



## Certification Page Regular and Emergency Rules

Revised May 2014

**Emergency Rules** (After completing all of Sections 1 and 2, proceed to Section 5 below)

**Regular Rules**

### 1. General Information

a. Agency/Board Name Department of Environmental Quality		
b. Agency/Board Address 200 W. 17th Street, Suite 400	c. City Cheyenne	d. Zip Code 82002
e. Name of Contact Person Casey Robb	f. Contact Telephone Number 307-777-7369	
g. Contact Email Address casey.rob2@wyo.gov	h. Adoption Date January 26, 2017	
i. Program Industrial Siting Council		

### 2. Rule Type and Information:

For each chapter listed, indicate if the rule is New, Amended, or Repealed.

If "New," provide the Enrolled Act numbers and years enacted: **New, Enrolled Act 71 July 1, 2015**

c. Provide the Chapter Number, Short Title, and Rule Type of Each Chapter being Created/Amended/Repealed  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Chapter Number:	Chapter Name:	New	Amended	Repealed
1	Industrial Development and Siting Rules and Regulations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

d.  The Statement of Reasons is attached to this certification.

e. If applicable, describe the **emergency** which requires promulgation of these rules without providing notice or an opportunity for a public hearing:

### 3. State Government Notice of Intended Rulemaking

a. Date on which the Notice of Intent containing all of the information required by W.S. 16-3-103(a) was filed with the **Secretary of State**: **September 9, 2016**

b. Date on which the Notice of Intent and proposed rules in strike and underscore format and a clean copy were provided to the **Legislative Service Office**: **September 9, 2016**

c. Date on which the Notice of Intent and proposed rules in strike and underscore format and a clean copy were provided to the **Attorney General**: **September 9, 2016**

### 4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice.  Yes  No  N/A

b. A public hearing was held on the proposed rules.  Yes  No

If "Yes:"	Date: <b>October 12, 2016</b>	Time: <b>11am -3pm</b>	City: <b>Casper, WY</b>	Location: <b>152 Durbin Street, Suite 100</b>
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### 5. Final Filing of Rules

a. Date on which the Certification Page with original signatures and final rules were sent to the **Attorney General's Office for the Governor's signature**: **January 30, 2017**

b. Date on which final rules were sent to the **Legislative Service Office**: **January 30, 2017**

c. Date on which a PDF of the final rules was electronically sent to the **Secretary of State**: **January 30, 2017**

### 6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct.

Signature of Authorized Individual  
*(Blue ink as per Rules on Rules, Section 7)*

Printed Name of Signatory

**Todd Parfitt**

Signatory Title

**Director, Department of Environmental Quality**

Date of Signature

**January 26, 2017**

### 7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

Governor's Signature

Date of Signature

**Attorney General:** 1. Statement of Reasons; 2. Original Certification Page; 3. Summary of Comments (regular rules); 4. Hard copy of rules: clean and strike/underscore; and 5. Memo to Governor documenting emergency (for emergency rules only).

**LSO:** 1. Statement of Reasons; 2. Copy of Certification Page; 3. Summary of Comments (regular rules); 4. Hard copy of rules: clean and strike/underscore; 5. Electronic copy of rules (PDFs) emailed to [Criss.Carlson@wvleg.gov](mailto:Criss.Carlson@wvleg.gov); clean and strike/underscore; and 6. Memo to Governor documenting emergency (for emergency rules only).

**SOS:** 1. PDF of clean copy of rules; and 2. Hard copy of Certification Page as delivered by the AG.



## Additional Rule Information

Revised May 2014

### 1. General Information

a. Agency/Board Name Department of Environmental Quality		
b. Agency/Board Address 200 W. 17th Street, Suite 400		c. City Cheyenne
		d. Zip Code 82002
e. Name of Contact Person Casey Robb		f. Contact Telephone Number 307-777-7369
g. Contact Email Address casey.robbs2@wyo.gov		
h. Program Industrial Siting Council		

### 2. Rule Information, Cont.

a. Provide the Chapter Number, Short Title, and Rule Type of Each Chapter being Created/Amended/Repealed

Chapter Number: 1	Chapter Name: Industrial Development Information and Siting Rules and Regulations	<input checked="" type="checkbox"/> New <input checked="" 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
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Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed

If Needed

BEFORE THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY  
INDUSTRIAL SITING DIVISION  
STATE OF WYOMING

IN THE MATTER OF THE PROPOSED REVISIONS TO CHAPTER 1 OF THE RULES AND REGULATIONS OF THE INDUSTRIAL SITING COUNCIL	) ) ) )	STATEMENT OF PRINCIPAL REASONS OF ADOPTION  DOCKET DEQ/ISC 16-03
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## **Introduction to Rule Package**

The Department of Environmental Quality, Industrial Siting Division, pursuant to the authority vested in it by the Industrial Development Information and Siting Act (Act), Wyoming Statutes 35-12-101 through 35-12-119 proposes to amend and revise Chapter 1 of the Industrial Siting Council Rules and Regulations (Rules). Chapter 1 provides the rules for the preparation and processing of applications for permits to construct, operate, and decommission large industrial facilities. Revisions are necessary to incorporate changes that occurred to Wyoming Statute 35-12-105(c) of the Act, 39-15-111(c) and (d)(i) and 39-16-111(d) and (e)(i) of the Department of Revenue Regulations as part of Enrolled Act Number 71 (EA 71), which became effective on July 1, 2015. EA 71 modified the way impact assistance payments are calculated, distributed, determined, and limits the amount of impact assistance payments to 2.76% of the total estimated material costs of the facility. EA 71 requires applicants and counties to provide evidence at the Industrial Siting Council (ISC) hearing of the mitigated and unmitigated impacts that the project will have on communities. EA 71 also requires the Industrial Siting Council (ISC) to determine the dollar amount for the unmitigated impacts related to the project, establish a schedule for distribution of impact assistance payments, and state the reasons for reaching this determination. All these requirements are new to the ISC and the application process. The proposed rule revisions are anticipated to make applicants and parties supply the necessary information in order for the ISC to comply with the new requirements set forth by the Wyoming Legislature.

## **Summary of the Principal Reasons for Revision of Rules**

Below, the Division summarizes the changes in each Section of Chapter 1. Then the Division provides a detailed explanation of the edits in the proposed rules. The principal reasons driving the revisions to the Rules are to:

- Incorporating the requirements of EA 71, which became effective on July 1, 2015 and
- to correct typos discovered while preparing this document.

## Proposed Revisions and Principal Reason for Revision by Rule Chapter and Section

### A. Chapter 1

Several changes were made throughout Chapter 1. Many changes consisted of small reformatting of text and typographical corrections. The items below identify the substantive revisions and the reason for such revisions.

1. **Section 2, Definitions:** Definitions for mitigated impacts, unmitigated impacts, and estimated material costs were added to address new terms from EA 71.
2. **Section 3, Certificate of Insufficient Jurisdiction:** A paragraph number was revised because it was mislabeled in the existing rules.
3. **Section 4, Jurisdictional Meeting:** Text was added to require the disclosure of estimated material costs by the applicant. EA 71 sets a limitation on impact assistance to 2.76% of estimated material costs. Thus, the addition of language to require the disclosure of the estimated material costs is necessary so that the ISC may determine the limit set in statute has not been exceeded.
4. **Section 5, Pre-Filing and Filing:** EA 71 requires testimony on mitigated and unmitigated impacts. Text was added to this section so the applicant must discuss mitigated and unmitigated impacts during initial communications with local governments. Also in this section, the deadlines for mailing notice and description of the project as well as the timeline for holding an informational meeting have been extended. The intent of this addition is to provide local governments more information early in the process so it can review and prepare testimony regarding unmitigated impacts that is now required by EA 71. In addition, notice timelines were clarified in the text.
5. **Section 7, Request for Waiver:** The revision in this section corrected a typo.
6. **Section 8, Application Information to be Submitted:** Text was added to require the disclosure of estimated material costs by the applicant. EA 71 sets a limitation on impact assistance to 2.76% of estimated material costs. In Addition, EA 71 requires the amount and schedule of Impact Assistance Payments to be set by the ISC, so the additional language was needed to ensure the information necessary to make such a determination is provided as part of the record, which means it must be provided in the application for permit. New language was added to provide more detailed technical

information regarding modeling software so the division could satisfy the requirements of EA 71.

Finally, some text in this section was revised and relocated for continuity and further streamlining the Rules.

7. **Section 11, Decision of Council:** Minor text was added to clarify the ISC may place conditions on a permit when it grants a permit.
8. **Section 12, Impact Assistance Funds:** The revisions were made in this section to clarify the process and limitations for the distribution of impact assistance funds as required by EA 71.

**Proposed Rules and Statement of Reasons**

CHAPTER 1  
INDUSTRIAL DEVELOPMENT INFORMATION AND SITING  
RULES AND REGULATIONS

**Chapter 1, Section 2 – Definitions**

**Chapter 1, Section 2(m)**

(m) “Estimated materials costs” means the estimated costs of materials, supplies and equipment, including allocable construction equipment costs, necessary and incident to the construction of the proposed facility.

*This definition was added to address new term introduced with EA 71. The format lettering following the new term was updated.*

**Chapter 1, Section 2(n-t)**

(n) “Financial assurance” means a security serving as collateral in the form of a surety bond, certificate of deposit, corporate guarantee, letter of credit, deposit account, insurance policy or other form acceptable to the Director to insure proper decommissioning and reclamation activities.

(o) “Financial capability” means evidence of the financial strength of the applicant to construct, maintain, operate, decommission and reclaim the facility.

(p) “Health” shall mean the state of being sound in body or mind and includes psychological as well as physical well-being.

(q) “Information applicant” means any person who intends to initiate a construction activity with an estimated construction cost of at least ninety-six million nine hundred thousand dollars (\$96,900,000.00) adjusted by applicable cost indices as provided in W.S. 35-12-102(a)(vii), which construction activity also falls within W.S. 35-12-119.

(r) “Job classification” means those of the 2010 Standard Occupational Classification System of the U. S. Department of Labor.

(s) “Mineral rights” means fee, leasehold, or mining claim interests in the mineral estate.

(t) “Mitigated impacts” means impacts that are minimized by limiting the magnitude of the impact, or are compensated for by replacing or providing substitute resources or supplemental environmental projects.

*This definition was added to address new term introduced with EA 71. The format lettering following the new term was updated.*

**Chapter 1, Section 2(u-ad)**

(u) “Oil and gas drilling facilities” are any and all activities in connection with or associated with drilling, testing, or completing oil and gas wells including well access roads and any electrical service, mobile and fixed equipment, and services used for drilling, completing, testing, maintaining and repairing oil or gas wells and related activities.

(t v) “Oil and gas producing facilities” are any and all activities necessary to extract oil or gas or both from a naturally occurring underground reservoir containing a common accumulation of oil or gas or both. Producing facilities include the oil or gas well downhole equipment, well heads, flow controls, and artificial lift equipment including compressors. Producing facilities also include those facilities used for pressure maintenance, enhanced recovery, or produced water disposal.

(u w) “Permit termination” means cessation or termination of a permit and all permit conditions, which were issued by the Council for the construction and operation of an industrial facility.

(v x) “Phase” or “phase of construction” means any future expansion or modification of the facility described in the application pursuant to W.S. 35-12-109 (a)(vi), and interpreted for jurisdiction by the Division.

(w y) “Projection period” means the period of time over which projections of socioeconomic factors are made. The projection period shall not exceed five (5) years beyond the period during which stable operation of the industrial facility is achieved.

(x z) “Reclamation” means the process of restoring all lands affected by the proposed industrial facility or its dependent components to a use for grazing, agriculture, recreational, wildlife purpose, or any other purpose of greater or equal value which satisfies the landowner or land management agency. The process may require removal of structures, backfilling, grading, contouring, compaction, stabilization, revegetation and drainage control.

(y aa) “Safety” shall mean freedom from injury or threat of injury. Such injury or threat of injury may be premised on crime rates, traffic accident rates, dangers of industrial accidents or mishaps, or other similar considerations.

(z ab) “Studies” shall include all social, economic or environmental reports, analyses, evaluations or compilations dealing with the impact of the industrial facility whether prepared by the applicant, the applicant’s employees, or consultants retained by the applicant. Where such studies are part of a longer report or study, the applicant may sever such study from the larger document for purposes of submission to the Council.

(aa ac) “Study Area” is the geographic and political boundary, as designated by the Administrator for the required governmental, social, and economic studies required for applications.

(ad) Unmitigated impacts” means identified impacts that are not minimized by limiting the magnitude of the impact, or are not compensated for by replacing or providing substitute resources or supplemental environmental projects.

*This definition was added to address new term introduced with EA 71. The format lettering following the new term was updated.*

## **Chapter 1, Section 2(ae-af)**

(ab ae) “Welfare” shall mean considerations of public convenience, public wellbeing and general prosperity. The term also properly covers those subjects encompassed under health and safety.

(ae af) “Wellfield activity” means any and all activity directly associated with the development, operation, or abandonment of oil and gas drilling or producing facilities. Wellfield activity includes but is not limited to construction of flow lines, heaters, treaters, dehydrators, fluid separators and stabilizers. Storage tanks not within the definable boundaries of an industrial facility are wellfield activities.

*The paragraph numbers were relabeled due to the addition of new terms.*

**Chapter 1, Section 3 – Certificate of Insufficient Jurisdiction**

**Chapter 1, Section 3(d)(iii)**

(~~iii~~ iii) Such notice shall state the following:

*This paragraph number was changed because it was mislabeled in the existing rules.*

**Chapter 1, Section 4 – Jurisdictional Meeting**

**Chapter 1, Section 4(a)(iv)**

(~~iii~~ iv) An informational filing pursuant to W. S. 35-12-119 (a) and (b); or

*This is paragraph number was changed because it was mislabeled in the existing rules.*

**Chapter 1, Section 4(c)(vi)**

(vi) The estimated cost of construction, including a preliminary estimated of material costs;

*This text was added to address the disclosure of estimated material costs, which is necessary in order to set the limitation of distribution described in EA 71 (W.S. 39-16-111).*

**Chapter 1, Section 5 – Pre-Filing and Filing**

**Chapter 1, Section 5(b)**

(b) The applicant shall notify and describe the project to local governments in the study area. The notice and description shall be sent by certified mail, return receipt, and shall include a description of the project, its location, the expected construction period, the number of construction workers, transportation routes for construction materials, the anticipated economic benefits of the project, the anticipated mitigated and unmitigated impacts from the project and offer methods to comment to the applicant and attend scheduled informational meetings. The notice and description will be mailed no later than ~~one week~~ 10 business days prior to the first informational meeting.

*Text was added to address mitigated and unmitigated impacts because those items are now required due to EA 71 (W.S. 39-16-111). The deadline for mailing the notice and description of the project and holding and informational meeting have been extended to provide adequate time for parties and local governments to prepare for a contested case proceeding.*

**Chapter 1, Section 5(b)(i)**

(i) Informational meetings shall be held no later than ~~30~~ 60 days before the filing of an application and shall be in the principal city of the county and at a place as close to the site of the project as is practical.

*This text was added to provide more time for parties and local governments to review and prepare testimony regarding unmitigated impacts in a contested case proceeding.*

**Chapter 1, Section 5(f)(ii)**

(ii) Justification why the referral is necessary. The Director will make a decision on the referral and notify the county ~~with~~in fifteen (15) days from the date of the referral.

*This text was added to provide clarity for the Director's decision concerning the referral and notification to the county.*

**Chapter 1, Section 7 – Request for Waiver**

**Chapter 1, Section 7(c)**

(c) If the Council finds that the considerations of subsection (b) above have been met, the Council may waive all of the application requirements of the Act, and shall issue a permit for the industrial facility in accordance with W.S. 35-12-113. If the Council is not able to find that these requirements are met, the Council may deny the request, and issue an order requiring that an application for a permit be filed pursuant to W.S. 35-12-109. The Council may also waive any part(s) of the application requirements of W.S. 35-12-109 if it determines that it is justified by the circumstances.

*This is a typo correction.*

**Chapter 1, Section 8 – Application Information to be Submitted**

**Chapter 1, Section 8(d)(iii)**

~~(iii)~~ Estimated material costs for the project.

*This text was added to require the disclosure of estimated material costs by the applicant. EA 71 sets a limitation on impact assistance to 2.76% of estimated material costs. Thus, the addition of language to require the disclosure of the estimated material costs is necessary so that the ISC may determine the limit set in statute has not been exceeded.*

**Chapter 1, Section 8(h)(ii)**

(ii) Information by calendar ~~quarter~~ month and year from the commencement of construction through the first year of operation;

*This revision requires the applications provide construction information by calendar month to align monthly payments of impact assistance to the construction schedule, and assist the Council in setting a schedule for payments. EA 71 requires the amount and schedule of Impact Assistance Payments to be set by the ISC, so the additional language was needed to ensure the information necessary to make such a determination is provided as part of the record, which means it must be provided in the application for permit.*

**Chapter 1, Section 8(h)(v-vi)**

~~(iv v)~~ Provide estimates of wages; and

~~(v vi)~~ Provide estimates of paid benefits including per diem and paid fees.

*These paragraph numbers were changed because they were mislabeled in the existing rules.*

**Chapter 1, Section 8(i)(vi)(A)**

(A) Facilities and personnel required for the administrative functions of government including specific new demands or increases in service levels created by construction of the proposed industrial facility;

*This text was added to provide more detailed impact information for the communities and Council.*

**Chapter 1, Section 8(i)(vi)(E)**

(E) An analysis of health and hospital care facilities and personnel including specific new demands or increases in service levels created by the proposed industrial facility;

*This text was added to provide more detailed impact information for the communities and Council.*

**Chapter 1, Section 8(i)(vi)(G-H)**

(G) An analysis of community recreational facilities and programs and urban outdoor recreational opportunities including specific new demands or increases in service levels created by the proposed industrial facility;

(H) Educational facilities, including an analysis based upon enrollment per grade, physical facilities and their capacities and other relevant factors with an assessment of the effect that the new population will have on personnel, programs and facilities;

*This text was added to provide more detailed impact information for the communities and Council.*

**Chapter 1, Section 8(i)(vii)**

(vii) A fiscal analysis over the projection period for all local governments and special districts identified by the applicant as primarily affected by the proposed industrial facility, including revenue structure, expenditure levels, mill levies, services provided through public financing, and the problems in providing public services. If modeling software is used, then identifying the software program and providing a summary table of the data set inputs (including any multipliers) for the analysis is required. The analysis may include, but is not limited to:

(A) An estimate of the cost of the facility with a separate line item for the estimated material costs;

(B) An estimate of the sales and use taxes to be paid directly by the applicant to construct the facility. This estimate should be broken down by year.

(C) If a facility is located in more than one county, the estimate under subsection (B) above shall be broken down by year and for each affected county.

*This text was added to provide more detailed impact and technical information for the parties, communities, and Council and is required for the ISD and ISC to meet the new requirements in EA71.*

**Chapter 1, Section 8(k)**

(k) The applicant shall describe the procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or recreational facilities which may be adversely affected by the estimated emissions and discharges from the proposed facility, including:

*This text was revised to clarify the information required while not extending that information beyond the Act's current language which specifies 'estimated emissions and discharges from the proposed facility...' for the parties, communities and Council.*

**Chapter 1, Section 8(k)(i)**

~~(i) Impact controls and mitigating measures proposed by the applicant to alleviate adverse environmental, social and economic impacts associated with construction and operation of the proposed industrial facility;~~

*This text was relocated to a later paragraph in this section for a more relevant continuity in the section.*

**Chapter 1, Section 8(k)(ii)**

~~(ii) Monitoring programs to assess effects of the proposed industrial facility and the overall effectiveness of impact controls and mitigating actions including:~~

*This text was relocated to a later paragraph in this section for a more relevant continuity in the section.*

**Chapter 1, Section 8(p)**

(p) The applicant shall provide a description of the impact controls and mitigating measures proposed to mitigate and alleviate adverse environmental, social and economic impacts associated with the construction and operation of the proposed industrial facility, including:

*This text was added to provide more detailed mitigation information for the parties, communities and Council.*

**Chapter 1, Section 8(p)(i)**

(i) Monitoring programs to assess effects of the proposed industrial facility and the overall effectiveness of impact controls and mitigating actions.

*This text was relocated from an earlier paragraph in this section for a more relevant continuity in the section.*

**Chapter 1, Section 8(p)(ii)**

(ii) Impact controls and mitigating measures proposed by the applicant to alleviate adverse environmental, social and economic impacts associated with construction and operation of the proposed industrial facility.

*This text was relocated from an earlier paragraph in this section for a more relevant continuity in the section.*

**Chapter 1, Section 8(q-r)**

(q) The applicant shall provide a description and quantification of the mitigated and unmitigated impacts that will result from the construction and operation of the proposed facility on the affected local governments and special districts. Such description shall include:

(i) Quantification of fiscal impacts, regardless of amount, on all items contained in Wyoming Statute 35-12-109 (a)(xiii)(A)-(S).

(ii) Projection of when, by calendar month, the unmitigated impacts will occur in the affected communities.

(iii) Projection, by calendar month, of fiscal impact in affected communities.

(r) Counties wishing to present evidence shall provide a description and quantification of the unmitigated impacts that will result from the construction and operation of the proposed facility. Such description shall include:

(i) Estimates of fiscal impacts on services provided by communities; and

*This text was added to provide more detailed mitigated and unmitigated information for the parties, communities and Council.*

**Chapter 1, Section 8(r)(ii)**

(ii) Estimated projections of when unmitigated impacts will occur in communities;

*This text was added to provide more detailed unmitigated information for the parties, communities and Council.*

**Chapter 1, Section 11 – Decision of Council**

**Chapter 1, Section 11(c)**

(c) Threat of serious injury. In order to find that the industrial facility does not pose a threat of serious injury, the Council must find that the granting of a permit, as conditioned by the Council, will not result in a significant detriment to, or significant impairment of, the environment or the social and economic condition of present or expected inhabitants.

*This text was added to clarify a permit is granted and conditioned by the Council.*

**Chapter 1, Section 12 – Impact Assistance Funds**

**Chapter 1, Section 12(a)**

~~(a) The Administrator shall make a recommendation to the Council for distribution of impact assistance money. If a ratio supported by all governments within the area primarily affected has not been provided to the Division within 30 days of filing an application or waiver of permit application, the Division will provide to city, town and county governments within the area primarily affected the Administrator's recommendation to the Council for distribution of the impact assistance funds. Governments in disagreement with the Administrator's draft recommendation shall provide to the Council supporting information as outlined in Section 12(b).~~

*This text is revised in the following paragraph to clarify the process for the distribution of impact assistance funds.*

**Chapter 1, Section 12(a)**

(a) If all affected counties, cities and towns in the area primarily affected can agree to an amount and schedule for payment distributions, they may provide their agreement to the Division for submission to the Council for its consideration. If an amount and schedule supported by all governments within the area primarily affected has not been provided to the Division within 30 days of filing an application or waiver of permit application, the Division will review the information provided in the application and provide to counties, cities and towns within the area primarily affected the Administrator's recommendation to the Council for distribution of the impact assistance funds. Counties in disagreement with the Administrator's draft recommendation shall provide to the parties an alternate distribution recommendation and information showing that the Administrator's recommended distribution does not account for all the unmitigated impacts.

