

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

4 Section 1. **Authority.**

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11 ~~IV are hereby repealed.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

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

17
18 (c) All hearings before the Council shall be held pursuant to these rules, the
19 provisions of the Wyoming Environmental Quality Act, and the Wyoming Administrative
20 Procedure Act.

21
22 Section 2. **Definitions.**

23
24 (a) ~~— All of the definitions set forth and contained in the Wyoming Environmental~~
25 ~~Quality Act and the Administrative Procedure Act are incorporated herein by reference. In~~
26 ~~addition, the following definitions are set forth:~~

27
28 (i) ~~— Applicant: Any person applying for a permit authorized under the~~
29 ~~Environmental Quality Act or any party petitioning for rulemaking in accordance with W.S. 9-4-~~
30 ~~106.~~

31
32 (ii) ~~— Protestant: Any person desiring to protest the application of a permit or~~
33 ~~any person requesting a hearing before the Environmental Quality Council in accordance with the~~
34 ~~Environmental Quality Act and who is objecting to an action of the Department of Environmental~~
35 ~~Quality and desiring affirmative relief.~~

36
37 (iii) ~~— Presiding officer: The officer designated by the Chairman of the~~
38 ~~Environmental Quality Council to conduct hearings.~~

39
40 (iv) ~~— The Wyoming Administrative Procedure Act: W.S. 9-4-101 through 9-4-~~
41 ~~115, as amended.~~

42
43 The following definitions are intended to supplement the definitions set forth and
44 contained in the Wyoming Administrative Procedure Act and the Wyoming Environmental
45 Quality Act:

46
47 (a) “Attorney” means an attorney licensed to practice law in the State of Wyoming
48 or an attorney who is allowed by the Wyoming State Bar to practice law in the State of
49 Wyoming;

50
51 (b) “Contested case” means a proceeding in which legal rights, duties, or privileges
52 of a party may be determined by the Council after an opportunity for hearing;

53
54 (c) “Council” means the Environmental Quality Council;

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

57
58 (e) “Office” means the Office of Administrative Hearings;

59
60 (f) “Petition” means a written request for relief, submitted to the Council, in
61 accordance with the Wyoming Environmental Quality Act;

62
63 (g) “Petitioner” means a person who submits a written request for relief to the
64 Council in accordance with the Wyoming Environmental Quality Act;

65
66 (h) “Representative” means an officer or employee other than an attorney who is
67 authorized to function in a representative capacity on behalf of a corporate party to a
68 contested case;

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

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

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

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

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

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

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

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

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

97

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

99
100 ~~(d) — The filing of such petition shall constitute the commencement of the proceeding~~
101 ~~on the date filed.~~

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

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

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

124
125 Section 4. **Notice of Hearing.**

126
127 ~~(a) — Notice of hearings shall conform to W.S. 9-4-107(b). The manner and time for~~
128 ~~giving notice shall be as follows:~~

129
130 ~~(i) — When the Council determines that it shall hold a hearing on its own~~
131 ~~motion, it shall give notice as promptly as possible in advance of the hearing date to all parties by~~
132 ~~registered or certified mail, return receipt requested.~~

133
134 ~~(ii) — When a party desires that a hearing be held before the Council he shall~~
135 ~~file his petition and the Council shall forthwith set a date for hearing and notify the applicant~~
136 ~~thereof.~~

137
138 (a) The Council or its designee shall provide notice of any hearing, which shall
139 include:

140
141 (i) The time, place, and nature of the hearing;

142
143 (ii) The legal authority and jurisdiction under which the hearing is to be held;

144
145 (iii) The particular sections of the statutes and rules involved; and

146
147 (iv) A short and plain statement of the matters asserted. If the Council
148 is unable to state the matters in detail at the time the notice is provided, the initial notice may be
149 limited to a statement of the issues involved, and upon a party's request, a more definite
150 and detailed statement shall be furnished.

151
152 (b) The Council may provide notice by posting through its website.

153
154 Section 5. ~~Attorney General Presene~~ Record of Proceedings.

155
156 (a) ~~— In all matters before the Council, the Council may request the Attorney General~~
157 ~~of the State of Wyoming or a representative of his staff to be present throughout the hearing.~~

158
159 (b) ~~— The Council, upon its own motion or the motion of any party, may certify an~~
160 ~~issue of law to the Attorney General for his opinion. Such opinion shall thereafter be part of the~~
161 ~~record of any proceeding before the Council, and may, if the court so directs, constitute a finding~~
162 ~~of the Council with respect to the issuance of final orders or decisions.~~

163
164 (a) All proceedings shall be recorded verbatim stenographically or by another
165 appropriate means determined by the Council.

