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CHAPTER 2
CONTESTED CASE HEARINGS

Section 1. Purpose and Scope.

These rules are promulgated with the intent to utilize as much as practicable of the uniform contested case rules that the Office of Administrative Hearings adopted under W.S. 16-3-102(d). These rules shall govern all contested case proceedings before the Council.

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

The Council shall conduct all contested case hearings with reference to the Wyoming Rules of Civil Procedure. Section 25 of this chapter specifically incorporates Rules 4, 12(b)(6), 24, 25, 45, 52, 56, and 56.1 of the Wyoming Rules of Civil Procedure.

Section 3. Informal Proceedings and Alternative Dispute Resolution.

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

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

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

Section 4. Initiation of Contested Case.

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

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

(ii) Where a person is objecting to a permit, service of all documents

45 shall include the permit applicant when serving the petition and all other pleadings and
46 motions.

47
48 (b) The petition for hearing shall set forth:

49
50 (i) Name, phone number, electronic mail address, and physical
51 address of the petitioner and, if applicable, the petitioner's attorney;

52
53 (ii) The action, decision, order, or permit upon which a hearing is
54 requested;

55
56 (iii) A statement in ordinary but concise language of the specific
57 allegations on which the petition is based, including references to the statute, rule, or
58 order that the petitioner alleges has been violated, and

59
60 (iv) A request for hearing before the Council.

61
62 (c) The contested case shall be deemed commenced on the date of filing the
63 petition with the Council, as long as the petition is served on each defendant within sixty
64 (60) days of filing. If service is not made within sixty (60) days of filing, then the
65 contested case shall be deemed commenced on the date when service is made.

66
67 (d) No responsive pleadings are mandatory prior to the prehearing scheduling
68 conference.

69
70 **Section 5. Filing and Service of Papers**

71
72 (a) In all proceedings, the parties shall file all original documents, pleadings,
73 and motions with the Council and serve all other parties with true and correct copies of
74 the particular document, pleading, or motion. The original and all copies shall be
75 accompanied by a certificate of service. The Council shall maintain the complete
76 original file, and all parties and the hearing officer shall be provided copies of all
77 contested case documents, pleadings, and motions contained therein.

78
79 (b) Filing and service under this rule shall be made by hand delivery, U.S.
80 mail transmittal to the last known address, or electronically uploaded to the relevant
81 docket at <http://wyomingeqc.wyo.gov/>. Where all parties have not consented to receive
82 electronic service, the party electronically filing shall otherwise serve the documents to
83 the parties who have not consented to receive electronic service. Parties may file by
84 means other than those described in this Section upon approval from the hearing officer.

85
86 **Section 6. Referral to Office.**

87
88 (a) Upon referral to the Office to conduct a contested case in accordance with

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

92
93 (b) The Council shall submit a transmittal sheet, on a form provided by the
94 Office, sufficiently identifying the contested case, including:

95
96 (i) The name of the known parties and their attorneys or
97 representatives;

98
99 (ii) A concise statement of the nature of the contested case;

100
101 (iii) Notification of any time limits for the setting of a hearing or entry
102 of a decision, location requirements, and anticipated special features or unique
103 requirements; and

104
105 (iv) Certification by an authorized officer of the Council that all parties
106 have been properly served with a true and complete copy of the transmittal form.

107
108 **Section 7. Designation and Authority of Hearing Officer; Recusal.**

109
110 (a) The Chair may refer, assign, or designate a hearing officer to preside
111 over any contested case unless otherwise provided by law. When appropriate under
112 applicable law and at the Council's request, the hearing officer may provide a
113 recommended decision.

114
115 (b) At any time while a contested case is pending, a hearing officer or
116 Council member may withdraw from a contested case by filing written notice of recusal
117 or entering a verbal notice of recusal into the record. As soon as the notice of recusal is
118 entered, the recused hearing officer or Council member shall not participate in the
119 contested case.