*This text is added to state the opportunity for the local governments to agree upon the payment and schedule of impact assistance. In addition the new text clarifies the ISD position for the distribution of impact assistance funds should all local governments not agree on an amount and schedule.*

**Chapter 1, Section 12(b)**

(b) Pursuant to W.S. 39-15-111(c) and (d), and W.S. 39-16-111 (e d) and (d e) the Council shall, after consideration of all evidence and recommendations presented at the hearing held pursuant to W.S. 35-12-107(g) and W.S. 35-12-110(f), establish a ratio for distribution of impact assistance funds an amount and schedule for distribution of impact assistance funds. The Council shall establish a dollar amount associated with the unmitigated impacts on the affected counties, cities and towns from the construction of the proposed facility. Under no circumstances shall the impact assistance payment exceed two and seventy-six hundredths percent (2.76%) of the total estimated material costs of the facility, as those costs are determined by the Council.

*This text was revised to describe the limitation of distribution as described in EA 71 (W.S. 39-16-111).*

**Chapter 1, Section 12(c-g)**

- (i) ~~The ratio shall be established in consideration of, but not limited to, the following factors:~~
- ~~(A) The residency pattern of the facility's direct and induced employment;~~
  - ~~(B) The existing service levels, capital facility needs, social service needs, health care needs, transportation needs, recreational needs, and police and fire protection needs of the affected local governments;~~
  - ~~(C) The revenue structure, expenditure level, mill levies and financial capabilities of the affected local governments; and~~
  - ~~(D) The incremental cost of providing services to the project related new population for affected local governments.~~

(c) (ii) If impact assistance payments are already being distributed to an affected area of site influence, and another facility commences construction, the Council shall consider the effect of the following factors in establishing, modifying, adjusting or revising the ratio distribution:

(i) (A) — The amount of impact assistance funds generated by each facility and the degree of impact in the county attributable to each facility; and

(ii) (B) — The timeframe in which different amounts of impact assistance funds are generated by each facility in relation to the timeframe in which impacts attributable to each facility occur.

(e d) The Council may adjust, revise or modify a certified ratio distributions during the construction of a facility. A local government which is primarily affected by the facility and which has filed a notice of intent to be a party pursuant to W.S. 35-12-111(b), or any person issued a permit pursuant to W.S. 35-12-106, may petition the Council for review and adjustment of the distribution ratio upon a showing of good cause. The request shall be submitted to the Division.

(i) Upon receiving a request to modify a ratio distribution, the Administrator shall:

(A) Within ten (10) days after the request is received, serve a copy of the request to each local government primarily affected. A copy of the request shall be provided to the permittee. Serve a copy of the request to each entity of local government, applicant or and permittee which may be affected within ten (10) days after the request is received.

(B) Request the affected local governments, applicants or and permittees to submit to the Division all relevant studies, statements, reports, analyses, evaluations, compilations, or other written material which will enable the Council to determine whether the social and economic impacts have changed and establish a new ratio distribution.

(C) Conduct such investigations, studies, reports and evaluation as may be necessary to prepare a recommendation on the request.

(ii) The Administrator shall present the request for impact assistance funds to the Council at least thirty (30) days after the Division received the request, with a recommendation. The Council may thereupon, after consideration of the materials submitted by the local governments, applicants, permittees and Administrator, determine that the social and economic impacts from construction of the facility have changed, and establish a new ratio distribution as appropriate and necessary.

(d e) Pursuant to W.S. 39-15-111(c) and (d), and W.S. 39-16-111(e d) and (d e) the Council, may determine that the social and economic impacts from construction of an industrial facility upon the adjoining county are significant and establish the ratio distribution of impacts between all communities in the impact area.

(i) The Council may adjust, revise or modify a certified ratio distribution during the construction of a facility; upon receiving a written request from any person issued a permit pursuant to W.S. 35-12-106, and a showing of good cause.

(e f) Upon establishing or modifying a distribution ratio pursuant to W.S. 39-15-111(c) and (d), and W. S. 39-16-111 (e d) and (d e) the Division shall notify all parties.

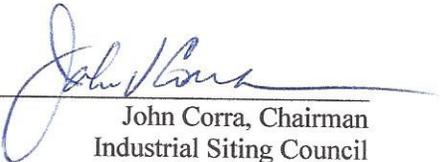
(f g) For the purposes of this Section of these regulations, the period of construction for a facility shall end when the physical components of the industrial facility are ninety (90) percent complete. The physical components of the industrial facility shall include all materials, supplies, and equipment included in the estimated construction cost of the facility pursuant to Section 2 (m l) of these regulations.

*This text was revised to clarify the impact assistance distribution under the new regulations as stated in EA 71.*

**Conclusion**

The Council has determined that the adoption of changes to Chapter 1 of the Rules and Regulations of the Industrial Siting Council are necessary to comply with the requirements of Enrolled Act Number 71 *et seq.* and that they have been promulgated in accordance with rulemaking provisions of the Wyoming Administrative Procedures Act.

Done this 26<sup>TH</sup> day of the month JANUARY and year of 2017.



John Corra, Chairman  
Industrial Siting Council  
200 W. 17<sup>th</sup> Street, Suite 400  
Cheyenne, WY 82002

BEFORE THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY  
INDUSTRIAL SITING DIVISION  
STATE OF WYOMING

IN THE MATTER OF REVISIONS TO )  
CHAPTERS 1, RULES AND REGULATIONS ) DOCKET DEQ/ISC 16-03  
OF THE INDUSTRIAL SITING COUNCIL )

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**Response to Comments**

The following document details the actions taken by the Division to gather public comments regarding the proposed revisions to the Rules and Regulations of the Industrial Siting Council, Chapter 1. In addition, this document contains the Division’s response to the comments received. The purpose of this document is to provide the Council information regarding the process for soliciting public input and the process for responding to the comments received by the Division.

**Public Notice**

On September 9, 2016, the Division sent a request for publication of the Notice of Public Hearing for the proposed revision to the Rules and Regulations of the Industrial Siting Council, Chapter 1. The request for publication was sent to the following newspapers: Casper Star-Tribune, Gillette News-Record, Cody Enterprise, Wyoming Tribune Eagle, Rawlins Daily Times, Rock Springs Rocket-Miner, Pinedale Roundup, Laramie Boomerang, Uinta County Herald, Riverton Ranger, Sheridan Press, and Platte County Record Times. The legal notice is enclosed as **Attachment A**.

The public notice informed readers that the Industrial Siting Division (Division) was seeking public comments regarding the Proposed Rules and the Statement of Principal Reasons and that the documents were available for review on the Division’s website. Further, the notice stated that copies of the documents could be requested by calling or emailing the Division. The Notice also informed readers that the Division would host an Open House in Casper, Wyoming to receive oral comments from the public on October 12, 2016. Finally, the notice communicated that the comment period would end on November 21, 2016, that there would be an analysis of the comments received, and the Council would hold a hearing regarding the proposed rule revisions on January 26, 2017 in Cheyenne, Wyoming.

As of January 3, 2017, ten of the newspapers provided an affidavit and invoice that the legal notice ran the week of September 12th or the week of September 19th. We received no correspondence from the Laramie Boomerang. For the Riverton Ranger, the Division has received an invoice; and the Division has requested an affidavit.

**Interested Parties Mailings**

On September 9, 2016, the Division did a mailing to 65 interested parties regarding the proposed revisions to the rules. The interested parties were people that expressed an interest in the rulemaking process in the past as well as individuals that requested to be part of the rule making process since the last rule revisions took place. A list of the participants in the mailing is included as **Attachment B**.

1 The mailing packet included a copy of the legal notice, the Statement of Principal Reasons, the  
2 Strikethrough copy of Chapter 1, and the clean copy of Chapter 1. Of the 65 packages sent, two packages  
3 were returned as ‘not deliverable.’ The packets returned were addressed to Wyoming Outdoor Council and  
4 Mr. Ed Werner.

### 5 **Oral Comments Received**

6 On October 12, 2016, the Division hosted an open house for oral public comments at the DEQ  
7 office in Casper. The Division had a court reporter that transcribed the meeting. The Division did not  
8 receive any oral comments during the open house. No other oral comments were received during the  
9 comment period.

### 11 **Written Comments Received**

12 The Industrial Siting Division received 4 letters containing public comments on the proposed rule  
13 revisions. The letters received were from Power Company of Wyoming LLC, Sammons/Dutton LLC,  
14 Carbon County Community of Governments (CCCOG), and Jason A. Lillegraven, PhD. The letters are  
15 included as **Attachments C-F** respectively.

16 On January 3, 2017, the Division sent a letter to each of the commenters letting them know their  
17 comments had been received.

### 18 **Response to Comments**

19 This section details the comments received regarding the proposed revisions to the Rules, the  
20 Division’s response, and the result to the proposed rules. Below, the Division describes each comment  
21 received, then explains the Division’s decision to accept, deny, or revise the text due to the comment.  
22 Below are the Division’s responses to each comment, organized in sequential order of the proposed rules.

### 23 **Chapter 1, Section 2 - Definitions**

24  
25 **Comment 1:** “... despite the obvious focus of Enrolled Act No. 71, the key term ‘impact  
26 assistance’ remains undefined in Chapter 1 of ‘Rules,’ Section 2. **Definitions.** Specifically, what  
27 criteria are appropriately involved in defining just what constitutes ‘impact assistance.’” ...  
28 “Refining the definition of ‘impact assistance’ with added emphasis on **socioeconomic** impacts  
29 could go a long way toward enhancing rational evaluation and comparisons of long-term  
30 alternatives competing for impact assistance.” (J Lillegraven)

31  
32 **Division Response:** The Division appreciates the comment but does not recommend the  
33 addition of a new definition. Impact assistance is not a new term with Enrolled Act 71,  
34 however, mitigated and unmitigated are new terms.

### 36 **Chapter 1, Section 2(t)**

37  
38 (s) “Mitigated impacts” means impacts that are minimized by limiting the magnitude of the impact, or  
39 are compensated for by replacing or providing substitute resources or supplemental environmental  
40 projects.

41  
42 **Comment 2:** “We recommend adding language as follows:

1 (t) “Mitigated impacts” means impacts, **from the construction of the industrial facility on the**  
2 **counties, cities and towns determined by the Council to be affected**, that are minimized by  
3 limiting the magnitude of the impact, **reduced or eliminated over time by preservation and**  
4 **maintenance measures**, or are compensated for by replacing or providing substitute resources or  
5 supplemental environmental projects.” (Power Company of Wyoming LLC)  
6

7 **Division Response:** The Division appreciates the comment but does not recommend  
8 changing the language. A broader definition provides communities latitude in defining  
9 impacts which they feel are mitigated and unmitigated.

10  
11 **Comment 3:** “Given the subsequent assessment requirements and consideration of  
12 “unmitigated” impacts in calculation and distribution of impact assistance payments (IAP), we  
13 suggest that definition of “mitigated impacts” be expanded to recognize project-related tax  
14 revenues as replacement or substitute resources. For example, the following phrase could be  
15 added at the end of the existing text for 2 (t) “...impacts that are compensated for by the timely  
16 receipt of project-related tax revenues adequate to fund additional public infrastructure and  
17 serve the demand created by the proposed industrial facility.” (Sammons/Dutton LLC)  
18

19 **Division Response:** The Division appreciates the comment but does not recommend  
20 changing the language as it is beyond the scope of the proposed changes. Neither  
21 Enrolled Act 71 nor the Act make reference to project-related projected tax revenues as  
22 replacement or substitute resources.  
23  
24  
25

## 26 Chapter 1, Section 2(ad)

27  
28 (ad) “Unmitigated Impacts” means identified impacts that are not minimized by limiting the magnitude  
29 of the impact, or are not compensated for by replacing or providing substitute resources or supplemental  
30 environmental projects.  
31

32 **Comment 4:** “We recommend adding language as follows:  
33 (ad) “Unmitigated impacts” means identified **impacts from the construction of the industrial**  
34 **facility on the counties, cities and towns determined by the Council to be affected** that are not  
35 minimized by limiting the magnitude of the impact, **are not reduced or eliminated over time by**  
36 **preservation and maintenance measures**, or are not compensated for by replacing or providing  
37 substitute resources or supplemental environmental projects.” (Power Company of Wyoming  
38 LLC)  
39

40 **Division Response:** The Division appreciates the comment but does not recommend  
41 changing the language. A broader definition provides communities latitude in defining  
42 impacts which they feel are mitigated and unmitigated.  
43

44 **Comment 5:** “Given the subsequent assessment requirements and consideration of  
45 “unmitigated” impacts in calculation and distribution of impact assistance payments (IAP), we  
46 suggest that definition of “mitigated impacts” be expanded to recognize project-related tax  
47 revenues as replacement or substitute resources. For example, the following phrase could be  
48 added at the end of the existing text for 2 (t) “...impacts that are compensated for by the timely  
49 receipt of project-related tax revenues adequate to fund additional public infrastructure and  
50 serve the demand created by the proposed industrial facility. A corresponding revision could be  
51 made under 2 (ad) if necessary.” (Sammons/Dutton LLC)

1  
2 **Division Response:** The Division appreciates the comment but does not recommend  
3 changing the language as it is beyond the scope of the proposed changes. Neither  
4 Enrolled Act 71 nor the Act make reference to project-related projected tax revenues as  
5 replacement or substitute resources.  
6

7 **Chapter 1, Section 4 – Jurisdictional Meetings**  
8

9 **Chapter 1, Section 4(d)**

10  
11 (d) The Director shall provide a written decision within 15 days following the jurisdictional  
12 meeting stating whether or not the facility is within the jurisdiction of the Siting Council and provide  
13 notice of any application fee pursuant to W.S. 35-12-105(g) and W. S. 35-12-109(b). The Director  
14 may provide conditional determinations. The Director, according to the accounting standards and  
15 procedures used by the State of Wyoming, will perform the deposit of revenues, payment of  
16 expenditures, and accounting. Any such fee will:

17  
18 (i) Be determined by the Director in accordance with the provisions of  
19 W.S 35-12-109 (b) and (d);

20  
21 (ii) Be collected at the time of the filing of an application;  
22

23  
24 (iii) Recover the full actual costs to the Division and Council for the activities  
25 specified by W. S. 35-12-109(b) and (d);

26  
27 (iv) May be subject to revision by the Director if the fees are determined to  
28 be insufficient to pay the full actual cost of the Division and Council as specified by W.S. 35-  
29 12-109 (b) and (d).  
30

31 **Comment 6:** *Section 4(d) - the "application fee" deposit should be earmarked for the local*  
32 *governments to offset some of the local costs for meetings and review." (CCCOG)*  
33

34 **Division Response:** The Division appreciates this comment but the suggestion is beyond  
35 the authority provided by the Act. W.S. 35-12-109(b) does not provide authority for the  
36 Division to use part of the application fee to offset the local government's costs  
37 associated with reviewing applications and attending meetings.  
38

39 **Chapter 1, Section 4(d)(iii)**

40  
41 (iii) Recover the full actual costs to the Division and Council for the activities  
42 specified by W. S. 35-12-109(b) and (d);  
43

44 **Comment 7:** *Section 4(d)(iii) - The wording "**and Local Governments**" should be inserted after*  
45 *"Division and Council". (CCCOG)*  
46

47 **Division Response:** The Division appreciates this comment but the suggestion is beyond  
48 the authority provided by the Act. W.S. 35-12-109(b) does not provide authority for the  
49 Division to use part of the application fee to offset the local government's costs  
50 associated with reviewing applications and attending meetings.  
51

1 **Chapter 1, Section 4(c)(vi)**

2  
3 (vi) The estimated cost of construction, including a preliminary estimate of material  
4 costs;

5  
6 **Comment 8:** “We recommend as follows:

7 (vi) *The estimated cost of construction, including ~~a preliminary estimate of material costs~~*  
8 ***preliminary estimated materials costs;***

9  
10 “**Note:** This revision is recommended to use the term “estimated material costs.” Also, note that  
11 the Enrolled Act No. 71 uses the term “estimated material costs” instead of “estimated materials  
12 costs.” In addition, in Section 8, item (d)(iii), the proposed revision uses the term “estimated  
13 material costs.” Consider changing both the defined term and other references in the rules to be  
14 consistent with the term in Enrolled Act No. 71.” (Power Company of Wyoming LLC)

15  
16 **Division Response:** The Division agrees with this comment and the text has been modified to be  
17 consistent with Enrolled Act No. 71. The rules will be modified as follows: “The estimated cost  
18 of construction, including a preliminary estimated of material costs;”

19  
20 **Chapter 1, Section 5 – Pre-Filing and Filing**

21  
22 **Chapter 1, Section 5(b)**

23  
24 (b) The applicant shall notify and describe the project to local governments in the  
25 study area. The notice and description shall be sent by certified mail, return receipt, and shall  
26 include a description of the project, its location, the expected construction period, the number of  
27 construction workers, transportation routes for construction materials, the anticipated economic benefits  
28 of the project, the anticipated mitigated and unmitigated impacts from the project and offer methods to  
29 comment to the applicant and attend scheduled informational meetings. The notice and description will  
30 be mailed no later than ~~one week~~ 10 business days prior to the first informational meeting.

31  
32 (i) Informational meetings shall be held no later than ~~30~~ 60 days before the filing of  
33 an application and shall be in the principal city of the county and at a place as close to the site of the  
34 project as is practical.

35  
36 **Comment 9:** “We recommend as follows:

37 (b) *The applicant shall notify and describe the project to local governments in the study*  
38 *area. The notice and description shall be sent by certified mail, return receipt, and shall*  
39 *include a description of the project, its location, the expected construction period, the*  
40 *number of construction workers, transportation routes for construction materials, the anticipated*  
41 *economic benefits of the project, the anticipated mitigated and unmitigated impacts from the*  
42 *~~project and industrial facility that the construction will have on the counties, cities and towns~~*  
43 ***determined by the Council to be affected and** offer methods to comment to the applicant and*  
44 *attend scheduled informational meetings. The notice and description will be mailed no later than*  
45 *~~one week~~ 10 business days prior to the first informational meeting. **Note:** This revision is*  
46 *recommended to use the language in Enrolled Act No. 71.” (Power Company of Wyoming LLC)*

47  
48 **Division Response:** The Division appreciates the comment but does not recommend  
49 changing the language. Notifying the local governments is a pre-filing step which takes

1 place before an application is submitted. After receipt of the application, the director will  
2 determine the area primarily affected.

3  
4 **Comment 10:** *“As written, this requirement suggests that much of the social and economic  
5 assessment would need to have been completed prior to such notice. It would suggest that an  
6 initial distribution of IAPs would be needed in order to determine the “unmitigated” impacts. Is  
7 that the level of detail to be included in the preliminary notice, or rather a general description of  
8 the potential social and economic impacts associated with the project, without specific  
9 characterization as to mitigated versus unmitigated?” (Sammons/Dutton LLC)*

10  
11 **Division Response:** The Division appreciates the comment and agrees the estimated  
12 impacts will likely be more general in nature during this pre-filing stage. The rules will  
13 be modified as follows:

14 “(b) The applicant shall notify and describe the project to local governments in the  
15 study area. The notice and description shall be sent by certified mail, return  
16 receipt, and shall include a description of the project, its location, the expected  
17 construction period, the number of construction workers, transportation routes for  
18 construction materials, the anticipated economic benefits of the project, ~~the anticipated~~  
19 ~~mitigated and unmitigated~~ impacts from the project and offer methods to comment to the  
20 applicant and attend scheduled informational meetings. The notice and description will  
21 be mailed no later than ~~one week~~ 10 business days prior to the first informational  
22 meeting.”

23  
24 **Chapter 1, Section 5(e)**

25  
26 (e) After receipt and examination of the application the Administrator shall determine the  
27 area primarily affected.

28  
29 **Comment 11:** *Section 5(e) - How will the ISC determine the area primarily affected? Will there  
30 be a ranking system and will this be made public? Definitions would be helpful on how the  
31 primary area is determined by ISC.” (CCCOG)*

32  
33 **Division Response:** The Division appreciates this comment but does not recommend  
34 changing the language. W.S. 35-12-110 (a)(i) states that the director must provide notice  
35 to the area primarily affected 10 days after receipt of an application. The director’s  
36 flexibility in determining the area primarily affected is crucial to the process and timeline  
37 for each application. The factors that go into determining the area primarily effected are  
38 tied to the socio-economic analysis provided in each application. The Division always  
39 encourages the public and communities to contact the Division with any questions  
40 regarding a specific project. The Division is happy to answer those questions in person or  
41 through email as they arise.

42  
43 **Chapter 1, Section 5(f)(ii)**

44  
45 (f) Counties who wish to make a referral according to W.S. 18-5-509 shall provide the  
46 following:

47  
48 (i) Information obtained from the applicant as described in Section 4(c)  
49 subparagraphs (i) through (v).

1 (ii) Justification why the referral is necessary. The Director will make a  
2 decision on the referral and notify the county within fifteen (15) days from the date of the referral.

3  
4 **Comment 12:** *Section 5(f)(ii) - The language of "and principal community" should be added*  
5 *after "county". (CCCOG)*

6  
7 **Division Response:** The Division appreciates this comment but does not recommend that  
8 it be changed. W.S. 18-5-509 only provides authority to make a referral to the county  
9 commissioners. Furthermore, there is no definition of "principal community" which  
10 would make compliance a challenge.

11  
12 **Chapter 1, Section 8 – Application Information to be Submitted**

13  
14 **Chapter 1, Section 8(h)(iv)**

15  
16 (iv) Identify and provide quarterly totals of the number, job  
17 classification and recurrence; of those which are estimated to be in- migrating (from outside the study  
18 area at the time of hire for the facility) and of those pre-existing employees of the applicant engaged in  
19 construction;

20  
21 **Comment 13:** *"Elsewhere, the proposed revisions call from direct employment and capital*  
22 *expenditure information by calendar month, rather than quarterly as is presently the case. Is*  
23 *"quarterly" the desired time period in this is paragraph, and if so, how is "quarterly" defined –*  
24 *the sum of the three monthly observations, the peak, or the average?" (Sammons/Dutton LLC)*

25  
26 **Division Response:** The Division appreciates the comment but does not recommend  
27 changing the language. The rule requires "quarterly totals" which the Division interprets  
28 as the sum of three monthly observations.

29  
30 **Chapter 1, Section 8(i)**

31  
32 (i) The social and economic conditions in the area of site influence shall be  
33 inventoried and evaluated as they currently exist, projected as they would exist in the future without the  
34 proposed industrial facility and as they will exist with the facility. Prior to submitting its application,  
35 each applicant shall confer with the Administrator to define the needed projections, the projection period  
36 and issues for socioeconomic evaluation. The evaluation shall include, but is not limited to:

37  
38 (i) An analysis of whether or not the use of the land by the industrial facility is  
39 consistent with state, intrastate, regional, county and local land use plans, if any. The analysis shall  
40 include the area of land required and ultimate use of land by the industrial facility and reclamation plans  
41 for all lands affected by the industrial facility or its dependent components;

42  
43 (ii) A study of the area economy including a description of  
44 methodology used. The study may include, but is not limited to, the following factors:

45  
46 (A) Employment projections by major sector;

47  
48 (B) Economic bases and economic trends of the local economy;

49 (C) Estimates of basic versus non-basic employment;

1 (D) Unemployment rates;

2  
3 (iii) A study of the area population including a description of methodology used.  
4 The study may include, but is not limited to, an evaluation of demographic characteristics for the current  
5 population and projections of the area population without the proposed industrial facility;

6  
7 (iv) An analysis of housing facilities by type, including a quantitative  
8 evaluation of the number of units in the area and a discussion of vacancy rates, costs, and rental rates  
9 of the units. The analysis should include geographic location, including a quantitative evaluation of the  
10 number of units in the area required by the construction and operation of the proposed industrial  
11 facility and a discussion of the effects of the proposed industrial facility on vacancy rates, costs,  
12 and rental rates of the units. Specific housing programs proposed by the applicant should be described in  
13 detail;

14  
15 **Comment 14:** *“The text indicates that social and economic conditions be will evaluated “... as*  
16 *they will exist with the facility. We have noted in some applications that the assessments,*  
17 *particularly as they relate to population change and demands for housing and public facilities*  
18 *and services focus on the direct demands, without addressing the needs related to the indirect and*  
19 *induced employment associated with a project. We suggest that language be added in this*  
20 *paragraph, and perhaps 8.i(iv) specifying that indirect and induced demand be included.*  
21 *Projections of total population change are critical to the subsequent assessment of housing*  
22 *needs, the incremental demand of various public facilities and services, and thereafter, to*  
23 *completing the fiscal analysis and assessments of unmitigated impacts.” (Sammons/Dutton LLC)*  
24

25 **Division Response:** The Division appreciates the comment but does not recommend  
26 changing the language. Indirect and induced employment associated with the project are  
27 beyond the scope of incorporating changes due to Enrolled Act 71.