166
167 (b) The compensation of any court reporter shall be paid as required by law and as
168 ordered by the Council. The Council may direct any party or parties to assume the cost of the
169 transcript.

170
171 (c) Certified copies of the transcript may be obtained by any party or interested
172 person from the court reporter taking the testimony at such fee as the court reporter may charge.

173
174 (d) The Council shall make appropriate arrangements to assure that a record of the
175 proceeding is kept pursuant to W.S. 16-3-107(o) and (p).

176
177 Section 6. ~~Record of Proceedings—Reporter~~ Contested Surface Water Discharge
178 Permit Hearings.

179
180 (a) ~~— Unless otherwise agreed by the parties and consented to by the Council, all~~
181 ~~hearings, including all testimony, shall be reported verbatim by a competent reporter. The~~
182 ~~compensation of such reporter shall be paid as required by law and as ordered by the Council.~~
183 ~~The Council may direct any party or parties to assume the cost of the transcript.~~

184
185 Members of the shall recuse themselves from contested case proceedings involving the
186 review of surface water discharge permits if they derive a significant portion of their income
187 directly or indirectly from the permit holder or applicant for the permit subject to review by the
188 Council, in accordance with the Clean Water Act, Section 304(i)(d), 33 U.S.C. § 1314(i)(d), and
189 40 C.F.R. § 123.25(c).

190
191 Section 7. ~~Record~~ Air Quality Division, State Implementation Plan.

192
193 (a) ~~— The record in all contested cases (Chapter II) shall include:~~

- 195 (i) ~~All formal and informal notices.~~
196
197 (ii) ~~Evidence received or considered including matters officially noticed.~~
198
199 (iii) ~~Questions and offers of proof, objections, and rulings thereon.~~
200
201 (iv) ~~Any proposed findings and objections thereto.~~
202
203 (v) ~~The decision and order of the Council.~~
204
205 (vi) ~~The transcript of all recorded proceedings.~~
206

207 (b) ~~The record in hearings held under Chapter III shall include all relevant~~
208 ~~information presented to the Council.~~
209

210 (c) ~~At the close of the hearing, the presiding officer may afford all interested parties~~
211 ~~time in which to submit additional written testimony or written proposed corrections of the~~
212 ~~transcript, pointing out errors that may have been made in transcribing the testimony. The~~
213 ~~presiding officer shall promptly thereafter order such corrections made as in his judgement are~~
214 ~~required to make the transcript conform to the testimony.~~
215

216 (a) The following are the only requirements in these procedural rules that are part
217 of the Air Quality Division's State Implementation Plan:
218

219 (i) The Council shall have at least a majority of members who represent the
220 public interest and do not derive a significant portion of their income from persons subject to Air
221 Quality permits or enforcement orders, as required by the Clean Air Act, Section 128(a)(1), 42
222 U.S.C. § 7428(a)(1);
223

224 (ii) Members of the Council shall disclose any potential conflicts of interest
225 in a public meeting of the Council, as required by the Clean Air Act, Section
226 128(a)(2), 42 U.S.C. § 7428(a)(2).
227

228 (b) All other requirements of these procedural rules, except those described in
229 Section 7, are reserved to the authority of the State and are not part of the Air Quality Division's
230 State Implementation Plan.
231

232 **Section 8. Appeals to Council.**
233

234 (a) ~~Appeals to the District Court from decisions of the Council are governed by W.S.~~
235 ~~9-4-114 Rule 12 of the Wyoming Rules of Appellate Procedure, and W.S. 35-11-1001, and 1002.~~
236

237 (b) ~~In case of an appeal of the District Court as above provided, the party appealing~~
238 ~~shall secure and file a transcript of the testimony and all other evidence offered at the hearing.~~
239

240 ~~The compensation of the reporter for making the transcript of the testimony and all other costs~~
241 ~~involved in such appeal shall be borne by the party prosecuting such appeal.~~
242

243 (a) Where authorized by the Wyoming Environmental Quality Act, appeals to the

244 Council from final actions of the Administrators or Director shall be made within thirty (30)
245 days of notification of such action.

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

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

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

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

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

266
267 (iv) The relief sought is not the issuance of a permit where a permit has been
268 denied by the Director.