120
121 (c) Any party may move for recusal of a hearing officer or Council member
122 for cause. Grounds for recusal include that the hearing officer or Council member:

123
124 (i) Has been engaged as counsel for any party to the action prior to
125 being appointed as hearing officer;

126
127 (ii) Has an interest in the outcome of the action;

128
129 (iii) Is a spouse, child, grandchild, parent, grandparent, or other
130 relative or person who maintains a close familial relationship with a party;

131
132 (iv) Is a witness in the action;

133

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

136

137 (vi) Any other ground provided by law.

138

139 (d) A motion for recusal shall be supported by an affidavit or affidavits of
140 any person or persons stating sufficient facts and law to show the motion should be
141 granted. Prior to a hearing on the motion, any party may file counter-affidavits. The
142 motion shall be heard by the hearing officer or, at the discretion of the hearing
143 officer, by another hearing officer appointed for the limited purpose of resolving the
144 motion. If the motion is granted, the Council Chair shall immediately designate another
145 hearing officer to preside over the contested case or shall excuse the hearing panel
146 member(s).

147

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

150

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

153

154 Section 8. **Appearances and Withdrawals.**

155

156 (a) A party, whether it be an individual, corporation, partnership, governmental
157 organization, or other entity may appear through an attorney or representative. An
158 individual may represent himself/herself. An individual or entity seeking to intervene in
159 a contested case may appear prior to a ruling on the motion to intervene.

160

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

167

168 (i) The attorney wishes to withdraw;

169

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

172

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

175

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

178
179 (v) The pleadings and papers in the case shall be served upon the
180 client at the client's last known address; and

181
182 (vi) The client has the right to object within 15 days of the date of
183 notice.

184
185 (c) Prior to withdrawing from a contested case, a representative shall provide
186 written notice of withdrawal to the Council.

187
188 **Section 9. Intervention.**

189
190 (a) Any person interested in obtaining the relief sought by a party or
191 otherwise interested in the determination of a proceeding, other than surface coal mining
192 operations pending before the Council, may file a motion to intervene before or at the
193 hearing, but not thereafter except for good cause shown. The motion shall set forth the
194 grounds of the proposed intervention, the position and interest of the petitioner in the
195 proceeding, and affirmative relief sought. Leave shall not be granted unless the Council
196 determines that the movant is adversely affected by the action and has a legal right to
197 intervene.

198
199 (b) For proceedings related to surface coal mining operations, any person may
200 file a motion for leave to intervene as a full party or in a limited capacity at any stage of a
201 proceeding conducted by the Council. The motion shall include the basis for intervention
202 and shall be granted to any person who either could have initiated the proceeding or has
203 an interest that may be adversely affected by the outcome of the proceeding. Regardless
204 of these bases, intervention may be granted whenever appropriate after considering the
205 nature of the issues, the adequacy of the existing parties' representation of movant's
206 interest, the ability of the movant to present relevant evidence and argument, and the
207 effect of intervention on the implementation of the Wyoming Environmental Quality
208 Act. The extent and terms of participation by an intervenor in a limited capacity shall be
209 determined by the Council.

210
211 (c) If the to motion intervene is granted, the movant becomes an intervenor
212 and a party to the proceeding with the right to have notice, appear at the taking of
213 testimony, produce and cross-examine witnesses, and be heard on the argument of the
214 case. The party intervening shall give notice of intervention to all other parties.

215
216 **Section 10. Ex Parte Communications.**

217
218 Except as authorized by law, a party or a party's attorney or representative shall
219 not communicate with any Council member in connection with any issue of fact or law
220 concerning any pending contested case, except upon notice and opportunity for all
221 parties to participate. Should ex parte communication occur, the Council member shall

222 advise all parties of the communication as soon as possible thereafter and, if requested,
223 shall allow any party an opportunity to respond prior to ruling on the issue.

224

225 **Section 11. Motions and Motion Practice.**

226

227 (a) Unless these rules or an order of the hearing officer establish time
228 limitations other than those contained herein, all motions except motions for enlargement
229 of time and motions made during hearing shall be served at least 10 days before the
230 hearing on the motion. A party affected by the motion may serve a response together
231 with affidavits, if any, at least three days before the hearing on the motion or within 20
232 days after service of the motion, whichever is earlier. Unless the hearing officer permits
233 service at some other time, the moving party may serve a reply, if any, at least one day
234 prior to the hearing on the motion or within 15 days after serving the response,
235 whichever is earlier. Unless the hearing officer otherwise orders, any party may serve
236 supplemental memoranda or rebuttal affidavits at least one day prior to the hearing on
237 the motion.