28  
29 **Chapter 1, Section 8(i)(vi)**

30  
31 (vi) Public facilities and services availability and needs, which may include, but  
32 are not limited to:

33  
34 (A) Facilities and personnel required for the administrative functions of  
35 government including specific new demands or increases in service  
36 levels created by the proposed industrial facility;

37  
38 (B) Sewer and water impacts shall describe the distribution and  
39 treatment facilities including the capability of these facilities to meet projected service levels  
40 required due to the proposed industrial facility. Use of facilities by the proposed industrial facility  
41 should be assessed separately from population related increases in service levels. If required pursuant to  
42 W.S. 35-12-108, the application shall contain the Water Supply and Water Yield Analysis and  
43 Final Opinion of the State Engineer;

44  
45 (C) Solid waste collection and disposal services including the  
46 capability of these facilities to meet projected service levels required due to the proposed industrial  
47 facility. Use of facilities by the proposed industrial facility should be assessed separately from population  
48 related increases in service levels;

1 (D) Existing police and fire protection facilities including specific new  
2 demands or increases in service levels created by the proposed industrial facility;

3  
4 (E) An analysis of health and hospital care facilities, ~~and~~ services and  
5 personnel including specific new demands or increases in service levels created by the proposed industrial  
6 facility;

7  
8 (F) Human service facilities, programs and personnel,  
9 including an analysis of the capacity to meet current demands and a description of problems, needs, and  
10 costs of increasing service levels;

11  
12 (G) An analysis of community recreational facilities and programs and  
13 urban outdoor recreational opportunities including specific new demands or increases in service levels  
14 created by the proposed industrial facility;

15  
16 (H) Educational facilities, including an analysis based upon enrollment per  
17 grade, physical facilities and their capacities and other relevant factors with an assessment of the effect  
18 that the new population will have on personnel, programs and facilities;

19  
20 (I) Problems due to the transition from temporary, construction  
21 employees to operating workforces should be addressed. Changes in levels of services required as a  
22 result of the proposed industrial facility should specifically be addressed. Cumulative impacts of the  
23 proposed industrial facility and other developments in the area of site influence should be addressed  
24 separately. This assessment should examine increased demands associated with the construction and  
25 operational phases of the proposed industrial facility, as well as effects on the level of services as the  
26 construction or operational workforces decline;

27  
28  
29 (J) A copy of any studies that may have been made of the social or  
30 economic impact of the industrial facility.

31  
32 **Comment 15:** *“In order to appropriately address the capability of public facilities and services*  
33 *to meet projected service levels required due to the proposed industrial facility, the assessment*  
34 *should acknowledge any pre-existing capacity or service shortfalls or constraints. Consideration*  
35 *of such shortfalls would be an important factor in determining “unmitigated” impacts to insure*  
36 *that a proposed facility not be asked to carry an undue economic burden to remedy pre-existing*  
37 *constraints, particularly given the often short-term/temporary demands associated with*  
38 *construction.” (Sammons/Dutton LLC)*

39  
40 **Division Response:** The Division appreciates the comment but does not recommend  
41 changing the language. A broader definition provides communities latitude in defining  
42 impacts which they feel are mitigated and unmitigated.

43  
44 **Chapter 1, Section 8(i)(vi)(A)**

45  
46 (A) Facilities and personnel required for the administrative functions of  
47 government including specific new demands or increases in service levels created by the proposed  
48 industrial facility;

49  
50 **Comment 16:** *“We recommend as follows:*

1 (A) *Facilities and personnel required for the administrative functions of the government*  
2 *including specific new demands or increases in service levels **created by construction** of the*  
3 *proposed industrial facility;” (Power Company of Wyoming LLC)*  
4

5 **Division Response:** The Division agrees with this comment and the text has been  
6 modified as follows: “Facilities and personnel required for the administrative functions of  
7 government including specific new demands or increases in service levels created by  
8 construction of the proposed industrial facility;  
9

10 **Chapter 1, Section 8(i)(vii)**

11 (vii) A fiscal analysis over the projection period for all local  
12 governments and special districts identified by the applicant as primarily affected by the proposed industrial  
13 facility, including revenue structure, expenditure levels, mill levies, services provided through public  
14 financing, and the problems in providing public services. If modeling software is used, then  
15 identifying the software program and providing a summary table of the data set inputs (including any  
16 multipliers) for the analysis is required. The analysis may include, but is not limited to:  
17

18 (A) An estimate of the cost of the facility with a separate line item for the  
19 estimated material costs.  
20

21 (B) An estimate of the cost of the ~~facility construction subject to~~ sales and  
22 use taxes to be paid directly by the applicant to construct the facility. This estimate should be broken  
23 down by year.  
24

25 (C) ~~An estimate of sales and use taxes by year for each county if the~~  
26 ~~facility is located in more than one county.~~ If a facility is located in more than one county, the  
27 estimate under subsection (B) above shall be broken down by year and for each affected county.  
28  
29

30 (D) Estimates of impact assistance payments which will result from the  
31 project.  
32

33 (E) An estimate of the cost of components of the industrial facility which  
34 will be included in the assessed value of the industrial facility for purposes of ad valorem taxes for both  
35 the construction and operations periods. This estimate should include a breakdown by county if the  
36 components of the industrial facility will be located in more than one county.  
37

38 **Comment 17:** “Section 8.i.(vii) makes reference to the use of “modeling software” to complete  
39 the fiscal analysis, and the documentation of inputs. Our concern lies not so much with the inputs  
40 noted in (A) – (D), but with other assumptions and calculations that underlie the outputs, and the  
41 appropriateness of the modeling framework to address the questions at hand. To the extent that  
42 “modeling software” includes spreadsheet programs such as Microsoft EXCEL that facilitate  
43 calculations and outputs can be documented. However, if the reference to “modeling software” is  
44 widely focused more on proprietary economic modeling software such as REMI or IMPLAN, the  
45 two most widely such programs, we would caution that it is our experience that they not well  
46 suited to the task. The reasons for that assessment include the following:  
47

- 48
- 49 • *The fiscal analysis routines address projected revenues and expenditures in relatively*  
50 *aggregated geographic terms, e.g., counties, and typically only on an annual basis. The latter*  
51 *make the assessment of short-term construction projects challenging.*

- *The calibration of revenues, including ad valorem/property taxes, typically reflects average values that are not readily variable to reflect unique aspects of a project. For example, to our knowledge, neither program addresses wind energy production taxes, or the ad valorem taxes for projects that are utility-owned.*
- *There is a certain “black box” element to how these programs deal with the statewide distributions of certain tax revenues.” (Sammons/Dutton LLC)*

**Division Response:** The Division appreciates the comment but does not recommend changing the language. There is no alternative language provided within the comment. The Division understands modeling software has limitations with potentially inaccurate outputs, and will plan evaluations of applications accordingly.

### Chapter 1, Section 8(i)(vii)(D)

(D) Estimates of impact assistance payments which will result from the project.

**Comment 18:** *“Section 8(i)(vii)(D) requires the fiscal impact assessment to include estimates of the impact assistance payments. Please clarify whether the intent is to present estimates of the ‘unmitigated impacts’, which could serve as a basis for the IAPs, or present estimates of the maximum funding that would be available for IAPs, i.e., 2.76 percent of the estimated material costs?” (Sammons/Dutton LLC)*

**Division Response:** The Division appreciates the comment, but does not recommend changing the language. These types of questions are common when constructing an application. The estimates of impact assistance payments will include both the present estimates of maximum funding multiplied by 2.76 percent, as well as the estimated impacts the Company identifies as a direct result of the project.

### Chapter 1, Section 8(i)(vii)(E)

(E) An estimate of the cost of components of the industrial facility which will be included in the assessed value of the industrial facility for purposes of ad valorem taxes for both the construction and operations periods. This estimate should include a breakdown by county if the components of the industrial facility will be located in more than one county.

**Comment 19:** *“Section 8(i)(vii)(E) requires applicants to identify the cost of components that would be included for purposes of ad valorem taxes for both the construction and operations periods. Consider revisions or expansion of this requirement to recognize that capital cost may not be the sole determinant of valuation for certain generation, transmission, and pipeline projects. For some such projects, the income or contribution to corporate income can also factor into the valuation.” (Sammons/Dutton LLC)*

**Division Response:** The Division appreciates the comment but does not recommend any change to the language at this time as it goes beyond the scope of incorporating Enrolled Act 71. There is no alternative language offered in the comment for further consideration.

### Chapter 1, Section 8(l)

(l) The applicant shall provide certification that all local governments in the study area were provided notification of the facility, a description of the proposed project and an opportunity to ask the

1 applicant questions regarding the proposed project at least thirty (30) days prior to the submission of the  
2 application. The certification shall include a description of the actual process used.

3  
4 **Comment 20:** “Section 8(l) - The wording should be changed to “*all towns in the county*”  
5 instead of “*all local governments*”.” (CCCOG)

6  
7 **Division Response:** The Division appreciates this comment but does not recommend that  
8 the text be changed. “Local government” is defined in W.S. 35-12-102 to be much  
9 broader than just towns. It also includes school districts and special districts formed  
10 under the Joint Powers Act. Making such modification could potentially restrict the  
11 number of individuals receiving a copy of the application under this provision.

12  
13 **Comment 21:** “Section 8(l) - This provision encourages local government participation and  
14 reinforced the need to earmark part of the “*application fee*” to offset local government meetings  
15 and cost to review and respond the application.” (CCCOG)

16  
17 **Division Response:** The Division appreciates this comment but feels that the suggestion  
18 is beyond the authority provided by the Act. W.S. 35-12-109(b) does not provide  
19 authority for the Division to use part of the application fee to offset the local  
20 government’s costs associated with reviewing applications and attending meetings.

21  
22 **Chapter 1, Section 8(p)**

23  
24 (p) The applicant shall provide a description of the impact controls and mitigating measures  
25 proposed to mitigate and alleviate adverse environmental, social and economic impacts associated with the  
26 construction and operation of the proposed industrial facility, including:

27  
28 (i) Monitoring programs to assess effects of the proposed industrial facility and the  
29 overall effectiveness of impact controls and mitigating actions.

30  
31 (ii) Impact controls and mitigating measures to proposed by the applicant to alleviate  
32 adverse environmental, social and economic impacts associated with construction and operation of the  
33 proposed industrial facility.

34  
35 **Comment 22:** “We recommend as follows:

36 (p) The applicant shall provide a description of the **mitigated and unmitigated measures**  
37 ~~proposed to mitigate and alleviate adverse~~ environmental, social and economic impacts  
38 associated with the construction and operation of the proposed industrial facility, including:

39 (i) Monitoring programs to assess ~~effects of the proposed industrial facility and the~~  
40 ~~overall~~ effectiveness of ~~the proposed mitigation impact controls and mitigating actions.~~

41 (ii) ~~Impact controls and mitigating~~ Mitigation measures proposed by the applicant to  
42 alleviate adverse environmental, social and economic impacts associated with the construction  
43 and operation of the proposed industrial facility.

44  
45 **Note:** These revisions are recommended to follow the language in Enrolled Act No. 71. Although  
46 the applicant is required to provide evidence, that is, a description of the mitigated and  
47 unmitigated impacts, the only requirement related to the estimation of fiscal impact or dollar  
48 amount is for unmitigated impacts. Enrolled Act No. 71 requires that the Council determine the  
49 dollar amount of the unmitigated impacts.” (Power Company of Wyoming LLC)

1 **Division Response:** The Division appreciates the comment but does not recommend any  
2 changes to the language. The focus of Section 8(p) is on the measures taken by the  
3 applicant to address the impacts of the proposed industrial facility, which will provide a  
4 better understanding for the dollar amount of the unmitigated impacts.  
5

6 **Chapter 1, Section 8(q)**  
7

8 (q) The applicant shall provide a description and quantification of the mitigated and  
9 unmitigated impacts that will result from the construction and operation of the proposed facility on the  
10 affected local governments and special districts. Such description shall include:  
11

12 (i) Quantification of fiscal impacts, regardless of amount, on all items contained in  
13 Wyoming Statute 35-12-109 (a)(xiii)(A)–(S).  
14

15 (ii) Projection of when, by calendar month, the unmitigated impacts will occur in the  
16 affected communities.  
17

18 (iii) Projection, by calendar month, of fiscal impact in affected communities.  
19

20 **Comment 23:** “We recommend as follows:

21 (q) The applicant shall provide a ~~description and~~ **quantification or dollar amount** of the  
22 ~~mitigated and~~ unmitigated impacts that will result from the construction ~~and operation~~ of the  
23 proposed facility on the affected local governments ~~and special districts~~. Such description shall  
24 include:

25 (i) Quantification of fiscal impacts, regardless of amount, on all **unmitigated impacts to**  
26 **items contained in Wyoming Statute 35-12-109 (a)(xiii)(A)-(S).**

27 (ii) Projection of when, by calendar month, the unmitigated impacts will occur in the  
28 affected communities.

29 (iii) Projection, by calendar month, of fiscal **amount impact of the unmitigated impacts**  
30 **in affected communities.**  
31

32 **Note:** These revisions are recommended to follow the language in Enrolled Act No. 71. Although  
33 the applicant is required to provide evidence, that is, a description of the mitigated and  
34 unmitigated impacts, the only requirement related to the estimation of fiscal impact or dollar  
35 amount is for unmitigated impacts. Enrolled Act No. 71 requires that the Council determine the  
36 dollar amount of the unmitigated impacts.” (Power Company of Wyoming LLC)  
37

38 **Division Response:** The Division appreciates the comment but does not recommend any  
39 alteration to the rule. Enrolled Act No. 71 requires the applicant to provide both the  
40 mitigated and unmitigated impacts. The Division anticipates that Section 8(p) & (q)  
41 which require the applicant to identify both mitigated and unmitigated impacts will aid  
42 local governments in identifying impacts which they may disagree are being mitigated.  
43

44 **Comment 24:** “Section 8(i)(vii)(q) of the proposed changes would require an applicant to  
45 describe and quantify mitigated and unmitigated impacts that will result from construction and  
46 operation of the proposed industrial facility on the affected local governments and special  
47 districts. Such description shall include:

48 (i) Quantification of fiscal impacts, **regardless of amount** (emphasis added), on all  
49 of the items contained in WS 35-12-109 (a)(xiii) (A)-(S). These items include the  
50 following:

51 a. Scenic resources;

- b. Recreational resources;
- c. Archeological and historical resources;
- d. Land use patterns;
- e. Economic base;
- f. Housing;
- g. Transportation;
- h. Sewer and water facilities;
- i. Solid waste facilities;
- j. Police and fire facilities;
- k. Educational facilities;
- l. Health and hospital facilities;
- m. Water supply;
- n. Other relevant areas;
- o. Agriculture;
- p. Terrestrial and aquatic wildlife; and
- q. Threatened, endangered and rare species and other species of concern identified in the state wildlife action plan as prepared by the Wyoming Game and Fish Department.

*It is our experience that conducting a fiscal analysis for each of the public facilities and services listed above in a multi-county and multi-community Area of Site Influence would be a substantial undertaking, particularly when the fiscal assessment must be performed **regardless** of the amount of impact. While ISC's current rules require assessment of an industrial facility's effects on the economic base, housing, and other sectors of the economy such as agriculture, an assessment of the fiscal impacts on the economic base, housing, and agriculture would be much more complex and involve fairly subjective assumptions.*

*We would also note that although some of the items listed in WS 35-12-109 (a)(xiii)(A)-(S) lend themselves to traditional fiscal assessment; others do not. For example, assessing the fiscal impacts of a proposed industrial facility's effects on archeological and historical resources, terrestrial and aquatic wildlife, and threatened, endangered and rare species and other species of concern would require addressing both market and non-market values for these resources, which is a labor intensive, lengthy and expensive undertaking that often relies on subjective assumptions. Moreover, tying economic effects of these resources and activities to fiscal effects on counties, communities and special districts would either require extensive research or subjective assumptions that could be reasonably challenged by other parties. To require fiscal assessment of these items regardless of amount would result in a substantial undertaking for multi-county projects such as transmission lines. Furthermore, the resulting assessments would not lend themselves to a determination of "mitigated" versus "unmitigated" impacts and the distribution of IAPs.*

*Additionally, the category of "Other relevant areas" is open-ended and may also invite consideration of topics that do not lend themselves to fiscal assessment.*

*The bottom line is that the fiscal assessment requirement of the proposed changes to the ISC Rules and Regulations, as currently defined, would add substantial time and cost to the performance of the socioeconomic assessment and in many ways call for a level of detail beyond that associated with all but very large projects that could have major impacts across a wide geography. Consequently, we suggest limiting the fiscal assessment to the following topics:*

- a. Local roads and bridges;

- b. Sewer and water facilities;
- c. Solid waste facilities;
- d. Police and fire facilities;
- e. Educational facilities;
- f. Water supply;
- g. Other publicly provided facilities and services.

Furthermore, we suggest limiting the fiscal assessment requirement to those facilities and services located in communities that would experience greater than a three percent increase in demand for longer than a three-month period of time.” (Sammons/Dutton LLC)

**Division Response:** The Division appreciates the comment and recognizes the comment is mislabeled, and is meant to address Section 8(q). The Division does not recommend any changes to the language. The Division does not have the authority to change or limit the fiscal assessment requirements as described in W.S. 35-12-109(a)(xiii)(A)-(S). In addition, a broad evaluation of all identified impacts will aid local governments in identifying impacts which they may disagree are being mitigated or accurately quantified.

**Chapter 1, Section 8(q)(ii)**

(ii) Projection of when, by calendar month, the unmitigated impacts will occur in the affected communities.

**Comment 25:** “Section 8(i)(vii)(q)(ii) also requires applicants to provide a description and quantification of unmitigated impacts, by calendar month. Yet elsewhere, the text calls for estimates of sales and use taxes by year and employment by quarter. The differing time periods would make it difficult to quantify unmitigated impacts, by calendar month. Consider revision of this paragraph to clarify the information to be provided in the definition/description of unmitigated impacts.

Furthermore, in describing the potential for unmitigated impacts, by calendar month, consider adding text that recognizes the potential for short-term occurrence of unmitigated impacts due to timing of revenue distribution by the state, and minor differences between the timing of purchases and short-term changes in employment, e.g., increased employment at the beginning of construction in one month, followed 2 months later by major capital purchases that could more than offset the earlier shortfalls in revenue.” (Sammons/Dutton LLC)

**Division Response:** The Division appreciates the comment and recognizes the comment is mislabeled, and is meant to address Section 8(q). The Division does not recommend any changes to the language. The Council relies heavily on the monthly schedule of projected unmitigated impacts to set Impact Assistance Payments, which are also distributed monthly.

**Chapter 1, Section 8(r)**

(r) Counties wishing to present evidence shall provide a description and quantification of the unmitigated impacts that will result from the construction and operation of the proposed facility. Such description shall include:

- (i) Estimates of fiscal impacts on services provided by communities; and

1 (ii) Estimated projections of when unmitigated impacts will occur in communities;  
2

3 **Comment 26:** *Section 8(r) - This section states that "counties wishing to present evidence shall*  
4 *provide a description and quantification of the unmitigated impacts..." A template needs to be*  
5 *provided by ISC for the requested information. The majority of the counties and municipalities do*  
6 *not have the resources to supply this information to the ISC without a template. (CCCOG)*  
7

8 **Division Response:** The Division appreciates this comment and does not recommend any  
9 changes to the language. Should these rules be accepted, the Division will develop a  
10 guidance document to aid local governments in providing information to the Council.  
11

12 **Chapter 1, Section 8(r)**

13  
14 (i) Estimates of fiscal impacts on services provided by communities; and  
15

16 **Comment 27:** *Section 8(r)(i) - In reference to this provision and Section 12, only "Unmitigated*  
17 *Impacts" are eligible for impact assistance funds. If the County wants to respond to a finding that*  
18 *there are no "unmitigated impacts" therefore, no impact assistance funds, the county and local*  
19 *governments will have to study and prepare "evidence" to rebuke the finding of "no unmitigated*  
20 *impacts". This effort to prepare "evidence" will cost the local government(s) money, at least*  
21 *Commissioner and staff time along with attorney/consultant fees to make a strong argument and*  
22 *provide "a description and quantification for the unmitigated impacts." (CCCOG)*  
23

24 **Division Response:** The Division appreciates this comment and acknowledges that  
25 Enrolled Act 71 requires additional time and resources from the local governments in  
26 order to satisfy the requirements for impact assistance funds. The proposed revisions to  
27 the Rule by the Division in Section 8(p) & (q) allows the applicant to show its analysis of  
28 the impacts and assists local governments in identifying impacts which they may disagree  
29 are being mitigated. The Division anticipates that the local governments could utilize the  
30 fiscal information provided in the application as well as in their respective budgets to  
31 fiscally quantify impacts identified and provide that information as evidence.  
32

33 **Chapter 1, Section 8(r)**

34  
35 (i) Estimated projections of when unmitigated impacts will occur in communities;  
36

37 **Comment 28:** *Section 8(r)(ii) - In reference to this provision and Section 12, only "Unmitigated*  
38 *Impacts" are eligible for impact assistance funds. If the County wants to respond to a finding that*  
39 *there are no "unmitigated impacts" therefore, no impact assistance funds, the county and local*  
40 *governments will have to study and prepare "evidence" to rebuke the finding of "no unmitigated*  
41 *impacts". This effort to prepare "evidence" will cost the local government(s) money, at least*  
42 *Commissioner and staff time along with attorney/consultant fees to make a strong argument and*  
43 *provide "a description and quantification for the unmitigated impacts." (CCCOG)*  
44

45 **Division Response:** The Division appreciates this comment and acknowledges that  
46 Enrolled Act 71 requires additional time and resources from the local governments in  
47 order to satisfy the requirements for impact assistance funds. The proposed revisions to  
48 the Rule by the Division in Section 8(p) & (q) allows the applicant to show its analysis of  
49 the impacts and assists local governments in identifying impacts which they may disagree  
50 are being mitigated. The Division anticipates that the local governments could utilize the

1 fiscal information provided in the application as well as in their respective budgets to  
2 fiscally quantify impacts identified and provide that information as evidence.

3  
4 **Chapter 1, Section 12 – Impact Assistance Funds**

5  
6 **Chapter 1, Section 12(a)**

7  
8 ~~(a) — The Administrator shall make a recommendation to the Council for distribution of  
9 impact assistance money. If a ratio supported by all governments within the area primarily affected has  
10 not been provided to the Division within 30 days of filing an application or waiver of permit application,  
11 the Division will provide to city, town and county governments within the area primarily affected the  
12 Administrator’s recommendation to the Council for distribution of the impact assistance funds.  
13 Governments in disagreement with the Administrator’s draft recommendation shall provide to the  
14 Council supporting information as outlined in Section 12(b).~~

15  
16 (a) If all affected counties, cities and towns in the area primarily affected can agree to an  
17 amount and schedule for payment distributions, they may provide their agreement to the Division for  
18 submission to the Council for its consideration. If an amount and schedule supported by all  
19 governments within the area primarily affected has not been provided to the Division within 30 days of  
20 filing an application or waiver of permit application, the Division will review the information provided  
21 in the application and provide to counties, cities and towns within the area primarily affected the  
22 Administrator’s recommendation to the Council for distribution of the impact assistance funds.  
23 Counties in disagreement with the Administrator’s draft recommendation shall provide to the parties  
24 an alternate distribution recommendation and information showing that the Administrator’s  
25 recommended distribution does not account for all the unmitigated impacts.

