

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

IN THE MATTER OF THE PROPOSED) REVISIONS TO CHAPTERS 1 & 2 OF THE) RULES AND REGULATIONS OF THE) INDUSTRIAL SITING COUNCIL)	STATEMENT OF PRINCIPAL) REASONS OF ADOPTION) DOCKET DEQ/ISC 13-08)
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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 Chapters 1 and 2 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. Chapter 2 sets forth the practice and procedures by which the Industrial Siting Council will reach informed decisions on whether or not a permit shall be granted for applications to construct industrial facilities. Revisions are necessary to incorporate changes that occurred to the Act, which became effective on July 1, 2011, and July 1, 2012. In addition, revisions are necessary to address the request of the Governor's Office to streamline agency rules in a memo dated April 9, 2013. The proposed revisions are anticipated to make regulation more efficient and streamlined.

Summary of the Principal Reasons for Revision of Rules

The principal reasons driving the revisions to the Rules are to:

- update existing rules to incorporate changes made to the Act,
- streamline Rules to address the request of the Governor's Office and make the Rules more clear and concise,
- clarify administrative procedures, correct typos, and rectify obsolete statutory references by the authority of 35-12-105.

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

A. Chapter 1

Several changes were made throughout Chapter One. 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 1, Authority:** The language under Severability, previously in Chapter 1, Section 18, was removed and relocated to Section 1, Authority. This change was made in effort to streamline the Rules.
2. **Section 2, Definitions:** There were several definitions throughout Chapter 1 that were relocated to Section 2. It is easier for the public to look to one section for the definitions that will be used in the rules. In addition, definitions located in the statute and terms that were no longer existed in the rules were removed from this section. These revisions were made in effort to streamline the rules.
3. **Section 4, Jurisdictional Meeting:** In this section, text was added to address the process for dispute resolution by clarifying the Division's structure and administrative process.
4. **Section 6, General Format of Application or Request for Waiver:** The revisions in this section were reformatting text, correcting typos, and the removal of text where appropriate in order to streamline the Rules.
5. **Section 7, Information to be Submitted:** The revisions in this section were shortening the title to streamline the Rules, reformatting text, and correcting typos.
6. **Section 8, Decision of Council Request for Waiver:** This section was consolidated into section 7. The text involving definitions moved to Chapter 1, Section 2 Definitions. In addition, simplifying the text regarding land use plans is proposed in order to streamline the Rules.
7. **Section 9, Application Information to be Submitted:** Revisions in this section centered upon correcting typos, updating references due to previous deletions, and using more concise text. Text was added regarding the water supply to implement W.S. 35-12-109(a)(xiii)(O) and facilitate 35-12-108(f). Text was removed from this section and added to the next section due to the legislative change that financial capability apply to wind projects alone.
8. **Section 10, Additional Application Requirements for Wind Energy Facilities:** Revisions in this section centered upon correcting typos, updating references due to previous deletions and the addition of new text. The new text provides compliance monitoring as required by W.S. 35-12-

117, a process for forfeiture, and sets the procedures for the changes to the Act requiring notice and offering participation to affected landowners. In addition, the financial capability requirement from Section 9 was moved verbatim into this section in accordance with the legislative change that financial capability apply to wind energy projects.

9. **Section 12, Decision of Council:** Revisions in this section centered upon correcting typos, updating references due to previous deletions, reformatting text due to deletions, and removing definitions from the text and placing them in Chapter 1 Section 2 Definitions.
10. **Section 15, Permit and Termination:** This section was reformatted to address the deletion of Section 8 and renamed for clarity. Text was added to provide procedures to facilitate W.S. 35-12-106(b) and to provide an orderly and necessary process for termination of a permit. Text was removed where appropriate in order to streamline the Rules.
11. **Section 15, Fees:** This section was created by authority granted under W.S. 35-12-105 to establish the necessary procedures for billing and collecting fees.
12. **Section 18, Severability:** This section was deleted and the text was moved to Chapter 1, Section 1 Authority.

The proposed revisions to Chapter 1 reduce the number of Sections from 18 to 17. The proposed changes shorten the Rules in Chapter 1 by 4 pages.

B. Chapter 2

Chapter 2 did not have significant revisions. Most changes consisted of small reformatting of text and typographical corrections in order to reduce and streamline the rules. The items below identify the substantive revisions and the reason for such revisions.

1. **Section 1, Authority:** The language under Severability, previously in Chapter 2, Section 22, was removed and combine with the Authority section. This change was made in effort to streamline the Rules.
2. **Section 3, Definitions:** The revisions in this section included the removal of definitions that are located in the statute and the removal of text where appropriate in order to streamline the Rules.

Definitions for terms that were no longer used in the language of the Rules were removed as a cleanup effort.