238

239 (b) Unless the hearing officer otherwise orders, a request for a hearing on the
240 motion may be served by the moving party or any party affected by the motion
241 within 20 days after serving the motion. The hearing officer may act on the motion
242 without a hearing.

243

244 (c) Prior to filing any non-dispositive motion, a party shall make reasonable
245 efforts to contact all other parties, representatives, and attorneys. Any such non-
246 dispositive motion shall include a statement concerning the party's efforts to confer with
247 the other parties and positions on the motion.

248

249 (d) All written motions filed with the Council shall be accompanied by a
250 proposed order.

251

252 **Section 12. Setting Hearings and Other Proceedings.**

253

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

257

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

259

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

262

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

265

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

270
271 (c) Prehearing conferences may be held at the discretion of the hearing
272 officer. Any party may request a prehearing conference to address issues such as
273 discovery, motion deadlines, scheduling orders, or case status.

274
275 (d) At the hearing officer's discretion and unless otherwise provided by the
276 Council, telephone or videoconference calls may be used to conduct any proceeding. At
277 the discretion of the hearing officer, parties or their witnesses may participate in any
278 hearing by telephone or videoconference.

279
280 **Section 13. Consolidation.**

281
282 A party may seek consolidation of two or more contested cases by filing a
283 motion to consolidate in each case sought to be consolidated. If consolidation is ordered
284 and unless otherwise ordered by the hearing officer, the cases shall be consolidated
285 into the first case filed. All subsequent filings shall be in the case first filed, and all
286 previous filings related to the consolidated cases shall be placed together under that
287 docket number. Consolidation may be ordered on a hearing officer's own motion.

288
289 **Section 14. Continuances, Extensions of Time, and Duty to Confer.**

290
291 (a) A motion for a continuance of any scheduled hearing shall be in
292 writing and state the reasons for the motion. A motion for a continuance shall be
293 granted only upon a showing of good cause.

294
295 (b) A motion for an extension of time for performing any act prescribed or
296 allowed by these rules or by order of the hearing officer shall be filed and served on all
297 parties and the hearing officer prior to the expiration of the applicable time period. A
298 motion for extension of time shall be granted only upon a showing of good cause.

299
300 (c) For contested cases conducted regarding objections pursuant to W.S. 35-
301 11-406(k), a motion for continuance may not be granted if the motion would continue
302 the hearing beyond the 20-day period provided in that statute unless the parties stipulate
303 to a different period.

304
305 **Section 15. Discovery.**

306
307 (a) The taking of depositions and discovery shall be in accordance with
308 W.S. 16-3-107(g).

309

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

312
313 **Section 16. Subpoenas.**

314
315 Any party may request the hearing officer to issue a subpoena to compel the
316 attendance of a witness or for the production of documents. Requests for a subpoena
317 shall be accompanied by a completed subpoena that conforms to Rule 45 of the
318 Wyoming Rules of Civil Procedure.

319
320 **Section 17. Prehearing Procedures.**

321
322 (a) Unless otherwise ordered by the hearing officer, each party to a
323 contested case shall file and serve on all other parties and the hearing officer a
324 prehearing disclosure statement setting forth:

325
326 (i) A complete list of all witnesses who will or may testify,
327 information on how each witness may be contacted, and a brief description of the
328 testimony each witness is expected to give in the case. If a deposition is to be offered into
329 evidence, the certified deposition shall be filed with the Council;

330
331 (ii) A statement of the specific claims, defenses, and issues that the
332 party asserts are before the hearing officer for hearing, based on the party's initial filing;

333
334 (iii) A statement of the burden of proof to be assigned in the contested
335 case, referring to specific regulatory, statutory, constitutional, or other authority
336 established by relevant case law;

337
338 (iv) A statement of stipulated facts. If the parties are unable to stipulate
339 to facts, the parties shall indicate what efforts have been made to stipulate to facts and the
340 reasons facts cannot be stipulated;

341
342 (v) A complete list of all evidence that a party will or may introduce
343 into evidence and copies of all documentary evidence that the party will or may
344 introduce; and

345
346 (vi) An approximation of the time required for the hearing.