26  
27 **Comment 29:** “... the roles of ISD’s Administrator as expressed in ‘Rules’ Section 12. (a) are  
28 much more active and conflict directly with roles assigned in Enrolled Act no. 71 to ISC.

29  
30 “Also, I worry about the likelihood of potentially debilitating influences by obstinate  
31 town, city, or county officials who might remain strongly dissatisfied even following already-  
32 reconsidered ISD offers of impact-assistance payments. Under those circumstances, it remains  
33 unclear to me who would then serve as a final arbiter. Might nor such decisions need to proceed  
34 to the top authority in DEQ or even to a state court? Additionally, in regard to assisting member  
35 of ISC with development of complex impact-assistance payment schedules and related specific  
36 elements, why should ISD’s Adminstrator need to assume all of the responsibility when DEQ/ISD  
37 has a long-experienced, designated Chief Economist?” (J Lillegraven)

38  
39 **Division Response:** The Division appreciates the comment but does not recommend  
40 changing the language. There is no alternative language provided within the comment for  
41 consideration. Under this provision, the Administrator would only provide the Council  
42 with recommendations and the Council would make the final decision on the distribution  
43 of payments. In the event that the local governments fail to agree on plan and the  
44 Administrator must prepare recommendations, the Administrator will certainly call upon  
45 the expertise of Division staff.

46  
47 **Comment 30:** “Section 12(b) – The timeline for affected counties, cities, and towns to provide  
48 the Division their payment distributions should be changed to 60 days instead of 30 days. The  
49 timeline of 30 days is extremely short for counties, cities, and towns to respond. Several towns  
50 only hold council meetings once a month. A template or guidance document will also need to be

1 provided to the counties, cities, and towns in order to provide the information needed for the  
2 ISC.” (CCCOG)

3  
4 **Division Response:** The Division appreciates this comment and recognizes it is  
5 mislabeled, and is meant to address Section 12(a). The Division also does not recommend  
6 this modification. Statutorily, the entire Industrial Siting application review process is 90  
7 days from application receipt to hearing day. If the communities do not agree on a  
8 distribution, then the Division must run a model to develop impact distribution  
9 recommendations and add that information to its testimony and exhibits. Given existing  
10 resource constraints, there is insufficient time in the process to allow the communities to  
11 have 60 days to potentially reach an agreement.

12  
13 **Comment 31:** “Section 12(b) - Change "counties, cities and towns" to "local governments".”  
14 (CCCOG)

15  
16 **Division Response:** The Division appreciates this comment and recognizes it is  
17 mislabeled, and is meant to address Section 12(a). The Division also does not recommend  
18 this modification. “Local government” is a defined term in the Act and is broader than  
19 just counties, cities, and towns. Joint powers boards, also included in the definition of  
20 local governments, are not entitled to impact assistance; therefore, the Division does not  
21 believe this modification is appropriate.

22  
23 **Comment 32:** “Section 12(a) & (b) - Recommend that (b) be moved to (a). It looks like  
24 procedurally the affected county, cities, and towns still have the opportunity to agree before the  
25 Council establishes the dollar amount of impact assistance funds.” (CCCOG)

26  
27 **Division Response:** The Division addressed this comment previously during the informal  
28 outreach on Proposed Rule Revisions. Thus, this comment is already incorporated in the  
29 proposed rules as they are currently presented.

30  
31 **Chapter 1, Section 12(b)**

32  
33 (b) Pursuant to W.S. 39-15-111(c) and (d), and W.S. 39-16-111 (~~e~~ d) and (~~d~~ e) the Council  
34 shall, after consideration of all evidence and recommendations presented at the hearing held  
35 pursuant to W.S. 35-12-107(g) and W.S. 35-12-110(f), establish ~~a ratio for distribution of impact~~  
36 ~~assistance funds~~ an amount and schedule for distribution of impact assistance funds. The Council shall  
37 establish a dollar amount associated with the unmitigated impacts on the affected counties, cities and  
38 towns from the construction of the proposed facility. Under no circumstances shall the impact  
39 assistance payment exceed two and seventy-six hundredths percent (2.76%) of the total estimated  
40 material costs of the facility, as those costs are determined by the Council.

41  
42 **Comment 33:** “Section 12(a) - How will the ISC determine or decide if the "total estimated  
43 material costs" are accurate or representative of the project? Also, how will the impact  
44 assistance percentage (%) amount be determined or will it always be 2.76%? An explanation  
45 would be helpful to explain how these changes to the regulation are in the community's best  
46 interest.” (CCCOG)

47  
48 **Division Response:** The Division appreciates this comment and recognizes it is  
49 mislabeled, and is meant to address Section 12(b). The total estimated material cost will  
50 be provided by the applicant and the applicant must certify that the information contained  
51 in the application is correct to their best knowledge. The maximum impact assistance

1 percentage of 2.76% is set in statute and cannot be changed by the Division or the  
2 Council.

3  
4 **Proposed Rules for Council's Consideration**

5 **Attachment G** contains the strike through version of the proposed Chapter 1 of the Rules and  
6 Regulations of the Industrial Siting Council after the Division's consideration of the comments received.  
7 Black text indicates no change in the current language of the Rules, Red text was the originally proposed  
8 revisions to the Rules, and Green text indicates a further revision of the Rules due to the comments  
9 received.

10  
11 **Attachment H** is the clean version of the proposed Chapter 1 of the Rules should the revisions be  
12 accepted.

CHAPTER 1  
INDUSTRIAL DEVELOPMENT INFORMATION AND SITING  
RULES AND REGULATIONS

Section 1. **Authority.**

These rules and regulations are promulgated by the Wyoming Industrial Siting Council (Council), pursuant to the authority granted the Council by the Wyoming Industrial Development Information and Siting Act; W.S. 35-12-101 through 35-12-119. If any provision of these rules or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of these rules which can be given effect without the invalid provision or application and to this end the provisions of these rules are declared to be severable.

Section 2. **Definitions.**

Definitions contained in W.S. 35-12-102, shall be applicable, where appropriate. The following terms used in these regulations shall have the following meanings, unless the context otherwise requires:

(a) “Act” means the Industrial Development Information and Siting Act, W.S. 35-12-101 through 35-12-119.

(b) “Area or local government primarily affected by the proposed industrial facility” means:

(i) Any defined geographical area in which the construction or operation of the industrial facility may significantly affect the environment, population, level of economic well-being, level of social services, or may threaten the health, safety or welfare of present or expected inhabitants.

(ii) Any such county, incorporated municipality, school district, or combination thereof formed under the Wyoming Joint Powers Act within (i) above.

(c) “Areas of site influence” means the areas which may be affected environmentally, socially, or economically, in any significant degree, by the location of the industrial facility at the proposed site. A separate “area of influence” may be considered for each resource identified in Section 8(i) of these rules.

(d) “Complete application” means an application which contains all of the information required by W.S. 35-12-109 and Section 8 of these rules, except those portions of the application requirements that the Council has waived pursuant to W.S. 35-12-107; excluding proprietary information. If proprietary information is withheld, it must be stated in the application.

(e) “Construction schedule” means the schedule of events by time, from the commencement of construction through completion of construction and commencement of commercial operation of the facility, as described in the application and any approved updates.

(f) “Cumulative impacts” means the combined impacts upon the environment or the social or economic conditions resulting from construction and operation of the proposed industrial facility and from construction and operation of other on-going or proposed developments in the area of site influence. Proposed developments to be considered in cumulative impacts include those

facilities which have public information available, or are actively permitting.

(g) “Decommissioning” means the removal from service, disassembly, and proper off-site disposal of the facility components.

(h) “Dependent component” means any ancillary facility to be constructed by the applicant that is necessary and essential to the construction or operation of the industrial facility. Dependent components are considered part of the industrial facility. Facilities described at W.S. 35-12-119 as exempt are not dependent components.

(i) “District or Special District” means the following:

(i) A special purpose local government created pursuant to W. S. 16-1-101 et seq. (Joint Powers Act) and whose registry as such is maintained by the Wyoming Secretary of State; or

(ii) A public school district.

(j) “Effective date of the Act” means May 30, 1975.

(k) “Environment” means the physical conditions existing within the affected area, including, but not limited to, land, air, water, minerals, flora, wildlife, noise, and objects of historic, aesthetic, or recreational impacts over which the Council has jurisdiction.

(l) “Estimated construction costs” means the anticipated total costs and expenses attributable directly to the planning, design, erection and construction of the applicant’s proposed facility. The estimate shall be based upon current cost projections within the possession of the applicant. Such costs and expenses shall include, but are not limited to, the following: costs of materials, supplies and equipment, including allocable construction equipment costs; labor and management personnel compensation and salaries; contract and subcontract fees; employee benefits; employment; sales and use taxes; per diem and subsistence allowances; and all other costs necessary and incident to the construction of the proposed facility. For purposes of estimating construction costs, the proposed facility shall be described and considered to include all units and components at the proposed site location, and which are or have been included in current plans for development of the proposed site. Exempt activities and site acquisition expenditures including the acquisition costs of mineral rights and interests are not to be included in the estimated construction cost.

(i) In computing an estimate pursuant to Section 2(l) above, the estimated costs for materials, supplies, equipment and allocable construction equipment shall include:

(A) The total costs of materials, supplies, and equipment incorporated into or otherwise necessary to construct the facility;

(B) The total costs of equipment used in site preparation and construction, which is further required to place the proposed facility into operation; and

(C) The allocable costs of that equipment used in site preparation and construction of the proposed facility, but which is not retained on site, and is not required to place the proposed facility into operation.

(ii) The proposed facility's estimated construction cost shall include the costs of access roads including modifications and improvements to existing roadways when such modifications or improvements are necessitated by the proposed facility, the costs of any rail facilities constructed for the substantial use of the proposed facility, and costs of other dependent components.

(m) "Estimated materials costs" means the estimated costs of materials, supplies and equipment, including allocable construction equipment costs, necessary and incident to the construction of the proposed facility.

(n) "Financial assurance" means a security serving as collateral in the form of a surety bond, certificate of deposit, corporate guarantee, letter of credit, deposit account, insurance policy or other form acceptable to the Director to insure proper decommissioning and reclamation activities.

(o) "Financial capability" means evidence of the financial strength of the applicant to construct, maintain, operate, decommission and reclaim the facility.

(p) "Health" shall mean the state of being sound in body or mind and includes psychological as well as physical well-being.

(q) "Information applicant" means any person who intends to initiate a construction activity with an estimated construction cost of at least ninety-six million nine hundred thousand dollars (\$96,900,000.00) adjusted by applicable cost indices as provided in W.S. 35-12-102(a)(vii), which construction activity also falls within W.S. 35-12-119.

(r) "Job classification" means those of the 2010 Standard Occupational Classification System of the U. S. Department of Labor.

(s) "Mineral rights" means fee, leasehold, or mining claim interests in the mineral estate.

(t) "Mitigated impacts" means impacts that are minimized by limiting the magnitude of the impact, or are compensated for by replacing or providing substitute resources or supplemental environmental projects.

(u) "Oil and gas drilling facilities" are any and all activities in connection with or associated with drilling, testing, or completing oil and gas wells including well access roads and any electrical service, mobile and fixed equipment, and services used for drilling, completing, testing, maintaining and repairing oil or gas wells and related activities.

(v) "Oil and gas producing facilities" are any and all activities necessary to extract oil or gas or both from a naturally occurring underground reservoir containing a common accumulation of oil or gas or both. Producing facilities include the oil or gas well downhole equipment, well heads, flow controls, and artificial lift equipment including compressors. Producing facilities also include those facilities used for pressure maintenance, enhanced recovery, or produced water disposal.

(w) "Permit termination" means cessation or termination of a permit and all permit conditions, which were issued by the Council for the construction and operation of an industrial facility.

(x) "Phase" or "phase of construction" means any future expansion or modification of

the facility described in the application pursuant to W.S. 35-12-109 (a)(vi), and interpreted for jurisdiction by the Division.

(y) “Projection period” means the period of time over which projections of socioeconomic factors are made. The projection period shall not exceed five (5) years beyond the period during which stable operation of the industrial facility is achieved.

(z) “Reclamation” means the process of restoring all lands affected by the proposed industrial facility or its dependent components to a use for grazing, agriculture, recreational, wildlife purpose, or any other purpose of greater or equal value which satisfies the landowner or land management agency. The process may require removal of structures, backfilling, grading, contouring, compaction, stabilization, revegetation and drainage control.

(aa) “Safety” shall mean freedom from injury or threat of injury. Such injury or threat of injury may be premised on crime rates, traffic accident rates, dangers of industrial accidents or mishaps, or other similar considerations.

(ab) “Studies” shall include all social, economic or environmental reports, analyses, evaluations or compilations dealing with the impact of the industrial facility whether prepared by the applicant, the applicant’s employees, or consultants retained by the applicant. Where such studies are part of a longer report or study, the applicant may sever such study from the larger document for purposes of submission to the Council.

(ac) “Study Area” is the geographic and political boundary, as designated by the Administrator for the required governmental, social, and economic studies required for applications.

(ad) “Unmitigated impacts” means identified impacts that are not minimized by limiting the magnitude of the impact, or are not compensated for by replacing or providing substitute resources or supplemental environmental projects.

(ae) “Welfare” shall mean considerations of public convenience, public wellbeing and general prosperity. The term also properly covers those subjects encompassed under health and safety.

(af) “Wellfield activity” means any and all activity directly associated with the development, operation, or abandonment of oil and gas drilling or producing facilities. Wellfield activity includes but is not limited to construction of flow lines, heaters, treaters, dehydrators, fluid separators and stabilizers. Storage tanks not within the definable boundaries of an industrial facility are wellfield activities.

### **Section 3. Certificate of Insufficient Jurisdiction.**

No person shall commence to construct an industrial facility unless an application has been filed in conformity with these rules and regulations and a permit has been issued by the Council.

(a) Any person who intends to initiate construction activity which may qualify as an industrial facility under the Act shall submit to the Division an application n for a Certificate of Insufficient Jurisdiction which shall demonstrate that the proposed construction activity does not qualify as an industrial facility under the Act, and that the Council lacks sufficient jurisdiction to require that an application for a permit be submitted.

(b) Industrial facilities that meet one of the following criteria shall not need a certificate of insufficient jurisdiction:

(i) The estimated construction cost is less than eighty percent (80%) of the current threshold construction cost.

(ii) A commercial waste incineration or disposal facility is not physically capable of receiving four hundred (400) short tons or more per day of household or mixed household and industrial waste.

(c) An application for a Certificate of Insufficient Jurisdiction shall contain the following information:

(i) A description of the proposed construction activity.

(ii) An estimated construction cost for the proposed construction activity that is in conformity with Section 2 (m) of these regulations.

(d) When an application for a Certificate of Insufficient Jurisdiction is submitted to the Division, the Administrator shall within ten (10) days after the application is submitted:

(i) Serve notice of the application upon each local government that would be entitled to receive service of a copy of the application for a permit under W.S. 35-12-110(a)(i), as if the person submitting the application for a Certificate of Insufficient Jurisdiction was submitting an application for a permit.

(ii) Publish notice of such application for a Certificate of Insufficient Jurisdiction throughout the state for four (4) consecutive weeks in newspapers of general circulation.

(iii) Such notice shall state the following:

(A) A description of the construction activity proposed by the applicant for a Certificate of Insufficient Jurisdiction.

(B) The estimated construction cost of the construction activity proposed by the applicant for a Certificate of Insufficient Jurisdiction.

(C) A statement that any interested party, who would be a party in any permit proceeding with respect to the construction activity, may file objections to the issuance of a Certificate of Insufficient Jurisdiction within thirty (30) days after the last date of publication of notice.

(e) The Director shall present an application for a Certificate of Insufficient Jurisdiction to the Council after thirty (30) days has expired from the last date of publication of notice of application with his recommendation for issuance or denial. The Council shall thereupon, after consideration of the application and the objections thereto, either issue or deny the application for a Certificate of Insufficient Jurisdiction.

(f) The decision of the Council to issue a certificate shall be effective immediately.

Section 4. **Jurisdictional Meeting.**

(a) Persons requesting a jurisdictional determination for the following from the Division shall first request a jurisdictional meeting with the Division:

- (i) A permit pursuant to W. S. 35-12-109;
- (ii) Waiver or waivers of requirements;
- (iii) A certificate of non-jurisdiction;
- (iv) An informational filing pursuant to W. S. 35-12-119 (a) and (b); or
- (v) An exemption from a permit pursuant to W.S. 35-12-119 (c).

(b) The jurisdictional meeting shall be held when the preliminary facility design and estimated construction schedule are known.

(c) The Person seeking the jurisdictional meeting shall provide information to describe the facility and shall include the following:

- (i) Details of ownership; and points of contact;
- (ii) Description of the proposed facility including a site plan;
- (iii) Proposed facility location and land ownership;
- (iv) The location for the receipt of purchase and where title changes;
- (v) Any future phases to be requested in the application;
- (vi) The estimated cost of construction, including preliminary estimated material costs;
- (vii) Information which the applicant feels to be pertinent.

(d) The Director shall provide a written decision within 15 days following the jurisdictional meeting stating whether or not the facility is within the jurisdiction of the Siting Council and provide notice of any application fee pursuant to W.S. 35-12-105(g) and W. S. 35-12-109(b). The Director may provide conditional determinations. The Director, according to the accounting standards and procedures used by the State of Wyoming, will perform the deposit of revenues, payment of expenditures, and accounting. Any such fee will:

- (i) Be determined by the Director in accordance with the provisions of W.S 35-12-109 (b) and (d);
- (ii) Be collected at the time of the filing of an application;
- (iii) Recover the full actual costs to the Division and Council for the activities specified by W. S. 35-12-109(b) and (d);

(iv) May be subject to revision by the Director if the fees are determined to be insufficient to pay the full actual cost of the Division and Council as specified by W.S. 35-12-109 (b) and (d).

(e) If the Director determines that the information provided by the person is incomplete, the Director shall respond in writing within 15 days following the jurisdictional meeting stating that the information is incomplete and that a determination cannot be made at that time.

#### **Section 5. Pre-Filing and Filing.**

(a) At the jurisdictional meeting the Administrator shall specify the study area for the project application. The study area provides the boundaries for studies of counties and municipalities.

(b) The applicant shall notify and describe the project to local governments in the study area. The notice and description shall be sent by certified mail, return receipt, and shall include a description of the project, its location, the expected construction period, the number of construction workers, transportation routes for construction materials, the anticipated economic benefits of the project, the anticipated impacts from the project and offer methods to comment to the applicant and attend scheduled informational meetings. The notice and description will be mailed no later than 10 business days prior to the first informational meeting.

(i) Informational meetings shall be held no later than 60 days before the filing of an application and shall be in the principal city of the county and at a place as close to the site of the project as is practical.

(c) The date of filing of an application is that date when all of the following have been received by the Division:

- (i) The application fee;
- (ii) The application document; and
- (iii) The letter of transmittal.

(d) When the application is filed, the Division shall provide the applicant with a written receipt for the application which shall stipulate the application has been filed on that date.

(e) After receipt and examination of the application the Administrator shall determine the area primarily affected.

(f) Counties who wish to make a referral according to W.S. 18-5-509 shall provide the following:

(i) Information obtained from the applicant as described in Section 4(c) subparagraphs (i) through (v).

(ii) Justification why the referral is necessary. The Director will make a decision on the referral and notify the county within fifteen (15) days from the date of the referral.

#### **Section 6. General Format of Application or Request for Waiver.**

In accordance with W.S. 35-12-107 and W.S. 35-12-109, the applicant shall abide by the following rules and conditions:

(a) Prior to submitting its application or request for waiver, each applicant shall confer with the Division to determine the number of copies of the application or request for waiver to be filed with the Division. The applicant shall file a minimum of forty (40) copies of the application with the Division. The applicant shall not be required to file more than seventy-five (75) copies of the application without prior approval of the Council.

(b) The application or request for waiver shall be typed, printed, or otherwise legibly reproduced on 8 ½-inch by 11-inch paper. Maps, drawings, charts, or other documents that are bound in the application or request for waiver shall be cut or folded to 8 ½-inch by 11-inch size. All pages in an application or request for waiver shall be consecutively numbered.

(c) The application or request for waiver shall be verified by the applicant as to its truth and accuracy, upon oath or affirmation. Such application or request for waiver shall be signed by the president of the corporation or owner of the company, or another official designated by the bylaws to obligate and bind the applicant. The application or request for waiver shall be accompanied by a letter of transmittal which shall contain the following information:

(i) The company's request for a permit or waiver of permit to construct and operate the facility; and

(ii) The designated individual to serve as point of contact for the permit process including address of service of notice.

(d) The Applicant shall notify the Division immediately whenever, subsequent to submitting an application or waiver request under the Act, a material change in the design, location, schedule, or scope of the industrial facility has occurred. Such notification by the applicant may constitute a request for amendment pursuant to W.S. 35-12-106(c) and Section 15 of these rules if the Division determines that such differences materially change the nature, location or impact of the proposed industrial facility.

(e) An applicant may apply for a permit to construct an industrial facility in phases over an extended period.

(f) As part of the application, the applicant shall submit a summary of the entire application. The summary shall contain references to supporting data and analysis contained in the application.

(g) Whenever the Act or these rules require information concerning the industrial facility to be submitted to the Council and the applicant is required to submit the same or similar information to another state, federal or local agency having jurisdiction, the applicant may submit the information to the Council in the same format required by the other agency.

(h) Applicants may fulfill informational requirements of the regulations and the Act by describing the area of jurisdiction covered by other regulatory agencies in the state.

(i) The application shall contain a table containing all commitments stated in the application and provide the page number where each commitment is discussed in the body of the application. The table shall also provide a narrative of all the commitments made to local governments in accordance with W.S. 35-12- 107(b)(xi) and W.S. 35-12-109(a)(xiii).

## Section 7. **Request for Waiver.**

(a) The request for waiver shall contain the information required by the Act with respect to both the construction period and on-line life of the proposed industrial facility and any additional information the applicant considers relevant to the needs of the Council and local units of government for making an informed decision for granting or refusing the waiver request. The waiver application shall follow the same format as the application contents described in Section 8, less those parts identified as not necessary by the Administrator.

(b) The Council shall grant a request for a waiver either as proposed or as modified by the Council as provided by the act and considering the following:

(i) In order to find that the industrial facility would not produce an unacceptable impact, the Council must find that the granting of a waiver will not result in a significant detriment to, or significant impairment of, the environment or the social and economic condition of present or expected inhabitants. If applicable, the Council may consider direct or cumulative impacts not within the area of jurisdiction of another regulatory agency in this state.

(ii) A proposed industrial facility is considered to be designed in compliance with applicable local ordinances, regulations and compatible with land use plans if it meets applicable requirements relative to zoning laws, building codes, health and safety laws, and other laws of a similar nature in force on the date of submittal of the request for waiver.

(c) If the Council finds that the considerations of subsection (b) above have been met, the Council may waive all of the application requirements of the Act, and shall issue a permit for the industrial facility in accordance with W.S. 35-12-113. If the Council is not able to find that these requirements are met, the Council may deny the request, and issue an order requiring that an application for a permit be filed pursuant to W.S. 35-12-109. The Council may also waive any part(s) of the application requirements of W.S. 35-12-109 if it determines that it is justified by the circumstances.