3. **Section 4, Initiation of Proceeding:** The revisions in this section were the removal of text where appropriate in order to streamline the Rules.
4. **Section 14, Order of Procedure at Hearings:** The revisions in this section were the removal of text where appropriate in order to streamline the Rules. In addition, the section was reformatted to address the deletions within the text of the section.
5. **Section 22, Rehearing:** This section was deleted, as it is unnecessary. Rules for Appealing a Decision are already in place. The removal of the section streamlines the rules as requested by the Memo.
6. **Section 23, Severability:** This section was deleted and needed text was placed in Section 1. The removal of the section streamlines the Rules.
7. **Section 24, Amendment:** This section was reformatted to address the deletions from sections 22 and 23.

The proposed revisions to Chapter 2 reduce the number of sections from 24 to 22. The proposed revisions do not result in the reduction in the number of pages for the rules.

Proposed Rules and Statement of Reasons

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.

This language was moved from the Section 18 Severability and combined with this section to reduce the length of the rules.

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:

...

(c) “Area substantially affected” means those counties and municipalities in the area primarily affected including those who chose not to become parties and are entitled to receive the notice of W.S. 35-12-113(f).

This provides a definition to term used in the statute.

(e) (d) “Areas of site influence” means ...

~~(d) “Commercial waste disposal facility” includes the waste disposal facilities defined in W.S. 35-12-102(a) (vii). Commercial waste disposal facilities do not include municipal or county operated landfills which receive wastes generated within the political subdivision of the municipality, county, or a solid waste district.~~

This definition was removed because the Division believes that a commercial waste disposal facility does not require a definition and is self-explanatory.

...

~~(j) “Discharge” means the release of any contaminant, wastes or other material or~~

object, into the waters of the state that will alter the physical, chemical or biological properties of such waters.

The definition was removed to streamline the rules and also because discharges are regulated through other Divisions of DEQ.

~~(k)~~ (j) "District or Special District" means ...

...

~~(m) — "Emission" means a release into the outdoor atmosphere of odorous material, dust, fumes, mist, smoke, other particulate matter, vapor, gas or any combination of the foregoing, but shall not include steam or water vapor.~~

"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.

This "Emission" definition was removed to streamline the rules and also because emissions are regulated by other Divisions of DEQ. Environment was moved from Section 10 to consolidate the definitions in one area.

(n) "Estimated construction costs" means ...

...

~~(q) — "Household refuse" and/or "industrial refuse" shall mean all liquid or solid waste generated by residential and/or industrial activities. This includes, but is not limited to, sludges and residues of treated wastes~~

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

"Household refuse" and "industrial refuse" were removed because they do not require a definition and are self-explanatory. Also, "Health" was relocated from Section 10 to consolidate the definitions in one area.

(r) "Information applicant" means ...

...

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

This clarifies that date of the Standard Occupational Classification System that should be used.

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

~~(u) — "Office" means either the director or administrator.~~

This definition was removed because it was confusing and was not used in the rules.

(v) (u) “Oil and gas drilling facilities” are ...

...

(x) —“Permit applicant” or “applicant” means any person who applies for a permit to construct an industrial facility pursuant to the Act and these regulations.

This definition was removed to streamline the rules and because it was self-explanatory.

(y) (w) “Permit termination” means ...

...

(aa) “Safety” shall mean freedom from fear of 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.

This definition was moved from Section 10 to consolidate all definitions in one area.

(ae) —“Site location” means the actual physical and geographical location of the proposed industrial facility and its dependent components.

(ad) —“Solid waste” means garbage and other discarded solid materials including solid waste materials resulting from industrial, commercial, and agricultural operations and from community activities.

These definitions were removed to streamline the rules and because the Division believes they are self-explanatory.

(ab) “Studies” shall include ...

...

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

This was moved from Section 10 to consolidate the definitions in one area.

(ae) “Wellfield activity” means ...

...

(ah) —“Wyoming resident” means any person who has maintained continuous residency in Wyoming for at least twelve (12) consecutive months.

This was removed to streamline the rules and because there is no reference to a Wyoming resident in these rules.

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:

...

(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 deposit of revenues, payment of expenditures, and accounting will be performed by the director according to the accounting standards and procedures used by the State of Wyoming. 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:

These changes provide authority for the Director to make conditional determinations and also make grammatical changes.

(i) Be determined by ...

...

(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.

This provides the Director with flexibility in dealing with inadequate information.

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:

...

(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.

(e)—All pages in an application or request for waiver shall be consecutively numbered.

This change combines these two subsections to streamline the rules and reduce their length.

(d)(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) Attestation that the company has the financial capability to construct, maintain, operate, decommission and reclaim the facility; and~~

This change was necessary based on the legislature's directive that financial capability demonstrations are only required of wind energy projects.