347
348 (b) Parties shall file and serve prehearing disclosure statements on or before
349 the date established by the hearing officer through the scheduling order.

350
351 (c) The information provided in a prehearing disclosure statement shall be
352 binding on each party throughout the course of the contested case unless modified
353 for good cause.

354

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

358

359 (e) The hearing officer may modify the requirements of a prehearing
360 disclosure statement.

361

362 (f) Failure to file a prehearing disclosure statement may result in the hearing
363 officer excluding witnesses, exhibits, claims and defenses, or dismissing the contested
364 case.

365

366 (g) If a prehearing order is entered, the prehearing order shall control
367 the course of the hearing.

368

369 Section 18. **Burden of Proof.**

370

371 The hearing officer shall assign the burden of proof in accordance with
372 applicable law.

373

374 Section 19. **Evidence.**

375

376 (a) The hearing officer shall rule on the admissibility of evidence in
377 accordance with the following:

378

379 (i) Evidence of the type commonly relied upon by reasonably prudent
380 persons in the conduct of their serious affairs shall be admissible. Irrelevant, immaterial,
381 or unduly repetitious evidence may be excluded.

382

383 (ii) Evidence may be offered through witness testimony or in
384 documentary form;

385

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

390

391 (iv) The rules of privilege recognized by Wyoming law shall be
392 given effect; and

393

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

396

397 (b) Each party shall have the opportunity to cross-examine witnesses. The

398 hearing officer may allow cross-examination on matters not covered on direct
399 examination. Each party shall have the opportunity to perform re-direct examination of
400 witnesses on matters covered during cross-examination.

401

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

404

405 Section 20. **Contested Case Hearing Procedure.**

406

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

409

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

415

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

418

419 Section 21. **Default.**

420

421 Unless otherwise provided by law, a hearing officer may enter an order of
422 default or an order affirming agency action for a party's failure to appear at a lawfully
423 noticed hearing. Where a contested case has due process implications, a hearing officer
424 may not enter judgment before the agency presents a prima facie case.

425

426 Section 22. **Expedited Hearing.**

427

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

431

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

435

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

439

440 Section 23. **Recommended Decision.**

441

442 In those contested cases where the hearing officer makes a recommended
443 decision, the hearing officer shall file the recommended decision with the Council and
444 serve copies of the recommended decision on all parties to the contested case. Unless
445 otherwise ordered, parties must file written exceptions to the hearing officer's
446 recommended decision within ten (10) days of the recommended decision being filed.
447 Written exceptions shall be filed with the Council and served on all parties.

448
449 **Section 24. Final Decision.**

450
451 (a) A final decision containing findings of fact, conclusions of law, and an
452 order entered by the Council shall be in writing and served upon all parties to the
453 contested case and the hearing officer, if applicable.

454
455 (b) A final decision shall include findings of fact and conclusions of law,
456 separately stated. When the hearing officer allows the parties to submit a proposed final
457 order, the parties shall file the original with the Council and serve copies of the
458 proposed order on all other parties and the hearing officer.

459
460 (c) At any time prior to judicial review, a hearing officer may correct clerical
461 errors in final decisions or other parts of the record. A party may move that clerical
462 errors or other parts of the record be corrected. During the pendency of judicial review,
463 such errors may be corrected only with leave of the reviewing court.

464
465 **Section 25. Incorporation by Reference.**

466
467 (a) These rules incorporate by reference Rules 4, 12(b)(6), 24, 45, 52, 56, and
468 56.1 of the Wyoming Rules of Civil Procedure, as in effect on July 1, 2016, available at
469 <http://www.courts.state.wy.us/WSC/CourtRule?RuleNumber=48>;

470
471 (b) These rules do not incorporate later amendments or editions of the
472 incorporated matter.

473
474 (c) All incorporated matter is available for public inspection at the
475 Department's Cheyenne office. Contact information for the Cheyenne Office may be
476 obtained at <http://deq.wyoming.gov> or from (307) 777-7937.

477