person. If the Director denies a request under subsections (a)  
98 or (b) of this section, the denial shall be in writing.

99  
100 (e) If an informal disposition conference or a conference to review a notice for  
101 abatement or cessation order is held, any person has the right to attend and participate in the  
102 conference. The procedure for the conference shall be informal with no pre-hearing conference,  
103 discovery, or cross-examination. The Director may record the conference by audio recording or  
104 court reporter and shall make any such recording available to all participants.

105  
106 (f) The Director shall provide the participants:

107  
108 (i) A written statement of any action taken or decisions rendered as a result  
109 of the conference; and

110  
111 (ii) A notice of any available appeal to the Council.

112  
113 (g) The terms of subsections (d), (e), and (f) of this section shall also apply to  
114 decisions made, or proceedings held, by the Director's authorized representative.

115  
116 (h) At formal review proceedings before the Council that may follow an informal  
117 disposition conference or conference to review a notice for abatement or cessation order, no  
118 evidence as to statements made or evidence produced by one participant at the conference or  
119 review shall be introduced as evidence by another participant.

120  
121 **Section 4. Requests for Hearings Before the Department.**

122  
123 (a) Requests for hearings in accordance with Section 1 of this Chapter before the  
124 Department, the Director, an Administrator, or any combination thereof provided for under the  
125 Wyoming Environmental Quality Act shall be in writing and contain:

126  
127 (i) The name(s) and contact information of the person(s) requesting the  
128 hearing;

129  
130 (ii) A brief statement identifying the purpose of the request; and

131  
132 (iii) A brief statement of the issues to be discussed.

133  
134 (b) Within thirty (30) days of the request, the Department shall grant or deny the  
135 request. If the Department grants the request, it shall schedule the hearing and notify the  
136 requesting party in writing. If the Department denies the request, it shall provide the requesting  
137 party a brief statement in writing of the reasons for denial.

138  
139 **Section 5. General Procedures for Hearings Before the Department.**

140  
141 (a) The Department shall designate a presiding officer for the hearing. The presiding  
142 officer shall adopt whatever procedures are reasonable and necessary for the conduct of the  
143 hearing.

145 (b) Unless otherwise stated in statute, such hearings are non-adversarial in nature and  
146 require no pleadings. Any interested persons shall be given the opportunity to appear and make  
147 their views known to the Department. Oral and written statements may be presented without  
148 regard to the rules of evidence.

149  
150 (c) No cross-examination is permitted, but persons appearing to make statements or  
151 present information may answer questions from or through the presiding officer. Questions for  
152 the person appearing to make statements or present information may be submitted to the presiding  
153 officer orally or in writing, and the presiding officer may direct appropriate questions to the  
154 person presenting. The presiding officer may limit the questioning and length of oral statements  
155 in the interest of conducting the hearing in an efficient and orderly manner.

156  
157 (d) The Department may record the meeting by audio recording or court reporter and  
158 shall make any such recording available to all participants.

159  
160 (e) The Department shall designate a location for any hearing before the Department  
161 and may provide an opportunity for interested persons to attend a hearing remotely.

162  
163 (f) At the conclusion of the hearing, the Department shall issue:

164  
165 (i) A written statement of any action taken or decisions rendered as a result  
166 of the hearing, if applicable; and

167  
168 (ii) A notice of any available appeal to the Director or to the Council.

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170 **Section 6. Hearing Notice.**

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172 (a) Unless otherwise specified in the Wyoming Environmental Quality Act, the  
173 Department shall provide written notice by email or regular mail to the person requesting the  
174 hearing and shall post a notice of the hearing on its website.

175  
176 (b) The notice shall include:

177  
178 (i) The name(s) of the person(s) requesting the hearing, if any;

179  
180 (ii) A brief statement identifying the purpose of the hearing;

181  
182 (iii) A brief statement of the issues to be discussed;

183  
184 (iv) The date, time, and location of the hearing;

185  
186 (v) The method for remote attendance, if applicable; and

187  
188 (vi) A copy of the request for a hearing. The Department shall redact  
189 personal contact information such as the requesting person's address and phone number.

190  
191 **Section 7. Variance Hearings Before the Department.**

192  
193 (a) The Department shall hold variance hearings pursuant to W.S. 35-11-601.

194  
195  
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197

(b) Following the hearing, the relevant Administrator(s) shall consider the views of the persons who may be affected by the grant of the variance and approve or deny the variance with the Director's approval.