269
270 Section 9. ~~Pre-Hearing Conference~~ **Appeals from Final Council Action.**

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

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

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

278
279 ~~(iii) The possibility of obtaining admissions of the fact and of documents to~~
280 ~~avoid unnecessary proof.~~

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

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

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

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

293
294 Any party to an action before the Council may seek judicial review of the Council's
295 final decision, in accordance with applicable law and court rules.
296

297 Section 10. ~~Time~~ Incorporation by Reference.
298

299 (a) ~~When time prescribed by these rules or by order of the Council for doing any act~~
300 ~~expires on a Saturday or legal holiday, such time shall extend to and include the next succeeding~~
301 ~~business day.~~
302

303 (b) ~~For good cause shown, extensions and continuances of time may be granted or~~
304 ~~denied in the discretion of the Council.~~
305

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

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

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

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

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

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

324 ~~Section 11. Settlement.~~
325

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

329 ~~Section 12. Deviation and Amendment.~~
330

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

334 (b) ~~Any amendments to these rules shall become effective as provided by W.S. 9-4-~~
335 ~~103 and 9-4-104.~~
336

337 ~~Section 13. Exclusion.~~
338

339 (a) ~~Nothing in these Rules shall be construed as prohibiting the Environmental~~
340 ~~Quality council and the Administrators of the Divisions of Land, Air, or Water Quality or their~~
341

342 ~~designee from holding informational proceedings, hearings, or conferences for the purpose of~~
343 ~~aiding the Council or the Administrator in ascertaining and determining facts necessary for the~~
344 ~~performance of their respective duties. Any person believing himself aggrieved by a~~
345 ~~determination made by the Administrator or his designee following an informational proceeding,~~
346 ~~hearing, or conference and who is otherwise entitled thereto, may upon filing a petition or~~
347 ~~complaint with the Council, obtain a full hearing or review upon the merits, which matter shall be~~
348 ~~heard and tried de novo.~~

349
350 ~~(b) — Disrespectful, disorderly or contumacious language or contemptuous conduct,~~
351 ~~refusal to comply with directions, continued use of dilatory tactics, or refusal to adhere to~~
352 ~~reasonable standards of orderly and ethical conduct, at any hearing before the Council, shall~~
353 ~~constitute grounds for immediate exclusion before the hearing.~~

354
355 ~~Section 14. Meeting of Council and Advisory Boards.~~

356
357 ~~(a) — All meetings of the Council and the Advisory Board shall be conducted in~~
358 ~~accordance with Robert's Rules of Order.~~

359
360 ~~(b) — The four regular meetings of the Council and the Advisory Boards required by~~
361 ~~W.S. 35-11-113 and W.S. 35-11-111(d) of the Act shall be called by the Chairman after~~
362 ~~consultation and coordination with the Administrator or Director, respectively.~~

363
364 ~~Section 15. Contested Water Discharge Permit Hearings.~~

365
366 ~~Members of the Environmental Quality Council who do not comply with the requirements set~~
367 ~~forth in 40 C.F.R. 123.25 (July 2003) shall recuse themselves from contested case proceedings in~~
368 ~~which the approval of a surface water discharge permit, or portions of a permit, is being~~
369 ~~considered by the Council.~~

370
371 ~~Section 16. Air Quality Division, State Implementation Plan.~~

372
373 ~~(a) — The following are the only requirements in these procedural rules that are part of~~
374 ~~the Air Quality Division's State Implementation Plan:~~

375
376 ~~(i) — The Council shall have at least a majority of members who represent the~~
377 ~~public interest and do not derive a significant portion of their income from persons subject to~~
378 ~~Air Quality permits or enforcement orders, as required by the Clean Air Act, Section 128(a)(1),~~
379 ~~42 U.S.C. § 7428(a)(1);~~

380
381 ~~(ii) — Members of the Council shall disclose any potential conflicts of interest~~
382 ~~in a public meeting of the Council, as required by the Clean Air Act, Section 128(a)(2), 42~~
383 ~~U.S.C. § 7428(a)(2).~~

384
385 ~~(b) — All other requirements of these procedural rules, except those described in~~
386 ~~Section 7, are reserved to the authority of the State and are not part of the Air Quality Division's~~
387 ~~State Implementation Plan.~~

388
389 ~~Section 17. Appeals to Council.~~

390

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

394
395 ~~(b) — Within 30 days after notification of any administrative decision following an~~
396 ~~informal conference relating to a surface coal mining operation, the applicant or any person with~~
397 ~~an interest which is or may be adversely affected may appeal the decision to the Council for a~~
398 ~~hearing in accordance with Chapters I and II. The Council shall make a final written decision~~
399 ~~within thirty (30) days after the hearing and furnish the decision to the applicant and all parties to~~
400 ~~the hearing.~~