## Section 8. **Application Information to be Submitted.**

In accordance with W.S. 35-12-109, the application shall contain the information required by the Act with respect to both the construction period and online life of the proposed industrial facility and the following information the Council determines necessary:

(a) The application shall state the name, title, telephone number, mailing address, and physical address of the person to whom communication in regards to the application shall be made.

(b) A description of the specific, geographic location of the proposed industrial facility. The description shall include the following:

(i) Preliminary site plans at an appropriate scale indicating the anticipated location for all major structures, roads, parking areas, on-site temporary housing, staging areas, construction material sources, material storage piles and other dependent components; and

(ii) The area of land required by the industrial facility and a land ownership map covering all the components of the proposed industrial facility.

(c) A general description of the major components and dependent components of the proposed industrial.

(d) A description of the operating nature of the proposed industrial facility, the expected source and quantity of its raw materials, and energy requirements. The description shall include, but is not limited to, the following:

(i) The proposed on-line life of the industrial facility and its projected operating capacity during its on-line life; and, for transmission lines exceeding one hundred fifteen thousand (115,000) volts included as part of the proposed industrial facility, a projection indicating when such lines will become insufficient to meet the future demand and at what time a need will exist to construct additional transmission lines to meet such demands; and

(ii) Products needed by facility operations and their source.

(iii) Estimated material costs for the project.

(e) A statement that shall be a reasonable estimate of the calendar quarter in which construction of the industrial facility will commence, contingent upon the issuance of a permit by the Council.

(f) A statement that shall be a reasonable estimate of the maximum time period required for construction of the industrial facility and an estimate of when the physical components of the industrial facility will be ninety (90) percent complete, and the basis for that estimate.

(g) The applicant shall identify what it deems to be the area of site influence and recommends as the local governments primarily affected by the proposed industrial facility as defined in Sections 2 (b), (c) and (d). The immediately adjoining area(s) and local governments shall also be identified with a statement of the reasons for their exclusion from the list of area(s) or local governments primarily affected by the proposed industrial facility.

(h) Using tables, provide a detailed tally of the estimated work force to construct and to operate the facility showing the following information:

(i) All workers providing direct labor and direct support; (safety, supervision, inspection) at the work site;

(ii) Information by calendar month and year from the commencement of construction through the first year of operation;

(iii) Identify and provide totals of those which are construction and those which are permanent;

(iv) Identify and provide quarterly totals of the number, job classification and recurrence; of those which are estimated to be in-migrating (from outside the study area at the time of hire for the facility) and of those pre-existing employees of the applicant engaged in construction;

(v) Provide estimates of wages; and

(vi) Provide estimates of paid benefits including per diem and paid fees.

(i) The social and economic conditions in the area of site influence shall be inventoried and evaluated as they currently exist, projected as they would exist in the future without the proposed industrial facility and as they will exist with the facility. Prior to submitting its application, each applicant shall confer with the Administrator to define the needed projections, the projection period and issues for socioeconomic evaluation. The evaluation shall include, but is not limited to:

(i) An analysis of whether or not the use of the land by the industrial facility is consistent with state, intrastate, regional, county and local land use plans, if any. The analysis shall include the area of land required and ultimate use of land by the industrial facility and reclamation plans for all lands affected by the industrial facility or its dependent components;

(ii) A study of the area economy including a description of methodology used. The study may include, but is not limited to, the following factors:

(A) Employment projections by major sector;

(B) Economic bases and economic trends of the local economy;

(C) Estimates of basic versus non-basic employment;

(D) Unemployment rates;

(iii) A study of the area population including a description of methodology used. The study may include, but is not limited to, an evaluation of demographic characteristics for the current population and projections of the area population without the proposed industrial facility;

(iv) An analysis of housing facilities by type, including a quantitative evaluation of the number of units in the area and a discussion of vacancy rates, costs, and rental rates of the units. The analysis should include geographic location, including a quantitative evaluation of the number of units in the area required by the construction and operation of the proposed industrial facility and a discussion of the effects of the proposed industrial facility on vacancy rates, costs, and rental rates of the units. Specific housing programs proposed by the applicant should be described in detail;

(v) An analysis of effects on transportation facilities containing discussion of roads (surface type), and railroads (if applicable).

(vi) Public facilities and services availability and needs, which may include, but are not limited to:

(A) Facilities and personnel required for the administrative functions of government including specific new demands or increases in service levels created by construction of the proposed industrial facility;

(B) Sewer and water impacts shall describe the distribution and treatment facilities including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels. If required pursuant to W.S. 35-12-108, the application shall contain the Water Supply and Water Yield Analysis and Final Opinion of the State Engineer;

(C) Solid waste collection and disposal services including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels;

(D) Existing police and fire protection facilities including specific new demands or increases in service levels created by the proposed industrial facility;

(E) An analysis of health and hospital care facilities and personnel including specific new demands or increases in service levels created by the proposed industrial facility;

(F) Human service facilities, programs and personnel, including an analysis of the capacity to meet current demands and a description of problems, needs, and costs of increasing service levels;

(G) An analysis of community recreational facilities and programs and urban outdoor recreational opportunities including specific new demands or increases in service levels created by the proposed industrial facility;

(H) Educational facilities, including an analysis based upon enrollment per grade, physical facilities and their capacities and other relevant factors with an assessment of the effect that the new population will have on personnel, programs and facilities;

(I) Problems due to the transition from temporary, construction employees to operating workforces should be addressed. Changes in levels of services required as a result of the proposed industrial facility should specifically be addressed. Cumulative impacts of the proposed industrial facility and other developments in the area of site influence should be addressed separately. This assessment should examine increased demands associated with the construction and operational phases of the proposed industrial facility, as well as effects on the level of services as the construction or operational workforces decline;

(J) A copy of any studies that may have been made of the social or economic impact of the industrial facility.

(vii) A fiscal analysis over the projection period for all local governments and special districts identified by the applicant as primarily affected by the proposed industrial facility, including revenue structure, expenditure levels, mill levies, services provided through public financing, and the problems in providing public services. If modeling software is used, then identifying the software program and providing a summary table of the data set inputs (including any multipliers) for the analysis is required. The analysis may include, but is not limited to:

(A) An estimate of the cost of the facility with a separate line item for the estimated material costs;

(B) An estimate of the sales and use taxes to be paid directly by the applicant to construct the facility. This estimate should be broken down by year.

(C) If a facility is located in more than one county, the estimate under subsection (B) above shall be broken down by year and for each affected county.

(D) Estimates of impact assistance payments which will result from the

project.

(E) An estimate of the cost of components of the industrial facility which will be included in the assessed value of the industrial facility for purposes of ad valorem taxes for both the construction and operations periods. This estimate should include a breakdown by county if the components of the industrial facility will be located in more than one county.

(j) An evaluation of the environmental impacts as they would exist if the proposed industrial facility were built. Each evaluation should be followed by a brief explanation of each impact and the permit issued that regulates the impact. If the impact is not regulated by a state regulatory agency or federal land management agency, the application must include plans and proposals for alleviating adverse impacts. Cumulative impacts of the proposed industrial facility and other projects in the area of site influence should be addressed separately.

(k) The applicant shall describe the procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or recreational facilities which may be adversely affected by the estimated emissions and discharges from the proposed facility.

(l) The applicant shall provide certification that all local governments in the study area were provided notification of the facility, a description of the proposed project and an opportunity to ask the applicant questions regarding the proposed project at least thirty (30) days prior to the submission of the application. The certification shall include a description of the actual process used.

(m) For a permit application, the applicant shall provide a description of land use and changes to land use as a result of the project. Such will include:

- (i) The project site, transportation routes, utilities, and collector systems.
- (ii) County land use plans and zoning, if any.
- (iii) Changes to agricultural production as a consequence of the project.

(n) For a permit application, the applicant shall provide the following:

(i) An evaluation of potential impacts together with any plans and proposals to alleviate potential impacts. The evaluation shall include a recent survey for threatened and endangered and rare species of concern (flora & fauna), as identified in the state wildlife action plan prepared by the Wyoming Game and Fish Department, found at the site location.

(ii) An evaluation of the potential impacts to terrestrial and aquatic wildlife and any plans or proposals to alleviate potential impacts.

(o) The applicant shall provide a description of the methods and strategies to maximize employment and utilization of the existing local or in-state contractor and labor force during the construction and operation of the facility.

(p) The applicant shall provide a description of the impact controls and mitigating measures proposed to mitigate and alleviate adverse environmental, social and economic impacts associated with the construction and operation of the proposed industrial facility, including:

(i) Monitoring programs to assess effects of the proposed industrial facility and the overall effectiveness of impact controls and mitigating actions.

(ii) Impact controls and mitigating measures proposed by the applicant to alleviate adverse environmental, social and economic impacts associated with construction and operation of the proposed industrial facility.

(q) The applicant shall provide a description and quantification of the mitigated and unmitigated impacts that will result from the construction and operation of the proposed facility on the affected local governments and special districts. Such description shall include:

(i) Quantification of fiscal impacts, regardless of amount, on all items contained in Wyoming Statute 35-12-109 (a)(xiii)(A)–(S).

(ii) Projection of when, by calendar month, the unmitigated impacts will occur in the affected communities.

(iii) Projection, by calendar month, of fiscal impact in affected communities.

(r) Counties wishing to present evidence shall provide a description and quantification of the unmitigated impacts that will result from the construction and operation of the proposed facility. Such description shall include:

(i) Estimates of fiscal impacts on services provided by communities; and

(ii) Estimated projections of when unmitigated impacts will occur in communities;

**Section 9. Additional Application Requirements for Wind Energy Facilities.**

(a) Facility Decommissioning. The applicant shall provide a facility decommissioning plan.

(i) The facility decommissioning plan shall include provisions regarding the removal and proper disposal of all wind turbines, towers, substations, buildings, and cabling, electrical components, foundations to a depth of forty-eight (48) inches, and any other associated or ancillary equipment or structures within the facility boundary above and below ground.

(ii) The facility may request that a building be left on site if approval is obtained from the surface landowner and upon written notification to the Administrator.

(iii) Facility or individual wind turbine decommissioning shall begin:

(A) Within twelve (12) months after the end of the useful life of the facility or individual wind turbine, or

(B) When no electricity is generated for a continuous period of twelve (12) months of the facility or individual wind turbine.

(C) The Council may extend the time period of Section (8)(a)(iii)(B) if the facility demonstrates good cause prior to the end of the continuous period of (12) months of the facility or wind energy generating towers not generating electricity.

(iv) The facility decommissioning plan shall be updated and submitted to the Administrator every five (5) years.

(b) Interim Reclamation. Interim Reclamation shall comply with the applicable permitting requirements of the Department of Environmental Quality, Water Quality Division storm water program.

(c) Final Reclamation. The applicant shall provide a final reclamation plan which shall include:

(i) A detailed description of site conditions prior to construction, including topography, vegetative cover (including plant species and plant community structure), climate, and land uses.

(ii) Re-grading. All tower foundations, roads, and all other surface disturbances within the facility boundary must be re-graded to the natural contours of the area. Backfilling, grading and contouring of affected land shall be accomplished by one or more of the following as detailed in the approved reclamation plan:

(A) Re-establishment of the contour of the land in a manner consistent with the proposed future use of the land.

(B) Contouring affected land to blend in with the topography of the surrounding terrain unless so doing would create an erosion problem or a hazard.

(C) The facility may leave a road un-reclaimed if approval is obtained from both the surface landowner and the Administrator.

(iii) Re-vegetation

(A) After backfilling, grading and contouring, and the replacement of topsoil, re-vegetation shall be commenced in such a manner so as to most efficiently accommodate the retention of moisture and control erosion on all affected lands to be re-vegetated.

(B) Re-vegetation documentation shall include seedbed preparation, seed mixture, and post seeding maintenance of all disturbed areas.

(C) If applicable, documentation of any mulching and/or use of fertilizers.

(D) Reclamation shall restore the land to a condition and native or adaptive perennial vegetative cover equal to or better than the original condition.

(E) Re-vegetation of all affected lands shall be accomplished in a manner consistent with the approved reclamation plan and the proposed future use of the land.

(F) Seeding of affected land shall be conducted during the first normal period for favorable planting conditions after final preparation unless an alternative plan is approved. The species of vegetation to be used in re-vegetation efforts shall be described in the reclamation plan indicating the composition of seed mixtures and the amount of seed to be distributed on the area on a per acre basis.

(G) The operator must control and minimize the introduction of noxious weeds into the re-vegetated areas until final reclamation is achieved.

(iv) The final reclamation plan shall be updated and submitted to the Administrator every five years.

(d) Financial Assurance: The applicant shall provide financial assurances for a wind energy facility, sufficient to assure complete decommissioning and site reclamation of the facility in accordance with the provisions of these rules. Wind energy facilities subject to regulation by the Public Service Commission shall be exempt from these financial assurance provisions and from the Cost Estimation for Decommissioning and Site Reclamation provisions of Section 9(e) and (h) of these rules.

(i) All financial assurances shall be in place prior to commencement of construction of any wind energy facility, and shall be adjusted up or down every five years from the date of permit issuance by the Council based on the results of paragraph (e) of this section.

(ii) Additional financial assurances to cover risks not anticipated at the time of the permit may be required at any time by the Director, as reasonable and necessary, provided the Director first gives thirty (30) days written notice stating the reason for and the amount of the additional financial assurance.

(iii) Financial assurance in the form of domestic securities may be accepted in any of the following forms at the discretion of the Director with consideration of credit worthiness, financial strength, credit history, credit rating and debt.

(A) Surety bond with a corporate surety registered in Wyoming.

(B) Certificate of deposit in the name of the "Department of Environmental Quality" with a state or federally insured financial institution in Wyoming. The permittee shall be entitled to all interest payments.

(C) Other forms of assurance such as corporate guarantee, letter of credit, insurance policy, or other forms as may be acceptable to the Director.

(iv) If the Permittee fails to decommission and reclaim as described in its permit, the Director may determine that the financial assurance be forfeited to the Division to arrange for the decommissioning and reclamation to be conducted by a third-party. In order for the Director to determine that the financial assurance be forfeited, the Director shall:

(A) Determine that decommissioning or reclamation has not started or it has fallen behind the approved schedule for more than six (6) months.

(B) Notify the Permittee in writing of the failure to perform reclamation in accordance with its approved reclamation plan and demand that justification be provided to the Division within 30 days.

(I) If no justification is made by the Permittee within the time provided, or if the Director rejects the justification, the Director shall provide the Permittee written notice that the Division intends to pursue forfeiture of the financial assurance.

(II) The Permittee has 30 days from the date of receiving the

notice of financial assurance forfeiture to request a hearing with the Council contesting the forfeiture of the financial assurance.

(III) If no hearing is requested, the Council will address the revocation of the permit and forfeiture of the financial assurance at the next meeting of the Council. If a hearing is requested, the Council shall conduct a hearing in accordance with the Wyoming Administrative Procedures Act. The Permittee shall bear the expense of scheduling and holding the hearing.

(e) Cost Estimation for Decommissioning and Site Reclamation of the facility:

(i) Estimates of cost for decommissioning and site reclamation shall be made by a licensed professional engineer provided by the applicant and subject to review and approval by the Director.

(ii) Total decommissioning costs shall be estimated without regard to salvage value of the equipment.

(iii) Decommissioning and site reclamation estimates shall be submitted to the Division in the application and every five years after the date of permit issuance until the completion of final reclamation.

(iv) The licensed professional engineer estimate of decommissioning and reclamation costs shall include the following:

(A) A general discussion of assumptions, including equipment, timeframes, backup calculations, procedures, methods, and any other considerations used in developing the cost estimate.

(B) A detailed description of the decommissioning activities to be performed.

(C) A detailed description of the reclamation activities to be performed.

(v) The facility may request release of the financial assurance mechanism when the facility has achieved final reclamation. Final reclamation means that all surface disturbances have been re-graded and re-vegetated with a uniform perennial vegetative cover with a density of 90% of the native or adaptive background vegetative cover. Noxious weeds shall not be included in percent cover in determining reclamation success.

(f) The Council may give a case-by-case variance to requirements of this Section after considering evidence by the applicant or landowner.

(g) Notice to record owners of mineral rights. Before submitting the application, the applicant shall provide notice to record owners of mineral rights located on or under the land where the proposed facility will be constructed.

(i) The notice shall consist of a statement of the applicant's intention to construct the project, features of the project, a legal description of the boundaries of the project, locations where the application may be examined, and persons to contact for additional information.

(ii) The notice shall be mailed by first class mail to all record owners of mineral rights whose identity and current addresses are readily obtainable from publicly available documents.

(iii) The notice shall be published twice in a newspaper of general circulation in the county or counties where the project is to be located.

(iv) The notice and details of steps taken to notify the record owners of mineral rights shall be entered into the record either within the application or as separate exhibit filed with the hearing examiner and parties.

(h) The application shall contain information demonstrating the applicant's financial capability to construct, maintain, operate, decommission, and reclaim the facility. Such documentation, if requested, shall be held confidential to the extent authorized by Wyoming law and shall include:

(i) Commitment letters from the principal investors of the project, which may be conditioned on issuance of required state and local permits; or

(ii) For applicants whose securities are publicly traded and are required to publicly disclose financial statements, any one of the following:

(A) General audited financial statements for the most recent year-end;

(B) Most recent credit rating reports for the financing company as published.

(C) Reports by chartered financial analysts as published.

(iii) For applicants whose securities are not publically traded, financial statements of the majority financial contributors.

(i) Notice to affected landowners

(i) Applicant must provide a list of the names and mailing addresses of all affected landowners at the time the application is submitted.

(ii) Upon receipt of an application subject to this section, the Division will provide notice to the affected landowners and request information and recommendations, which pertain to their respective lands and interests.

(iii) All review comments from State agencies pursuant to W.S. 35-12-110(b) and (c) will be provided to the affected landowners by the Division.

(iv) All comments by affected landowners received by the Division about the project and about the agency comments under (iii) above will be provided to the State agencies. The agencies will give the Division their replies to the comments from affected landowners.

#### **Section 10. Application Information for Commercial Waste Disposal Facilities.**

Application requirements for a commercial waste disposal facility shall include information

required for a request for waiver or permit application under W.S. 35-12-107, 35-12-109 and Sections 6 and 7 of these rules and regulations and the information required in subsections (a) through (f) of this section.

(a) A statement of the applicant's financial condition, including but not limited to:

(i) A profit and loss statement

(ii) Debt to equity ratio

(b) A description of the mode of transportation by which the wastes will be transported to the site; including access route specification, modification of existing traffic patterns, an estimate of the additional load and traffic placed on access routes, and the method of waste containment during transport. The applicant shall describe possible hazards associated with the transportation of wastes, safety precautions and emergency procedures should a transportation accident occur in route to the facility. If the wastes are to be temporarily stored, transferred, or handled during transport, the location of storage facilities or transfer stations shall be identified. For hazardous wastes, the applicant shall describe how the facility will comply with Department of Transportation the Environmental Protection Agency manifest and transportation requirements of 49 CFR 271-279 and 40 CFR 263.

(c) A description of the effect the facility may have on local land use, and an estimate of the potential short and long-term effect on local property values and tax revenues, and an estimate of the adverse effect the proposed facility may have on local businesses and jobs.

(d) Specification of the types of wastes to be managed by the facility, an estimate of the average waste volume the facility will manage in tons per day and the maximum tonnage the facility will be capable of handling, as well as a general description of the waste management methods used by the facility or associated operations.

(e) A description of the record keeping procedures that will be maintained to assure accurate accounting and payment of the waste management surcharge. The applicant may also request that certain records be held as confidential in accordance with Section 16(b) of these regulations.

(f) The applicant's assessment of impacts must include the impacts of required or proposed recycling operations resulting from the proposed facility.

#### Section 11. **Decision of Council.**

(a) The Council shall either grant or deny the application as filed, or grant it upon terms, conditions or modifications of the construction, operation or maintenance of the industrial facility as the Council deems appropriate. The Decision of the Council shall be written and shall be effective the date it is signed by the chair of the Council.

(b) Compliance with all applicable law. The Council must find that the proposed industrial facility will comply with all applicable local, state, and federal law throughout each phase of planning, construction, and operation. The local and state laws that must be complied with for purposes of this subsection consist of those laws which were in force on the date of application. In many cases, required permits and approvals may not be applied for until subsequent to the filing of the application. Therefore, the Council will examine the list of permits that regulate other aspects of the facility development for the purpose of determining whether the proposed industrial facility

would be in compliance with all applicable laws if the permits and approvals specified therein were issued as expected.

(c) Threat of serious injury. In order to find that the industrial facility does not pose a threat of serious injury, the Council must find that the granting of a permit, as conditioned by the Council, will not result in a significant detriment to, or significant impairment of, the environment or the social and economic condition of present or expected inhabitants.

(i) In determining whether the proposed industrial facility poses a threat of serious injury to the social condition of the inhabitants, any significant decrease in the quality or quantity of services or facilities may be considered a serious injury. "Social condition" shall include, but is not limited to, the following factors:

- (A) Water treatment;
- (B) Sanitary waste disposal;
- (C) Solid waste collection;
- (D) Housing;
- (E) Police and fire protection;
- (F) Medical facilities;
- (G) Schools;
- (H) Recreational facilities;
- (I) Transportation systems;
- (J) Mental health facilities;
- (K) Social service facilities.

(ii) In determining whether the proposed industrial facility poses a threat of serious injury to the economic condition of the present or expected inhabitants, any net deterioration of a material nature in the condition of either present or expected inhabitants will be weighed negatively. "Economic conditions" may include, but is not limited to, the following factors:

- (A) Upgrading of jobs and increased income;
- (B) Family and per capita income;
- (C) Unemployment and underemployment rates within the area of site influence.
- (D) Purchasing power of earnings within the area of site influence.
- (E) Short term and long term fluctuations in resource consumption and resource availability.

(F) Employment dislocation and skill obsolescence.

(G) Employment opportunities;

(H) Diversity of economy and stability of various segments of the economy.

(d) Substantially impair the health, safety or welfare. The Council must find that the proposed industrial facility will not substantially impair the health, safety or welfare of the present or expected inhabitants of the areas of site influence. A proposed industrial facility may be found to substantially impair the health, safety or welfare of the inhabitants if their health, safety or welfare during and after construction would be significantly diminished or weakened relative to present levels.

(e) If the Council is not able to find that these conditions are met, the Council shall deny the application.

(f) If the Council determines that the location of all or part of the proposed industrial facility should be modified, it may condition its permit upon that modification, provided that the local governments, and persons residing therein, affected by the modification, have been given reasonable notice of the modification.

(g) If the Council decides to grant a permit for the industrial facility, it shall issue the permit embodying the terms and conditions in detail, including the time specified to commence construction, which time shall be determined by the Council's decision as to the reasonable capability of the local government, most substantially affected by the proposed industrial facility, to implement the necessary procedures to alleviate the impact. If the construction of the facility fails to follow the schedule used by the Council to make its decision, the Council may require an amendment to the permit in accordance with W.S. 35-12-106(c) and (d).

(h) Unless the Council extends the permit as provided in subsection (i) of this section a permit to construct shall expire for any of the following conditions:

(i) Construction has not commenced within thirty-six (36) months after the date of the Decision of the Council;

(ii) If commenced construction has discontinued before the completion of the described project for a period of twelve (12) consecutive months, provided that the discontinuance is not in an approved schedule or for approved phases.

(i) The Council may extend the time periods of paragraphs (h)(i) and (h)(ii) above for good cause provided that the facility requests an extension in a timely manner accompanied by an update to the Application including the following:

(i) The construction schedule;

(ii) The estimated start of commercial operation;

(iii) Socio-economic baseline; and

(iv) Updates to those sections of the Application as defined by the

Administrator where material changes are expected to occur.

(j) Permit Term. During the application for a permit or permit waiver, an applicant may request that the permit be issued for a term of less than the life of the facility, but not less than the construction phase(s). The Council may authorize a permit for a term less than the life of a facility if the applicant demonstrates that all of the following conditions exist:

(i) After the permit term (over the remaining life of the facility), no adverse environmental, social and economic impacts in the area of site influence may occur, which are not regulated by another State regulatory agency. The life of the facility includes cessation of operations, site clearance and site reclamation.

(ii) There are no conditions or requirements of the pending permit that warrant the continuation of Council's jurisdiction for the remaining life of the facility.

(iii) The permit term would not conflict with any statute or rule governing the facility, and would not conflict with the purposes of the Industrial Development Information and Siting Act.

(A) The Council shall consider all objections from local government before granting a permit term request.

(k) Local governments may make a request for a bond pursuant to W. S. 35-12-113(e), such requests must:

(i) Be provided to the Director and parties three weeks prior to the date of the hearing of the permit application by the Council;

(ii) Justify the need for the bond;

(iii) Describe the purpose and use of the bond;

(iv) Justify the amount of the bond;

(v) Recommend a mechanism to determine when and if the bond should be released; and

(vi) Recommend a mechanism to determine when and if the bond should be surrendered to the State of Wyoming. The Director shall make a recommendation on any such bond request to the Council prior to the hearing of the Council. Such recommendation shall be provided to the parties to the hearing.

#### Section 12. **Impact Assistance Funds.**

(a) If all affected counties, cities and towns in the area primarily affected can agree to an amount and schedule for payment distributions, they may provide their agreement to the Division for submission to the Council for its consideration. If an amount and schedule supported by all governments within the area primarily affected has not been provided to the Division within 30 days of filing an application or waiver of permit application, the Division will review the information provided in the application and provide to counties, cities and towns within the area primarily affected the Administrator's recommendation to the Council for distribution of the impact assistance funds. Counties in disagreement with the Administrator's draft recommendation shall provide to the

parties an alternate distribution recommendation and information showing that the Administrator's recommended distribution does not account for all the unmitigated impacts.

(b) Pursuant to W.S. 39-15-111(c) and (d), and W.S. 39-16-111 (d) and (e) the Council shall, after consideration of all evidence and recommendations presented at the hearing held pursuant to W.S. 35-12-107(g) and W.S. 35-12-110(f), establish an amount and schedule for distribution of impact assistance funds. The Council shall establish a dollar amount associated with the unmitigated impacts on the affected counties, cities and towns from the construction of the proposed facility. Under no circumstances shall the impact assistance payment exceed two and seventy-six hundredths percent (2.76%) of the total estimated material costs of the facility, as those costs are determined by the Council.

(c) If impact assistance payments are already being distributed to an affected area of site influence, and another facility commences construction, the Council shall consider the effect of the following factors in establishing, modifying, adjusting or revising the distribution:

(i) The amount of impact assistance funds generated by each facility and the degree of impact in the county attributable to each facility; and

(ii) The timeframe in which different amounts of impact assistance funds are generated by each facility in relation to the timeframe in which impacts attributable to each facility occur.

(d) The Council may adjust, revise or modify distributions during the construction of a facility. A local government which is primarily affected by the facility and which has filed a notice of intent to be a party pursuant to W.S. 35-12-111(b), or any person issued a permit pursuant to W.S. 35-12-106, may petition the Council for review and adjustment of the distribution upon a showing of good cause. The request shall be submitted to the Division.

(i) Upon receiving a request to modify a distribution, the Administrator shall:

(A) Within ten (10) days after the request is received, serve a copy of the request to each local government primarily affected. A copy of the request shall be provided to the permittee.

(B) Request the affected local governments and permittees to submit to the Division all relevant studies, statements, reports, analyses, evaluations, compilations, or other written material which will enable the Council to determine whether the social and economic impacts have changed and establish a new distribution.

(C) Conduct such investigations, studies, reports and evaluation as may be necessary to prepare a recommendation on the request.

(ii) The Administrator shall present the request for impact assistance funds to the Council at least thirty (30) days after the Division received the request, with a recommendation. The Council may thereupon, after consideration of the materials submitted by the local governments, applicants, permittees and Administrator, determine that the social and economic impacts from construction of the facility have changed, and establish a new distribution as appropriate and necessary.

(e) Pursuant to W.S. 39-15-111(c) and (d), and W.S. 39-16-111(d) and (e) the Council, may determine that the social and economic impacts from construction of an industrial facility upon

the adjoining county are significant and establish the distribution of impacts between all communities in the impact area.

(i) The Council may adjust, revise or modify a distribution during the construction of a facility; upon receiving a written request from any person issued a permit pursuant to W.S. 35-12-106, and a showing of good cause.

(f) Upon establishing or modifying a distribution pursuant to W.S. 39-15-111(c) and (d), and W. S. 39-16-111 (d) and (e) the Division shall notify all parties.

(g) For the purposes of this Section of these regulations, the period of construction for a facility shall end when the physical components of the industrial facility are ninety (90) percent complete. The physical components of the industrial facility shall include all materials, supplies, and equipment included in the estimated construction cost of the facility pursuant to Section 2 (l) of these regulations.

### Section 13. **Information Requirements Imposed Upon Exempt Activities.**

(a) No entity defined as an information applicant shall commence construction activity unless such entity has supplied the following information to the Council a reasonable time prior to the commencement of such construction:

(i) A description of the nature and location of the construction activity.

(ii) The estimated time of commencement of construction and construction time.

(iii) The estimated number and job classifications, by calendar quarter, of the employees of the applicant, of its contractor or subcontractor during the construction phase and during the operating life of the facility. Such estimates shall include the number of employees who will be utilized but who do not currently reside within the area to be affected by the facility.

(b) For construction activities which are exempt from the permit requirements of the Act pursuant to W.S. 35-12-119(c), and which are associated with an industrial facility as defined by W.S. 35-12-102(a)(vii), the applicant shall provide the information required by W.S. 35-12-109(a)(iii), (iv), (v), and (viii) at the same time that the application for a permit for the industrial facility is filed.

### Section 14. **Permit Transfers and Terminations.**

(a) The Administrator may recommend corrections to the name of the permit holder to the Council.

(b) The Council may authorize transfers of permits to a different person buying the assets of the permitted facility if:

(i) The matter is initiated by a written request from the current permit holder and accompanied by a written acceptance of the permit, its terms and conditions by the prospective buyer.

(ii) The matter is heard by the Council at its next meeting after notice is

published and parties are notified.

(iii) Appropriate officers of the current permit holder and the acquiring company are present for examination by the Council.

(c) Petition by a Permittee for termination of the permit.

(i) Upon application for a permit termination, the Council may authorize permit termination if the Permittee demonstrates that all of the following conditions exist:

(A) The operation is in compliance with local ordinances and land use plans in force or adopted on or prior to the date of the application.

(B) Termination of the permit will not cause or add to any adverse environmental, social and economic impacts in the area of site influence, which are not regulated by another State regulatory agency, during the remaining life of the facility. The remaining life of the facility includes cessation of operations, site clearance and site reclamation.

(C) All construction phases of the facility have been completed and there are no conditions or requirements of the permit that warrant the continuation of the permit for the remaining life of the facility.

(D) Permit termination would not conflict with any statute or rule governing the facility, and would not conflict with the purposes of Act.

(ii) The Council shall consider all objections from local governments before granting a permit termination.

(iii) Within fourteen (14) days of receipt of a termination application the Director shall cause notice to be published in newspaper(s) of general circulation in the area primarily affected stating the nature of the request. Written notice shall also be provided to local governments in the area of site influence. The notice shall describe the name and location of the operation and provide for a thirty (30) day public comment period.

(iv) Prior to granting a permit termination, the Council shall provide opportunity for a public hearing if requested, in accordance with Chapter II, Section 13 and 14 of these regulations. The Council shall render a decision within ninety (90) days from the date the application is filed with the Department.

(v) The applicant shall pay an application fee to cover the costs of processing the application, inspecting, and for compliance activities. The amount shall be calculated by the Director.

#### Section 15. **Amendments.**

(a) A permit shall be amended if the applicant makes a significant change to the scope, purpose, size, or scheduling of the project; which would result in different impacts not within the scope of the approved permit.

(i) Supplemental submittals shall not be considered amendments, if they do not provide a significant change to the scope, purpose, size or scheduling of the project. In particular, material which is in the nature of a clarification in response to a request by the Division

shall not be considered a permit application amendment.

(ii) An amendment to a permit application or request for waiver may be allowed on condition that the applicant agrees to an extension of time for hearings, studies and determinations, in order to allow full and adequate notice in the manner and to the persons specified in W.S. 35-12-111(a).

(b) With respect to commercial waste disposal facilities, any major changes in the type or volume of wastes received, size of the facility, changes in transportation methods or routes for waste delivery, or changes in recycling, reuse, or treatment shall require notice and prior approval from the Director. If the Director determines that these changes may result in additional adverse impacts that were not previously reviewed by the Council, the Permittee shall submit a permit amendment in accordance with the requirements of this section.

#### Section 16. **Waste Management Surcharge.**

(a) Each Permittee of a commercial waste incineration or disposal facility shall keep records of all wastes received by the facility. Records shall consist of:

(i) A daily log of all wastes received by the applicant by weight, source and content.

(ii) A daily record of payments made for wastes received for disposal by source, including a first accounting of invoices;

(iii) A daily record of solid wastes removed from the facility and recycled or reused; and

(iv) A daily record of hazardous wastes treated at the facility.

(b) In accordance with W.S. 16-4-203(d)(v), records supplied for purposes of verifying the surcharge payment shall be public record unless the applicant can demonstrate to the Council, at the time of permitting, that the information consists of trade secrets, privileged information, or confidential commercial information. In such case, the applicant shall stamp as "confidential" each page containing privileged information.

(c) Waste receipt and surcharge reporting shall be on a quarterly basis through the use of monthly recapitulation sheets of the daily records.

(d) In accordance with W.S. 35-12-113(g), the Permittee shall remit the surcharge no later than the last day of the second month following the end of the quarter. Failure to remit the full payment as required by this section may constitute grounds for permit revocation in accordance with W.S. 35-12-116, after notice and reasonable opportunity to correct the failure.

(e) Upon a fourteen (14) day advance notice, the Permittee shall allow audits by the Division, or its auditors. The Permittee shall provide the Division access to all records and provide the copying of all records dealing with compliance of the permit requirements and payment of the waste management surcharge.

(f) Without advance notice, the Division or its designated agent may inspect manifests for shipments to determine accuracy of record keeping and weight scales.

(g) For audit purposes, all records required by this section will be maintained a minimum of five years.

(h) All measuring devices utilized to determine the surcharge payment shall be certified by the Wyoming Department of Agriculture in accordance with W.S. 40-10-117 through 40-10-123 and inspected and recertified annually.

(i) The waste management surcharge rate shall be a minimum of \$10 per short ton for non-hazardous wastes received and \$25 per short ton for hazardous waste. The Council may impose a higher rate at the time of permitting or annually thereafter. The rate may also be lowered as long as the surcharge remains at or above the minimum set in W.S. 35-12-113(g). The Council shall consider any of the following criteria as a basis for adjusting the surcharge rate:

(i) National or regional cost escalation for waste disposal;

(ii) Level of short and long term liabilities and risk to public health, safety and welfare.

(iii) Encouragement of the use and demonstration of new and advanced technologies which benefit the community and state;

(iv) Economic benefits accruing to the local community from the facility, including but not limited to, voluntary mitigation measures, employment opportunities, and importance to the economic stability; or

(v) Utilization of waste reduction, recycling and treatment practices at the origin of the wastes.

(j) The Council shall authorize a reduction in the waste management surcharge rate to encourage recycling, reuse, or treatment of hazardous wastes in accordance with W.S. 35-12-113(g). To obtain the credit, the Permittee must provide for removal and recovery of useful components of the waste stream above the minimum required by W.S. 35-11-508(a) (iii). For hazardous wastes, the treatment process shall reduce the hazards and long-term risks from the wastes above the minimum treatment processes required by rules promulgated under the Environmental Quality Act. The Council may authorize a credit at, or greater than, the minimum of W.S. 35-12-113(g) if the Council finds:

(i) Economic viability - where the Permittee can demonstrate a recycling or treatment technology or method which would not be economically viable through costs in excess of the minimum credit, the Council may grant a higher credit to promote the technology or method, if the Council determines the recycling or treatment technology or method beneficial to the State.

(ii) Economic development - the credit may be increased to broaden the local economic base in the form of a subsidy to develop local recycling, reuse, or treatment enterprises. This subsidy may only be approved to increase business profitability in the growth years of the enterprise.

(k) Upon submittal of a permit application, request for waiver, or annually after permit approval, the Director may require the Permittee or applicant to provide cost data so that the Division may evaluate the merits of a surcharge rate adjustment. The information requested may include, but

is not limited to:

- (i) Breakdown of operation costs.
- (ii) Breakdown of construction costs.
- (iii) Breakdown of transportation costs.
- (iv) Current tipping charges.

**Section 17. Fees.**

(a) Application Fee. The fee required by W.S. 35-12-109(b) is prepared on the basis of features of the proposed application and facility as are any increases in the Application Fee as required by W.S. 35-12-109(d).

(b) Public records may be inspected and copies provided upon written request specifying the document(s) requested. The Department may require reimbursement of costs incurred in reproducing the requested document(s). Costs will be the actual costs incurred to process the request.

CHAPTER 1  
INDUSTRIAL DEVELOPMENT INFORMATION AND SITING  
RULES AND REGULATIONS

Section 1. **Authority.**

These rules and regulations are promulgated by the Wyoming Industrial Siting Council (Council), pursuant to the authority granted the Council by the Wyoming Industrial Development Information and Siting Act; W.S. 35-12-101 through 35-12-119. If any provision of these rules or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of these rules which can be given effect without the invalid provision or application and to this end the provisions of these rules are declared to be severable.

Section 2. **Definitions.**

Definitions contained in W.S. 35-12-102, shall be applicable, where appropriate. The following terms used in these regulations shall have the following meanings, unless the context otherwise requires:

- (a) “Act” means the Industrial Development Information and Siting Act, W.S. 35-12-101 through 35-12-119.
- (b) “Area or local government primarily affected by the proposed industrial facility” means:
  - (i) Any defined geographical area in which the construction or operation of the industrial facility may significantly affect the environment, population, level of economic well-being, level of social services, or may threaten the health, safety or welfare of present or expected inhabitants.
  - (ii) Any such county, incorporated municipality, school district, or combination thereof formed under the Wyoming Joint Powers Act within (i) above.
- (c) “Areas of site influence” means the areas which may be affected environmentally, socially, or economically, in any significant degree, by the location of the industrial facility at the proposed site. A separate “area of influence” may be considered for each resource identified in Section 8(i) of these rules.
- (d) “Complete application” means an application which contains all of the information required by W.S. 35-12-109 and Section 8 of these rules, except those portions of the application requirements that the Council has waived pursuant to W.S. 35-12-107; excluding proprietary information. If proprietary information is withheld, it must be stated in the application.
- (e) “Construction schedule” means the schedule of events by time, from the commencement of construction through completion of construction and commencement of commercial operation of the facility, as described in the application and any approved updates.
- (f) “Cumulative impacts” means the combined impacts upon the environment or the social or economic conditions resulting from construction and operation of the proposed industrial facility and from construction and operation of other on-going or proposed developments in the area of site influence. Proposed developments to be considered in cumulative impacts include those

facilities which have public information available, or are actively permitting.

(g) “Decommissioning” means the removal from service, disassembly, and proper off-site disposal of the facility components.

(h) “Dependent component” means any ancillary facility to be constructed by the applicant that is necessary and essential to the construction or operation of the industrial facility. Dependent components are considered part of the industrial facility. Facilities described at W.S. 35-12-119 as exempt are not dependent components.

(i) “District or Special District” means the following:

(i) A special purpose local government created pursuant to W. S. 16-1-101 et seq. (Joint Powers Act) and whose registry as such is maintained by the Wyoming Secretary of State; or

(ii) A public school district.

(j) “Effective date of the Act” means May 30, 1975.

(k) “Environment” means the physical conditions existing within the affected area, including, but not limited to, land, air, water, minerals, flora, wildlife, noise, and objects of historic, aesthetic, or recreational impacts over which the Council has jurisdiction.

(l) “Estimated construction costs” means the anticipated total costs and expenses attributable directly to the planning, design, erection and construction of the applicant’s proposed facility. The estimate shall be based upon current cost projections within the possession of the applicant. Such costs and expenses shall include, but are not limited to, the following: costs of materials, supplies and equipment, including allocable construction equipment costs; labor and management personnel compensation and salaries; contract and subcontract fees; employee benefits; employment; sales and use taxes; per diem and subsistence allowances; and all other costs necessary and incident to the construction of the proposed facility. For purposes of estimating construction costs, the proposed facility shall be described and considered to include all units and components at the proposed site location, and which are or have been included in current plans for development of the proposed site. Exempt activities and site acquisition expenditures including the acquisition costs of mineral rights and interests are not to be included in the estimated construction cost.

(i) In computing an estimate pursuant to Section 2(l) above, the estimated costs for materials, supplies, equipment and allocable construction equipment shall include:

(A) The total costs of materials, supplies, and equipment incorporated into or otherwise necessary to construct the facility;

(B) The total costs of equipment used in site preparation and construction, which is further required to place the proposed facility into operation; and

(C) The allocable costs of that equipment used in site preparation and construction of the proposed facility, but which is not retained on site, and is not required to place the proposed facility into operation.

(ii) The proposed facility's estimated construction cost shall include the costs of access roads including modifications and improvements to existing roadways when such modifications or improvements are necessitated by the proposed facility, the costs of any rail facilities constructed for the substantial use of the proposed facility, and costs of other dependent components.

(m) "Estimated materials costs" means the estimated costs of materials, supplies and equipment, including allocable construction equipment costs, necessary and incident to the construction of the proposed facility.

~~(n)~~ (n) "Financial assurance" means a security serving as collateral in the form of a surety bond, certificate of deposit, corporate guarantee, letter of credit, deposit account, insurance policy or other form acceptable to the Director to insure proper decommissioning and reclamation activities.

~~(o)~~ (o) "Financial capability" means evidence of the financial strength of the applicant to construct, maintain, operate, decommission and reclaim the facility.

~~(p)~~ (p) "Health" shall mean the state of being sound in body or mind and includes psychological as well as physical well-being.

~~(q)~~ (q) "Information applicant" means any person who intends to initiate a construction activity with an estimated construction cost of at least ninety-six million nine hundred thousand dollars (\$96,900,000.00) adjusted by applicable cost indices as provided in W.S. 35-12-102(a)(vii), which construction activity also falls within W.S. 35-12-119.

~~(r)~~ (r) "Job classification" means those of the 2010 Standard Occupational Classification System of the U. S. Department of Labor.

~~(s)~~ (s) "Mineral rights" means fee, leasehold, or mining claim interests in the mineral estate.

(t) "Mitigated impacts" means impacts that are minimized by limiting the magnitude of the impact, or are compensated for by replacing or providing substitute resources or supplemental environmental projects.

~~(u)~~ (u) "Oil and gas drilling facilities" are any and all activities in connection with or associated with drilling, testing, or completing oil and gas wells including well access roads and any electrical service, mobile and fixed equipment, and services used for drilling, completing, testing, maintaining and repairing oil or gas wells and related activities.

~~(v)~~ (v) "Oil and gas producing facilities" are any and all activities necessary to extract oil or gas or both from a naturally occurring underground reservoir containing a common accumulation of oil or gas or both. Producing facilities include the oil or gas well downhole equipment, well heads, flow controls, and artificial lift equipment including compressors. Producing facilities also include those facilities used for pressure maintenance, enhanced recovery, or produced water disposal.

~~(w)~~ (w) "Permit termination" means cessation or termination of a permit and all permit conditions, which were issued by the Council for the construction and operation of an industrial facility.

~~(x)~~ (x) "Phase" or "phase of construction" means any future expansion or modification of

the facility described in the application pursuant to W.S. 35-12-109 (a)(vi), and interpreted for jurisdiction by the Division.

~~(w)~~ y “Projection period” means the period of time over which projections of socioeconomic factors are made. The projection period shall not exceed five (5) years beyond the period during which stable operation of the industrial facility is achieved.

~~(x)~~ z “Reclamation” means the process of restoring all lands affected by the proposed industrial facility or its dependent components to a use for grazing, agriculture, recreational, wildlife purpose, or any other purpose of greater or equal value which satisfies the landowner or land management agency. The process may require removal of structures, backfilling, grading, contouring, compaction, stabilization, revegetation and drainage control.

~~(y)~~ aa “Safety” shall mean freedom from injury or threat of injury. Such injury or threat of injury may be premised on crime rates, traffic accident rates, dangers of industrial accidents or mishaps, or other similar considerations.

~~(z)~~ ab “Studies” shall include all social, economic or environmental reports, analyses, evaluations or compilations dealing with the impact of the industrial facility whether prepared by the applicant, the applicant’s employees, or consultants retained by the applicant. Where such studies are part of a longer report or study, the applicant may sever such study from the larger document for purposes of submission to the Council.

~~(aa)~~ ac “Study Area” is the geographic and political boundary, as designated by the Administrator for the required governmental, social, and economic studies required for applications.

(ad) “Unmitigated impacts” means identified impacts that are not minimized by limiting the magnitude of the impact, or are not compensated for by replacing or providing substitute resources or supplemental environmental projects.

~~(ab)~~ ae “Welfare” shall mean considerations of public convenience, public wellbeing and general prosperity. The term also properly covers those subjects encompassed under health and safety.

~~(ae)~~ af “Wellfield activity” means any and all activity directly associated with the development, operation, or abandonment of oil and gas drilling or producing facilities. Wellfield activity includes but is not limited to construction of flow lines, heaters, treaters, dehydrators, fluid separators and stabilizers. Storage tanks not within the definable boundaries of an industrial facility are wellfield activities.

### Section 3. **Certificate of Insufficient Jurisdiction.**

No person shall commence to construct an industrial facility unless an application has been filed in conformity with these rules and regulations and a permit has been issued by the Council.

(a) Any person who intends to initiate construction activity which may qualify as an industrial facility under the Act shall submit to the Division an application n for a Certificate of Insufficient Jurisdiction which shall demonstrate that the proposed construction activity does not qualify as an industrial facility under the Act, and that the Council lacks sufficient jurisdiction to require that an application for a permit be submitted.

(b) Industrial facilities that meet one of the following criteria shall not need a certificate of insufficient jurisdiction:

(i) The estimated construction cost is less than eighty percent (80%) of the current threshold construction cost.

(ii) A commercial waste incineration or disposal facility is not physically capable of receiving four hundred (400) short tons or more per day of household or mixed household and industrial waste.

(c) An application for a Certificate of Insufficient Jurisdiction shall contain the following information:

(i) A description of the proposed construction activity.

(ii) An estimated construction cost for the proposed construction activity that is in conformity with Section 2 (m) of these regulations.

(d) When an application for a Certificate of Insufficient Jurisdiction is submitted to the Division, the Administrator shall within ten (10) days after the application is submitted:

(i) Serve notice of the application upon each local government that would be entitled to receive service of a copy of the application for a permit under W.S. 35-12-110(a)(i), as if the person submitting the application for a Certificate of Insufficient Jurisdiction was submitting an application for a permit.

(ii) Publish notice of such application for a Certificate of Insufficient Jurisdiction throughout the state for four (4) consecutive weeks in newspapers of general circulation.

(~~ii~~ iii) Such notice shall state the following:

(A) A description of the construction activity proposed by the applicant for a Certificate of Insufficient Jurisdiction.

(B) The estimated construction cost of the construction activity proposed by the applicant for a Certificate of Insufficient Jurisdiction.

(C) A statement that any interested party, who would be a party in any permit proceeding with respect to the construction activity, may file objections to the issuance of a Certificate of Insufficient Jurisdiction within thirty (30) days after the last date of publication of notice.

(e) The Director shall present an application for a Certificate of Insufficient Jurisdiction to the Council after thirty (30) days has expired from the last date of publication of notice of application with his recommendation for issuance or denial. The Council shall thereupon, after consideration of the application and the objections thereto, either issue or deny the application for a Certificate of Insufficient Jurisdiction.

(f) The decision of the Council to issue a certificate shall be effective immediately.

#### Section 4. **Jurisdictional Meeting.**

(a) Persons requesting a jurisdictional determination for the following from the Division shall first request a jurisdictional meeting with the Division:

- (i) A permit pursuant to W. S. 35-12-109;
- (ii) Waiver or waivers of requirements;
- (iii) A certificate of non-jurisdiction;
- ~~(iii)~~ iv) An informational filing pursuant to W. S. 35-12-119 (a) and (b); or
- (v) An exemption from a permit pursuant to W.S. 35-12-119 (c).

(b) The jurisdictional meeting shall be held when the preliminary facility design and estimated construction schedule are known.

(c) The Person seeking the jurisdictional meeting shall provide information to describe the facility and shall include the following:

- (i) Details of ownership; and points of contact;
- (ii) Description of the proposed facility including a site plan;
- (iii) Proposed facility location and land ownership;
- (iv) The location for the receipt of purchase and where title changes;
- (v) Any future phases to be requested in the application;
- (vi) The estimated cost of construction, including a preliminary estimated of material costs;
- (vii) Information which the applicant feels to be pertinent.

(d) The Director shall provide a written decision within 15 days following the jurisdictional meeting stating whether or not the facility is within the jurisdiction of the Siting Council and provide notice of any application fee pursuant to W.S. 35-12-105(g) and W. S. 35-12-109(b). The Director may provide conditional determinations. The Director, according to the accounting standards and procedures used by the State of Wyoming, will perform the deposit of revenues, payment of expenditures, and accounting. Any such fee will:

- (i) Be determined by the Director in accordance with the provisions of W.S 35-12-109 (b) and (d);
- (ii) Be collected at the time of the filing of an application;
- (iii) Recover the full actual costs to the Division and Council for the activities specified by W. S. 35-12-109(b) and (d);

(iv) May be subject to revision by the Director if the fees are determined to be insufficient to pay the full actual cost of the Division and Council as specified by W.S. 35-12-109 (b) and (d).

(e) If the Director determines that the information provided by the person is incomplete, the Director shall respond in writing within 15 days following the jurisdictional meeting stating that the information is incomplete and that a determination cannot be made at that time.

#### Section 5. **Pre-Filing and Filing.**

(a) At the jurisdictional meeting the Administrator shall specify the study area for the project application. The study area provides the boundaries for studies of counties and municipalities.

(b) The applicant shall notify and describe the project to local governments in the study area. The notice and description shall be sent by certified mail, return receipt, and shall include a description of the project, its location, the expected construction period, the number of construction workers, transportation routes for construction materials, the anticipated economic benefits of the project, ~~the anticipated mitigated and unmitigated impacts from the project and~~ offer methods to comment to the applicant and attend scheduled informational meetings. The notice and description will be mailed no later than ~~one week~~ 10 business days prior to the first informational meeting.

(i) Informational meetings shall be held no later than ~~30~~ 60 days before the filing of an application and shall be in the principal city of the county and at a place as close to the site of the project as is practical.

(c) The date of filing of an application is that date when all of the following have been received by the Division:

- (i) The application fee;
- (ii) The application document; and
- (iii) The letter of transmittal.

(d) When the application is filed, the Division shall provide the applicant with a written receipt for the application which shall stipulate the application has been filed on that date.

(e) After receipt and examination of the application the Administrator shall determine the area primarily affected.

(f) Counties who wish to make a referral according to W.S. 18-5-509 shall provide the following:

(i) Information obtained from the applicant as described in Section 4(c) subparagraphs (i) through (v).

(ii) Justification why the referral is necessary. The Director will make a decision on the referral and notify the county within fifteen (15) days from the date of the referral.

#### Section 6. **General Format of Application or Request for Waiver.**

In accordance with W.S. 35-12-107 and W.S. 35-12-109, the applicant shall abide by the following rules and conditions:

(a) Prior to submitting its application or request for waiver, each applicant shall confer with the Division to determine the number of copies of the application or request for waiver to be filed with the Division. The applicant shall file a minimum of forty (40) copies of the application with the Division. The applicant shall not be required to file more than seventy-five (75) copies of the application without prior approval of the Council.

(b) The application or request for waiver shall be typed, printed, or otherwise legibly reproduced on 8 ½-inch by 11-inch paper. Maps, drawings, charts, or other documents that are bound in the application or request for waiver shall be cut or folded to 8 ½-inch by 11-inch size. All pages in an application or request for waiver shall be consecutively numbered.

(c) The application or request for waiver shall be verified by the applicant as to its truth and accuracy, upon oath or affirmation. Such application or request for waiver shall be signed by the president of the corporation or owner of the company, or another official designated by the bylaws to obligate and bind the applicant. The application or request for waiver shall be accompanied by a letter of transmittal which shall contain the following information:

(i) The company's request for a permit or waiver of permit to construct and operate the facility; and

(ii) The designated individual to serve as point of contact for the permit process including address of service of notice.

(d) The Applicant shall notify the Division immediately whenever, subsequent to submitting an application or waiver request under the Act, a material change in the design, location, schedule, or scope of the industrial facility has occurred. Such notification by the applicant may constitute a request for amendment pursuant to W.S. 35-12-106(c) and Section 15 of these rules if the Division determines that such differences materially change the nature, location or impact of the proposed industrial facility.

(e) An applicant may apply for a permit to construct an industrial facility in phases over an extended period.

(f) As part of the application, the applicant shall submit a summary of the entire application. The summary shall contain references to supporting data and analysis contained in the application.

(g) Whenever the Act or these rules require information concerning the industrial facility to be submitted to the Council and the applicant is required to submit the same or similar information to another state, federal or local agency having jurisdiction, the applicant may submit the information to the Council in the same format required by the other agency.

(h) Applicants may fulfill informational requirements of the regulations and the Act by describing the area of jurisdiction covered by other regulatory agencies in the state.

(i) The application shall contain a table containing all commitments stated in the application and provide the page number where each commitment is discussed in the body of the application. The table shall also provide a narrative of all the commitments made to local

governments in accordance with W.S. 35-12- 107(b)(xi) and W.S. 35-12-109(a)(xiii).

**Section 7. Request for Waiver.**

(a) The request for waiver shall contain the information required by the Act with respect to both the construction period and on-line life of the proposed industrial facility and any additional information the applicant considers relevant to the needs of the Council and local units of government for making an informed decision for granting or refusing the waiver request. The waiver application shall follow the same format as the application contents described in Section 8, less those parts identified as not necessary by the Administrator.

(b) The Council shall grant a request for a waiver either as proposed or as modified by the Council as provided by the act and considering the following:

(i) In order to find that the industrial facility would not produce an unacceptable impact, the Council must find that the granting of a waiver will not result in a significant detriment to, or significant impairment of, the environment or the social and economic condition of present or expected inhabitants. If applicable, the Council may consider direct or cumulative impacts not within the area of jurisdiction of another regulatory agency in this state.

(ii) A proposed industrial facility is considered to be designed in compliance with applicable local ordinances, regulations and compatible with land use plans if it meets applicable requirements relative to zoning laws, building codes, health and safety laws, and other laws of a similar nature in force on the date of submittal of the request for waiver.

(c) If the Council finds that the considerations of subsection (b) above have been met, the Council may waive all of the application requirements of the Act, and shall issue a permit for the industrial facility in accordance with W.S. 35-12-113. If the Council is not able to find that these requirements are met, the Council may deny the request, and issue an order requiring that an application for a permit be filed pursuant to W.S. 35-12-109. The Council may also waive any part(s) of the application requirements of W.S. 35-12-109 if it determines that it is justified by the circumstances.

**Section 8. Application Information to be Submitted.**

In accordance with W.S. 35-12-109, the application shall contain the information required by the Act with respect to both the construction period and online life of the proposed industrial facility and the following information the Council determines necessary:

(a) The application shall state the name, title, telephone number, mailing address, and physical address of the person to whom communication in regards to the application shall be made.

(b) A description of the specific, geographic location of the proposed industrial facility. The description shall include the following:

(i) Preliminary site plans at an appropriate scale indicating the anticipated location for all major structures, roads, parking areas, on-site temporary housing, staging areas, construction material sources, material storage piles and other dependent components; and

(ii) The area of land required by the industrial facility and a land ownership

map covering all the components of the proposed industrial facility.

(c) A general description of the major components and dependent components of the proposed industrial.

(d) A description of the operating nature of the proposed industrial facility, the expected source and quantity of its raw materials, and energy requirements. The description shall include, but is not limited to, the following:

(i) The proposed on-line life of the industrial facility and its projected operating capacity during its on-line life; and, for transmission lines exceeding one hundred fifteen thousand (115,000) volts included as part of the proposed industrial facility, a projection indicating when such lines will become insufficient to meet the future demand and at what time a need will exist to construct additional transmission lines to meet such demands; and

(ii) Products needed by facility operations and their source.

(iii) Estimated material costs for the project.

(e) A statement that shall be a reasonable estimate of the calendar quarter in which construction of the industrial facility will commence, contingent upon the issuance of a permit by the Council.

(f) A statement that shall be a reasonable estimate of the maximum time period required for construction of the industrial facility and an estimate of when the physical components of the industrial facility will be ninety (90) percent complete, and the basis for that estimate.

(g) The applicant shall identify what it deems to be the area of site influence and recommends as the local governments primarily affected by the proposed industrial facility as defined in Sections 2 (b), (c) and (d). The immediately adjoining area(s) and local governments shall also be identified with a statement of the reasons for their exclusion from the list of area(s) or local governments primarily affected by the proposed industrial facility.

(h) Using tables, provide a detailed tally of the estimated work force to construct and to operate the facility showing the following information:

(i) All workers providing direct labor and direct support; (safety, supervision, inspection) at the work site;

(ii) Information by calendar ~~quarter~~ month and year from the commencement of construction through the first year of operation;

(iii) Identify and provide totals of those which are construction and those which are permanent;

(iv) Identify and provide quarterly totals of the number, job classification and recurrence; of those which are estimated to be in- migrating (from outside the study area at the time of hire for the facility) and of those pre-existing employees of the applicant engaged in construction;

~~(v)~~ v Provide estimates of wages; and

(v vi) Provide estimates of paid benefits including per diem and paid fees.

(i) The social and economic conditions in the area of site influence shall be inventoried and evaluated as they currently exist, projected as they would exist in the future without the proposed industrial facility and as they will exist with the facility. Prior to submitting its application, each applicant shall confer with the Administrator to define the needed projections, the projection period and issues for socioeconomic evaluation. The evaluation shall include, but is not limited to:

(i) An analysis of whether or not the use of the land by the industrial facility is consistent with state, intrastate, regional, county and local land use plans, if any. The analysis shall include the area of land required and ultimate use of land by the industrial facility and reclamation plans for all lands affected by the industrial facility or its dependent components;

(ii) A study of the area economy including a description of methodology used. The study may include, but is not limited to, the following factors:

- (A) Employment projections by major sector;
- (B) Economic bases and economic trends of the local economy;
- (C) Estimates of basic versus non-basic employment;
- (D) Unemployment rates;

(iii) A study of the area population including a description of methodology used. The study may include, but is not limited to, an evaluation of demographic characteristics for the current population and projections of the area population without the proposed industrial facility;

(iv) An analysis of housing facilities by type, including a quantitative evaluation of the number of units in the area and a discussion of vacancy rates, costs, and rental rates of the units. The analysis should include geographic location, including a quantitative evaluation of the number of units in the area required by the construction and operation of the proposed industrial facility and a discussion of the effects of the proposed industrial facility on vacancy rates, costs, and rental rates of the units. Specific housing programs proposed by the applicant should be described in detail;

(v) An analysis of effects on transportation facilities containing discussion of roads (surface type), and railroads (if applicable).

(vi) Public facilities and services availability and needs, which may include, but are not limited to:

(A) Facilities and personnel required for the administrative functions of government including specific new demands or increases in service levels created by construction of the proposed industrial facility;

(B) Sewer and water impacts shall describe the distribution and treatment facilities including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels. If required

pursuant to W.S. 35-12-108, the application shall contain the Water Supply and Water Yield Analysis and Final Opinion of the State Engineer;

(C) Solid waste collection and disposal services including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels;

(D) Existing police and fire protection facilities including specific new demands or increases in service levels created by the proposed industrial facility;

(E) An analysis of health and hospital care facilities, ~~and~~ services and personnel including specific new demands or increases in service levels created by the proposed industrial facility;

(F) Human service facilities, programs and personnel, including an analysis of the capacity to meet current demands and a description of problems, needs, and costs of increasing service levels;

(G) An analysis of community recreational facilities and programs and urban outdoor recreational opportunities including specific new demands or increases in service levels created by the proposed industrial facility;

(H) Educational facilities, including an analysis based upon enrollment per grade, physical facilities and their capacities and other relevant factors with an assessment of the effect that the new population will have on personnel, programs and facilities;

(I) Problems due to the transition from temporary, construction employees to operating workforces should be addressed. Changes in levels of services required as a result of the proposed industrial facility should specifically be addressed. Cumulative impacts of the proposed industrial facility and other developments in the area of site influence should be addressed separately. This assessment should examine increased demands associated with the construction and operational phases of the proposed industrial facility, as well as effects on the level of services as the construction or operational workforces decline;

(J) A copy of any studies that may have been made of the social or economic impact of the industrial facility.

(vii) A fiscal analysis over the projection period for all local governments and special districts identified by the applicant as primarily affected by the proposed industrial facility, including revenue structure, expenditure levels, mill levies, services provided through public financing, and the problems in providing public services. If modeling software is used, then identifying the software program and providing a summary table of the data set inputs (including any multipliers) for the analysis is required. The analysis may include, but is not limited to:

(A) An estimate of the cost of the facility with a separate line item for the estimated material costs.

(B) An estimate of the cost of the ~~facility construction subject to~~ sales and use taxes to be paid directly by the applicant to construct the facility. This estimate should be broken down by year.

(C) ~~An estimate of sales and use taxes by year for each county if the~~

~~facility is located in more than one county. If a facility is located in more than one county, the estimate under subsection (B) above shall be broken down by year and for each affected county.~~

(D) Estimates of impact assistance payments which will result from the project.

(E) An estimate of the cost of components of the industrial facility which will be included in the assessed value of the industrial facility for purposes of ad valorem taxes for both the construction and operations periods. This estimate should include a breakdown by county if the components of the industrial facility will be located in more than one county.

(j) An evaluation of the environmental impacts as they would exist if the proposed industrial facility were built. Each evaluation should be followed by a brief explanation of each impact and the permit issued that regulates the impact. If the impact is not regulated by a state regulatory agency or federal land management agency, the application must include plans and proposals for alleviating adverse impacts. Cumulative impacts of the proposed industrial facility and other projects in the area of site influence should be addressed separately.

(k) The applicant shall describe the procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or recreational facilities which may be adversely affected by the estimated emissions and discharges from the proposed facility, ~~including:~~

~~(i) — Impact controls and mitigating measures proposed by the applicant to alleviate adverse environmental, social and economic impacts associated with construction and operation of the proposed industrial facility;~~

~~(ii) — Monitoring programs to assess effects of the proposed industrial facility and the overall effectiveness of impact controls and mitigating actions including:~~

(l) The applicant shall provide certification that all local governments in the study area were provided notification of the facility, a description of the proposed project and an opportunity to ask the applicant questions regarding the proposed project at least thirty (30) days prior to the submission of the application. The certification shall include a description of the actual process used.

(m) For a permit application, the applicant shall provide a description of land use and changes to land use as a result of the project. Such will include:

- (i) The project site, transportation routes, utilities, and collector systems.
- (ii) County land use plans and zoning, if any.
- (iii) Changes to agricultural production as a consequence of the project.

(n) For a permit application, the applicant shall provide the following:

(i) An evaluation of potential impacts together with any plans and proposals to alleviate potential impacts. The evaluation shall include a recent survey for threatened and endangered and rare species of concern (flora & fauna), as identified in the state wildlife action plan prepared by the Wyoming Game and Fish Department, found at the site location.

(ii) An evaluation of the potential impacts to terrestrial and aquatic wildlife and any plans or proposals to alleviate potential impacts.

(o) The applicant shall provide a description of the methods and strategies to maximize employment and utilization of the existing local or in-state contractor and labor force during the construction and operation of the facility.

(p) The applicant shall provide a description of the impact controls and mitigating measures proposed to mitigate and alleviate adverse environmental, social and economic impacts associated with the construction and operation of the proposed industrial facility, including:

(i) Monitoring programs to assess effects of the proposed industrial facility and the overall effectiveness of impact controls and mitigating actions.

(ii) Impact controls and mitigating measures proposed by the applicant to alleviate adverse environmental, social and economic impacts associated with construction and operation of the proposed industrial facility.

(q) The applicant shall provide a description and quantification of the mitigated and unmitigated impacts that will result from the construction and operation of the proposed facility on the affected local governments and special districts. Such description shall include:

(i) Quantification of fiscal impacts, regardless of amount, on all items contained in Wyoming Statute 35-12-109 (a)(xiii)(A)–(S).

(ii) Projection of when, by calendar month, the unmitigated impacts will occur in the affected communities.

(iii) Projection, by calendar month, of fiscal impact in affected communities.

(r) Counties wishing to present evidence shall provide a description and quantification of the unmitigated impacts that will result from the construction and operation of the proposed facility. Such description shall include:

(i) Estimates of fiscal impacts on services provided by communities; and

(ii) Estimated projections of when unmitigated impacts will occur in communities;

#### **Section 9. Additional Application Requirements for Wind Energy Facilities.**

(a) Facility Decommissioning. The applicant shall provide a facility decommissioning plan.

(i) The facility decommissioning plan shall include provisions regarding the removal and proper disposal of all wind turbines, towers, substations, buildings, and cabling, electrical components, foundations to a depth of forty-eight (48) inches, and any other associated or ancillary equipment or structures within the facility boundary above and below ground.

(ii) The facility may request that a building be left on site if approval is obtained from the surface landowner and upon written notification to the Administrator.

(iii) Facility or individual wind turbine decommissioning shall begin:

(A) Within twelve (12) months after the end of the useful life of the facility or individual wind turbine, or

(B) When no electricity is generated for a continuous period of twelve (12) months of the facility or individual wind turbine.

(C) The Council may extend the time period of Section (8)(a)(iii)(B) if the facility demonstrates good cause prior to the end of the continuous period of (12) months of the facility or wind energy generating towers not generating electricity.

(iv) The facility decommissioning plan shall be updated and submitted to the Administrator every five (5) years.

(b) Interim Reclamation. Interim Reclamation shall comply with the applicable permitting requirements of the Department of Environmental Quality, Water Quality Division storm water program.

(c) Final Reclamation. The applicant shall provide a final reclamation plan which shall include:

(i) A detailed description of site conditions prior to construction, including topography, vegetative cover (including plant species and plant community structure), climate, and land uses.

(ii) Re-grading. All tower foundations, roads, and all other surface disturbances within the facility boundary must be re-graded to the natural contours of the area. Backfilling, grading and contouring of affected land shall be accomplished by one or more of the following as detailed in the approved reclamation plan:

(A) Re-establishment of the contour of the land in a manner consistent with the proposed future use of the land.

(B) Contouring affected land to blend in with the topography of the surrounding terrain unless so doing would create an erosion problem or a hazard.

(C) The facility may leave a road un-reclaimed if approval is obtained from both the surface landowner and the Administrator.

(iii) Re-vegetation

(A) After backfilling, grading and contouring, and the replacement of topsoil, re-vegetation shall be commenced in such a manner so as to most efficiently accommodate the retention of moisture and control erosion on all affected lands to be re-vegetated.

(B) Re-vegetation documentation shall include seedbed preparation, seed mixture, and post seeding maintenance of all disturbed areas.

(C) If applicable, documentation of any mulching and/or use of fertilizers.

(D) Reclamation shall restore the land to a condition and native or adaptive perennial vegetative cover equal to or better than the original condition.

(E) Re-vegetation of all affected lands shall be accomplished in a manner consistent with the approved reclamation plan and the proposed future use of the land.

(F) Seeding of affected land shall be conducted during the first normal period for favorable planting conditions after final preparation unless an alternative plan is approved. The species of vegetation to be used in re-vegetation efforts shall be described in the reclamation plan indicating the composition of seed mixtures and the amount of seed to be distributed on the area on a per acre basis.

(G) The operator must control and minimize the introduction of noxious weeds into the re-vegetated areas until final reclamation is achieved.

(iv) The final reclamation plan shall be updated and submitted to the Administrator every five years.

(d) Financial Assurance: The applicant shall provide financial assurances for a wind energy facility, sufficient to assure complete decommissioning and site reclamation of the facility in accordance with the provisions of these rules. Wind energy facilities subject to regulation by the Public Service Commission shall be exempt from these financial assurance provisions and from the Cost Estimation for Decommissioning and Site Reclamation provisions of Section 9(e) and (h) of these rules.

(i) All financial assurances shall be in place prior to commencement of construction of any wind energy facility, and shall be adjusted up or down every five years from the date of permit issuance by the Council based on the results of paragraph (e) of this section.

(ii) Additional financial assurances to cover risks not anticipated at the time of the permit may be required at any time by the Director, as reasonable and necessary, provided the Director first gives thirty (30) days written notice stating the reason for and the amount of the additional financial assurance.

(iii) Financial assurance in the form of domestic securities may be accepted in any of the following forms at the discretion of the Director with consideration of credit worthiness, financial strength, credit history, credit rating and debt.

(A) Surety bond with a corporate surety registered in Wyoming.

(B) Certificate of deposit in the name of the "Department of Environmental Quality" with a state or federally insured financial institution in Wyoming. The permittee shall be entitled to all interest payments.

(C) Other forms of assurance such as corporate guarantee, letter of credit, insurance policy, or other forms as may be acceptable to the Director.

(iv) If the Permittee fails to decommission and reclaim as described in its permit, the Director may determine that the financial assurance be forfeited to the Division to arrange for the decommissioning and reclamation to be conducted by a third-party. In order for the Director to determine that the financial assurance be forfeited, the Director shall:

(A) Determine that decommissioning or reclamation has not started or it has fallen behind the approved schedule for more than six (6) months.

(B) Notify the Permittee in writing of the failure to perform reclamation in accordance with its approved reclamation plan and demand that justification be provided to the Division within 30 days.

(I) If no justification is made by the Permittee within the time provided, or if the Director rejects the justification, the Director shall provide the Permittee written notice that the Division intends to pursue forfeiture of the financial assurance.

(II) The Permittee has 30 days from the date of receiving the notice of financial assurance forfeiture to request a hearing with the Council contesting the forfeiture of the financial assurance.

(III) If no hearing is requested, the Council will address the revocation of the permit and forfeiture of the financial assurance at the next meeting of the Council. If a hearing is requested, the Council shall conduct a hearing in accordance with the Wyoming Administrative Procedures Act. The Permittee shall bear the expense of scheduling and holding the hearing.

(e) Cost Estimation for Decommissioning and Site Reclamation of the facility:

(i) Estimates of cost for decommissioning and site reclamation shall be made by a licensed professional engineer provided by the applicant and subject to review and approval by the Director.

(ii) Total decommissioning costs shall be estimated without regard to salvage value of the equipment.

(iii) Decommissioning and site reclamation estimates shall be submitted to the Division in the application and every five years after the date of permit issuance until the completion of final reclamation.

(iv) The licensed professional engineer estimate of decommissioning and reclamation costs shall include the following:

(A) A general discussion of assumptions, including equipment, timeframes, backup calculations, procedures, methods, and any other considerations used in developing the cost estimate.

(B) A detailed description of the decommissioning activities to be performed.

(C) A detailed description of the reclamation activities to be performed.

(v) The facility may request release of the financial assurance mechanism when the facility has achieved final reclamation. Final reclamation means that all surface disturbances have been re-graded and re-vegetated with a uniform perennial vegetative cover with a density of 90% of the native or adaptive background vegetative cover. Noxious weeds shall not be included in percent cover in determining reclamation success.

(f) The Council may give a case-by-case variance to requirements of this Section after considering evidence by the applicant or landowner.

(g) Notice to record owners of mineral rights. Before submitting the application, the applicant shall provide notice to record owners of mineral rights located on or under the land where the proposed facility will be constructed.

(i) The notice shall consist of a statement of the applicant's intention to construct the project, features of the project, a legal description of the boundaries of the project, locations where the application may be examined, and persons to contact for additional information.

(ii) The notice shall be mailed by first class mail to all record owners of mineral rights whose identity and current addresses are readily obtainable from publicly available documents.

(iii) The notice shall be published twice in a newspaper of general circulation in the county or counties where the project is to be located.

(iv) The notice and details of steps taken to notify the record owners of mineral rights shall be entered into the record either within the application or as separate exhibit filed with the hearing examiner and parties.

(h) The application shall contain information demonstrating the applicant's financial capability to construct, maintain, operate, decommission, and reclaim the facility. Such documentation, if requested, shall be held confidential to the extent authorized by Wyoming law and shall include:

(i) Commitment letters from the principal investors of the project, which may be conditioned on issuance of required state and local permits; or

(ii) For applicants whose securities are publicly traded and are required to publicly disclose financial statements, any one of the following:

(A) General audited financial statements for the most recent year-end;

(B) Most recent credit ration reports for the financing company as published.

(C) Reports by chartered financial analysts as published.

(iii) For applicants whose securities are not publically traded, financial statements of the majority financial contributors.

(i) Notice to affected landowners

(i) Applicant must provide a list of the names and mailing addresses of all affected landowners at the time the application is submitted.

(ii) Upon receipt of an application subject to this section, the Division will provide notice to the affected landowners and request information and recommendations, which pertain to their respective lands and interests.

(iii) All review comments from State agencies pursuant to W.S. 35-12-110(b) and (c) will be provided to the affected landowners by the Division.

(iv) All comments by affected landowners received by the Division about the project and about the agency comments under (iii) above will be provided to the State agencies. The agencies will give the Division their replies to the comments from affected landowners.

**Section 10. Application Information for Commercial Waste Disposal Facilities.**

Application requirements for a commercial waste disposal facility shall include information required for a request for waiver or permit application under W.S. 35-12-107, 35-12-109 and Sections 6 and 7 of these rules and regulations and the information required in subsections (a) through (f) of this section.

(a) A statement of the applicant's financial condition, including but not limited to:

(i) A profit and loss statement

(ii) Debt to equity ratio

(b) A description of the mode of transportation by which the wastes will be transported to the site; including access route specification, modification of existing traffic patterns, an estimate of the additional load and traffic placed on access routes, and the method of waste containment during transport. The applicant shall describe possible hazards associated with the transportation of wastes, safety precautions and emergency procedures should a transportation accident occur in route to the facility. If the wastes are to be temporarily stored, transferred, or handled during transport, the location of storage facilities or transfer stations shall be identified. For hazardous wastes, the applicant shall describe how the facility will comply with Department of Transportation the Environmental Protection Agency manifest and transportation requirements of 49 CFR 271-279 and 40 CFR 263.

(c) A description of the effect the facility may have on local land use, and an estimate of the potential short and long-term effect on local property values and tax revenues, and an estimate of the adverse effect the proposed facility may have on local businesses and jobs.

(d) Specification of the types of wastes to be managed by the facility, an estimate of the average waste volume the facility will manage in tons per day and the maximum tonnage the facility will be capable of handling, as well as a general description of the waste management methods used by the facility or associated operations.

(e) A description of the record keeping procedures that will be maintained to assure accurate accounting and payment of the waste management surcharge. The applicant may also request that certain records be held as confidential in accordance with Section 16(b) of these regulations.

(f) The applicant's assessment of impacts must include the impacts of required or proposed recycling operations resulting from the proposed facility.

**Section 11. Decision of Council.**

(a) The Council shall either grant or deny the application as filed, or grant it upon

terms, conditions or modifications of the construction, operation or maintenance of the industrial facility as the Council deems appropriate. The Decision of the Council shall be written and shall be effective the date it is signed by the chair of the Council.

(b) Compliance with all applicable law. The Council must find that the proposed industrial facility will comply with all applicable local, state, and federal law throughout each phase of planning, construction, and operation. The local and state laws that must be complied with for purposes of this subsection consist of those laws which were in force on the date of application. In many cases, required permits and approvals may not be applied for until subsequent to the filing of the application. Therefore, the Council will examine the list of permits that regulate other aspects of the facility development for the purpose of determining whether the proposed industrial facility would be in compliance with all applicable laws if the permits and approvals specified therein were issued as expected.

(c) Threat of serious injury. In order to find that the industrial facility does not pose a threat of serious injury, the Council must find that the granting of a permit, as conditioned by the Council, will not result in a significant detriment to, or significant impairment of, the environment or the social and economic condition of present or expected inhabitants.

(i) In determining whether the proposed industrial facility poses a threat of serious injury to the social condition of the inhabitants, any significant decrease in the quality or quantity of services or facilities may be considered a serious injury. "Social condition" shall include, but is not limited to, the following factors:

- (A) Water treatment;
- (B) Sanitary waste disposal;
- (C) Solid waste collection;
- (D) Housing;
- (E) Police and fire protection;
- (F) Medical facilities;
- (G) Schools;
- (H) Recreational facilities;
- (I) Transportation systems;
- (J) Mental health facilities;
- (K) Social service facilities.

(ii) In determining whether the proposed industrial facility poses a threat of serious injury to the economic condition of the present or expected inhabitants, any net deterioration of a material nature in the condition of either present or expected inhabitants will be weighed negatively. "Economic conditions" may include, but is not limited to, the following factors:

- (A) Upgrading of jobs and increased income;

- (B) Family and per capita income;
- (C) Unemployment and underemployment rates within the area of site influence.
- (D) Purchasing power of earnings within the area of site influence.
- (E) Short term and long term fluctuations in resource consumption and resource availability.
- (F) Employment dislocation and skill obsolescence.
- (G) Employment opportunities;
- (H) Diversity of economy and stability of various segments of the economy.

(d) Substantially impair the health, safety or welfare. The Council must find that the proposed industrial facility will not substantially impair the health, safety or welfare of the present or expected inhabitants of the areas of site influence. A proposed industrial facility may be found to substantially impair the health, safety or welfare of the inhabitants if their health, safety or welfare during and after construction would be significantly diminished or weakened relative to present levels.

(e) If the Council is not able to find that these conditions are met, the Council shall deny the application.

(f) If the Council determines that the location of all or part of the proposed industrial facility should be modified, it may condition its permit upon that modification, provided that the local governments, and persons residing therein, affected by the modification, have been given reasonable notice of the modification.

(g) If the Council decides to grant a permit for the industrial facility, it shall issue the permit embodying the terms and conditions in detail, including the time specified to commence construction, which time shall be determined by the Council's decision as to the reasonable capability of the local government, most substantially affected by the proposed industrial facility, to implement the necessary procedures to alleviate the impact. If the construction of the facility fails to follow the schedule used by the Council to make its decision, the Council may require an amendment to the permit in accordance with W.S. 35-12-106(c) and (d).

(h) Unless the Council extends the permit as provided in subsection (i) of this section a permit to construct shall expire for any of the following conditions:

(i) Construction has not commenced within thirty-six (36) months after the date of the Decision of the Council;

(ii) If commenced construction has discontinued before the completion of the described project for a period of twelve (12) consecutive months, provided that the discontinuance is not in an approved schedule or for approved phases.

(i) The Council may extend the time periods of paragraphs (h)(i) and (h)(ii) above for good cause provided that the facility requests an extension in a timely manner accompanied by an update to the Application including the following:

- (i) The construction schedule;
- (ii) The estimated start of commercial operation;
- (iii) Socio-economic baseline; and

(iv) Updates to those sections of the Application as defined by the Administrator where material changes are expected to occur.

(j) Permit Term. During the application for a permit or permit waiver, an applicant may request that the permit be issued for a term of less than the life of the facility, but not less than the construction phase(s). The Council may authorize a permit for a term less than the life of a facility if the applicant demonstrates that all of the following conditions exist:

(i) After the permit term (over the remaining life of the facility), no adverse environmental, social and economic impacts in the area of site influence may occur, which are not regulated by another State regulatory agency. The life of the facility includes cessation of operations, site clearance and site reclamation.

(ii) There are no conditions or requirements of the pending permit that warrant the continuation of Council's jurisdiction for the remaining life of the facility.

(iii) The permit term would not conflict with any statute or rule governing the facility, and would not conflict with the purposes of the Industrial Development Information and Siting Act.

(A) The Council shall consider all objections from local government before granting a permit term request.

(k) Local governments may make a request for a bond pursuant to W. S. 35-12-113(e), such requests must:

(i) Be provided to the Director and parties three weeks prior to the date of the hearing of the permit application by the Council;

- (ii) Justify the need for the bond;
- (iii) Describe the purpose and use of the bond;
- (iv) Justify the amount of the bond;

(v) Recommend a mechanism to determine when and if the bond should be released; and

(vi) Recommend a mechanism to determine when and if the bond should be surrendered to the State of Wyoming. The Director shall make a recommendation on any such bond request to the Council prior to the hearing of the Council. Such recommendation shall be provided to the parties to the hearing.

## Section 12. Impact Assistance Funds.

~~(a) — The Administrator shall make a recommendation to the Council for distribution of impact assistance money. If a ratio supported by all governments within the area primarily affected has not been provided to the Division within 30 days of filing an application or waiver of permit application, the Division will provide to city, town and county governments within the area primarily affected the Administrator's recommendation to the Council for distribution of the impact assistance funds. Governments in disagreement with the Administrator's draft recommendation shall provide to the Council supporting information as outlined in Section 12(b).~~

(a) If all affected counties, cities and towns in the area primarily affected can agree to an amount and schedule for payment distributions, they may provide their agreement to the Division for submission to the Council for its consideration. If an amount and schedule supported by all governments within the area primarily affected has not been provided to the Division within 30 days of filing an application or waiver of permit application, the Division will review the information provided in the application and provide to counties, cities and towns within the area primarily affected the Administrator's recommendation to the Council for distribution of the impact assistance funds. Counties in disagreement with the Administrator's draft recommendation shall provide to the parties an alternate distribution recommendation and information showing that the Administrator's recommended distribution does not account for all the unmitigated impacts.

(b) Pursuant to W.S. 39-15-111(c) and (d), and W.S. 39-16-111 (e d) and (d e) the Council shall, after consideration of all evidence and recommendations presented at the hearing held pursuant to W.S. 35-12-107(g) and W.S. 35-12-110(f), establish a ratio for distribution of impact assistance funds an amount and schedule for distribution of impact assistance funds. The Council shall establish a dollar amount associated with the unmitigated impacts on the affected counties, cities and towns from the construction of the proposed facility. Under no circumstances shall the impact assistance payment exceed two and seventy-six hundredths percent (2.76%) of the total estimated material costs of the facility, as those costs are determined by the Council.

~~(i) — The ratio shall be established in consideration of, but not limited to, the following factors:~~

~~A) — The residency pattern of the facility's direct and induced employment;~~

~~(B) — The existing service levels, capital facility needs, social service needs, health care needs, transportation needs, recreational needs, and police and fire protection needs of the affected local governments;~~

~~(C) — The revenue structure, expenditure level, mill levies and financial capabilities of the affected local governments; and~~

~~(D) — The incremental cost of providing services to the project related new population for affected local governments.—~~

(c) (ii) If impact assistance payments are already being distributed to an affected area of site influence, and another facility commences construction, the Council shall consider the effect of the following factors in establishing, modifying, adjusting or revising the ~~ratio distribution~~:

(i) ~~(A)~~—The amount of impact assistance funds generated by each facility and the degree of impact in the county attributable to each facility; and

(ii) ~~(B)~~—The timeframe in which different amounts of impact assistance funds are generated by each facility in relation to the timeframe in which impacts attributable to each facility occur.

(e d) The Council may adjust, revise or modify ~~a certified ratio~~ distributions during the construction of a facility. A local government which is primarily affected by the facility and which has filed a notice of intent to be a party pursuant to W.S. 35-12-111(b), or any person issued a permit pursuant to W.S. 35-12-106, may petition the Council for review and adjustment of the distribution ~~ratio~~ upon a showing of good cause. The request shall be submitted to the Division.

(i) Upon receiving a request to modify a ~~ratio~~ distribution, the Administrator shall:

(A) Within ten (10) days after the request is received, serve a copy of the request to each local government primarily affected. A copy of the request shall be provided to the permittee. Serve a copy of the request to each entity of local government, applicant or and permittee which may be affected within ten (10) days after the request is received.

(B) Request the affected local governments, ~~applicants or and~~ permittees to submit to the Division all relevant studies, statements, reports, analyses, evaluations, compilations, or other written material which will enable the Council to determine whether the social and economic impacts have changed and establish a new ~~ratio~~ distribution.

(C) Conduct such investigations, studies, reports and evaluation as may be necessary to prepare a recommendation on the request.

(ii) The Administrator shall present the request for impact assistance funds to the Council at least thirty (30) days after the Division received the request, with a recommendation. The Council may thereupon, after consideration of the materials submitted by the local governments, applicants, permittees and Administrator, determine that the social and economic impacts from construction of the facility have changed, and establish a new ~~ratio~~ distribution as appropriate and necessary.

(~~d e~~) Pursuant to W.S. 39-15-111(c) and (d), and W.S. 39-16-111(~~e d~~) and (~~d e~~) the Council, may determine that the social and economic impacts from construction of an industrial facility upon the adjoining county are significant and establish the ~~ratio~~ distribution of impacts between all communities in the impact area.

(i) The Council may adjust, revise or modify a ~~certified ratio~~ distribution during the construction of a facility; upon receiving a written request from any person issued a permit pursuant to W.S. 35-12-106, and a showing of good cause.

(e f) Upon establishing or modifying a distribution ~~ratio~~ pursuant to W.S. 39-15-111(c) and (d), and W. S. 39-16-111 (~~e d~~) and (~~d e~~) the Division shall notify all parties.

(~~f g~~) For the purposes of this Section of these regulations, the period of construction for a facility shall end when the physical components of the industrial facility are ninety (90) percent complete. The physical components of the industrial facility shall include all materials, supplies, and

equipment included in the estimated construction cost of the facility pursuant to Section 2 (~~m~~ l) of these regulations.

**Section 13. Information Requirements Imposed Upon Exempt Activities.**

(a) No entity defined as an information applicant shall commence construction activity unless such entity has supplied the following information to the Council a reasonable time prior to the commencement of such construction:

- (i) A description of the nature and location of the construction activity.
- (ii) The estimated time of commencement of construction and construction time.
- (iii) The estimated number and job classifications, by calendar quarter, of the employees of the applicant, of its contractor or subcontractor during the construction phase and during the operating life of the facility. Such estimates shall include the number of employees who will be utilized but who do not currently reside within the area to be affected by the facility.

(b) For construction activities which are exempt from the permit requirements of the Act pursuant to W.S. 35-12-119(c), and which are associated with an industrial facility as defined by W.S. 35-12-102(a)(vii), the applicant shall provide the information required by W.S. 35-12-109(a)(iii), (iv), (v), and (viii) at the same time that the application for a permit for the industrial facility is filed.

**Section 14. Permit Transfers and Terminations.**

(a) The Administrator may recommend corrections to the name of the permit holder to the Council.

(b) The Council may authorize transfers of permits to a different person buying the assets of the permitted facility if:

(i) The matter is initiated by a written request from the current permit holder and accompanied by a written acceptance of the permit, its terms and conditions by the prospective buyer.

(ii) The matter is heard by the Council at its next meeting after notice is published and parties are notified.

(iii) Appropriate officers of the current permit holder and the acquiring company are present for examination by the Council.

(c) Petition by a Permittee for termination of the permit.

(i) Upon application for a permit termination, the Council may authorize permit termination if the Permittee demonstrates that all of the following conditions exist:

(A) The operation is in compliance with local ordinances and land use plans in force or adopted on or prior to the date of the application.

(B) Termination of the permit will not cause or add to any adverse environmental, social and economic impacts in the area of site influence, which are not regulated by another State regulatory agency, during the remaining life of the facility. The remaining life of the facility includes cessation of operations, site clearance and site reclamation.

(C) All construction phases of the facility have been completed and there are no conditions or requirements of the permit that warrant the continuation of the permit for the remaining life of the facility.

(D) Permit termination would not conflict with any statute or rule governing the facility, and would not conflict with the purposes of Act.

(ii) The Council shall consider all objections from local governments before granting a permit termination.

(iii) Within fourteen (14) days of receipt of a termination application the Director shall cause notice to be published in newspaper(s) of general circulation in the area primarily affected stating the nature of the request. Written notice shall also be provided to local governments in the area of site influence. The notice shall describe the name and location of the operation and provide for a thirty (30) day public comment period.

(iv) Prior to granting a permit termination, the Council shall provide opportunity for a public hearing if requested, in accordance with Chapter II, Section 13 and 14 of these regulations. The Council shall render a decision within ninety (90) days from the date the application is filed with the Department.

(v) The applicant shall pay an application fee to cover the costs of processing the application, inspecting, and for compliance activities. The amount shall be calculated by the Director.

#### Section 15. **Amendments.**

(a) A permit shall be amended if the applicant makes a significant change to the scope, purpose, size, or scheduling of the project; which would result in different impacts not within the scope of the approved permit.

(i) Supplemental submittals shall not be considered amendments, if they do not provide a significant change to the scope, purpose, size or scheduling of the project. In particular, material which is in the nature of a clarification in response to a request by the Division shall not be considered a permit application amendment.

(ii) An amendment to a permit application or request for waiver may be allowed on condition that the applicant agrees to an extension of time for hearings, studies and determinations, in order to allow full and adequate notice in the manner and to the persons specified in W.S. 35-12-111(a).

(b) With respect to commercial waste disposal facilities, any major changes in the type or volume of wastes received, size of the facility, changes in transportation methods or routes for waste delivery, or changes in recycling, reuse, or treatment shall require notice and prior approval from the Director. If the Director determines that these changes may result in additional adverse impacts that were not previously reviewed by the Council, the Permittee shall submit a permit amendment in accordance with the requirements of this section.

Section 16. **Waste Management Surcharge.**

(a) Each Permittee of a commercial waste incineration or disposal facility shall keep records of all wastes received by the facility. Records shall consist of:

(i) A daily log of all wastes received by the applicant by weight, source and content.

(ii) A daily record of payments made for wastes received for disposal by source, including a first accounting of invoices;

(iii) A daily record of solid wastes removed from the facility and recycled or reused; and

(iv) A daily record of hazardous wastes treated at the facility.

(b) In accordance with W.S. 16-4-203(d)(v), records supplied for purposes of verifying the surcharge payment shall be public record unless the applicant can demonstrate to the Council, at the time of permitting, that the information consists of trade secrets, privileged information, or confidential commercial information. In such case, the applicant shall stamp as "confidential" each page containing privileged information.

(c) Waste receipt and surcharge reporting shall be on a quarterly basis through the use of monthly recapitulation sheets of the daily records.

(d) In accordance with W.S. 35-12-113(g), the Permittee shall remit the surcharge no later than the last day of the second month following the end of the quarter. Failure to remit the full payment as required by this section may constitute grounds for permit revocation in accordance with W.S. 35-12-116, after notice and reasonable opportunity to correct the failure.

(e) Upon a fourteen (14) day advance notice, the Permittee shall allow audits by the Division, or its auditors. The Permittee shall provide the Division access to all records and provide the copying of all records dealing with compliance of the permit requirements and payment of the waste management surcharge.

(f) Without advance notice, the Division or its designated agent may inspect manifests for shipments to determine accuracy of record keeping and weight scales.

(g) For audit purposes, all records required by this section will be maintained a minimum of five years.

(h) All measuring devices utilized to determine the surcharge payment shall be certified by the Wyoming Department of Agriculture in accordance with W.S. 40-10-117 through 40-10-123 and inspected and recertified annually.

(i) The waste management surcharge rate shall be a minimum of \$10 per short ton for non-hazardous wastes received and \$25 per short ton for hazardous waste. The Council may impose a higher rate at the time of permitting or annually thereafter. The rate may also be lowered as long as the surcharge remains at or above the minimum set in W.S. 35-12-113(g). The Council

shall consider any of the following criteria as a basis for adjusting the surcharge rate:

- (i) National or regional cost escalation for waste disposal;
- (ii) Level of short and long term liabilities and risk to public health, safety and welfare.
- (iii) Encouragement of the use and demonstration of new and advanced technologies which benefit the community and state;
- (iv) Economic benefits accruing to the local community from the facility, including but not limited to, voluntary mitigation measures, employment opportunities, and importance to the economic stability; or
- (v) Utilization of waste reduction, recycling and treatment practices at the origin of the wastes.

(j) The Council shall authorize a reduction in the waste management surcharge rate to encourage recycling, reuse, or treatment of hazardous wastes in accordance with W.S. 35-12-113(g). To obtain the credit, the Permittee must provide for removal and recovery of useful components of the waste stream above the minimum required by W.S. 35-11-508(a) (iii). For hazardous wastes, the treatment process shall reduce the hazards and long-term risks from the wastes above the minimum treatment processes required by rules promulgated under the Environmental Quality Act. The Council may authorize a credit at, or greater than, the minimum of W.S. 35-12-113(g) if the Council finds:

(i) Economic viability - where the Permittee can demonstrate a recycling or treatment technology or method which would not be economically viable through costs in excess of the minimum credit, the Council may grant a higher credit to promote the technology or method, if the Council determines the recycling or treatment technology or method beneficial to the State.

(ii) Economic development - the credit may be increased to broaden the local economic base in the form of a subsidy to develop local recycling, reuse, or treatment enterprises. This subsidy may only be approved to increase business profitability in the growth years of the enterprise.

(k) Upon submittal of a permit application, request for waiver, or annually after permit approval, the Director may require the Permittee or applicant to provide cost data so that the Division may evaluate the merits of a surcharge rate adjustment. The information requested may include, but is not limited to:

- (i) Breakdown of operation costs.
- (ii) Breakdown of construction costs.
- (iii) Breakdown of transportation costs.
- (iv) Current tipping charges.

**Section 17. Fees.**

(a) Application Fee. The fee required by W.S. 35-12-109(b) is prepared on the basis of features of the proposed application and facility as are any increases in the Application Fee as required by W.S. 35-12-109(d).

(b) Public records may be inspected and copies provided upon written request specifying the document(s) requested. The Department may require reimbursement of costs incurred in reproducing the requested document(s). Costs will be the actual costs incurred to process the request.