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

~~(e)(d) Each application or request for waiver shall be considered to be continuing and the applicant is under a duty to immediately notify the division of any changes of facts or applicable law materially affecting such application or request for waiver up to and including the date on which the permit or request for waiver is issued or denied. The applicant shall notify the Division immediately whenever it submits an application or receives a permit or approval subsequent to submitting an application or waiver request under the Act which would require a material change in the design, or 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 16 of these rules if the Division determines that such differences materially change the nature, location or impact of the proposed industrial facility.~~

This removes unnecessary and repetitive language from the rule.

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

~~(g)(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.

This change is for clarity. References pertain to the application and not the summary.

~~(h)(g)~~ Whenever the ...

...

~~(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 sections 107(b)(xi) and 109(a)(xiii).

This additional allows the Division to conduct the reviews and monitoring required by Sections 110 and 117 of the Act in an expedient manner.

Section 7. Request for Waiver Information to be Submitted.

In an effort to streamline the rules, the Division has recommended consolidating Sections 7 & 8. Both Sections address Request for Waivers and therefore, they can be combined.

(a) The request for waiver shall contain ...

~~Section (8). Decision of Council Request for Waiver.~~

(a)(b) The Council shall grant a request for a waiver either as proposed or as modified ...

(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. ~~The terms "environment", "social condition", and "economic condition" have the same meaning as attributed to them in Section 12 of these regulations, and include consideration of the health, safety, and welfare of the 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.

Because these definitions were consolidated in Section 2, there is no need for this language.

(ii) A proposed industrial facility is considered to be designed in compliance with applicable local ordinances, ~~and regulations and compatible with land use plans issued thereunder~~ 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. ~~A proposed industrial facility will be deemed compatible with applicable land use plans if the construction, presence and operation of the proposed industrial facility would be permitted under land use plans adopted and in effect on the date of submittal of the request for waiver.~~

The substantive requirements of the second sentence were consolidated with the first in order to streamline the rules.

(b)(c) If the Council finds that ...

Section (9)8. Application Information to be Submitted.

In accordance with W.S. 35-12-109, the application shall contain ...

...

(c) A general description of the major components and dependent components of the proposed industrial facility ~~such as boilers, steam generators, turbine generators, cooling facilities, production equipment, and dependent components.~~

This change streamlines the rules while keeping the substantive requirements of the regulations in place.

(d) A description of ...

...

(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(e) and (b), (c), and (d) respectively, of these regulations. 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.

This change corrects the regulatory references and also removes unnecessary language which streamlines the rules while keeping the substantive requirements of the regulations in place.

(h) Using tables, ...

...

(i) ~~An evaluation of the social and economic conditions in the area of site influence.~~ 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 ~~may~~ include, but is not limited to:

This change combines the first and second sentence to streamline the rules but keeps the substantive requirements in place.

(i) ~~Land use designation of the site location, including~~ 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;

This change streamlines the rules while keeping the substantive requirements of the regulations in place.

(ii) A study of the ...

...

(v) An analysis of effects on transportation facilities containing discussion of roads (surface, type), and railroads (if applicable). ~~An analysis of effects on transportation facilities including effects on service levels of roads, haul routes for materials and supplies, increased rail traffic at grade crossings, and intersection of new access roads with existing roads;~~

This change streamlines the rules while keeping the substantive requirements of the regulations in place.

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

(A) Facilities required for the administrative functions of government:

(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;

This addition implements section 109(a)(xiii)(O) and facilitates section 108(f).

(C) Solid waste collection and disposal services ...

...

(G) An analysis of ~~user-oriented~~ community recreational facilities and programs and urban outdoor recreational opportunities ~~including descriptions of recreational resources, locations of the recreational resources, and the types of recreational resources and an analysis of outdoor, resource-oriented recreational opportunities including locations and types of the recreational resources;~~

This change streamlines the rules while keeping the substantive requirements of the regulations in place.

(H) Educational facilities...

...

(j) An evaluation analysis of the environmental impacts. ~~The items shall be noted and evaluated 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.~~

This change streamlines the rules while keeping the substantive requirements of the regulations in place.

(k) The applicant shall describe ...

...

~~(p) The application shall contain information demonstrating the applicant's financial capability to construct, maintain, operate, decommission; and reclaim the land of 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 publically traded and are required to publicly disclose financial statements, provide 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, or~~

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

This requirement was moved from Section 9 in accordance with the legislative change that financial capability apply to wind energy projects alone. This requirement has been placed in the following Section on Additional Application Requirements for Wind Energy Facilities.

Section ~~10-9~~. Additional Application Requirements for Wind Energy Facilities.

(a) Facility Decommissioning. The applicant shall provide ...

...

(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. ~~Provisions regarding the re-grading of a~~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:

This change clarifies the requirements of this section.

(A) Re-establishment ...

...

(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 ~~8~~(d) of these rules.

(i) All financial assurances shall be in place prior to commencement of construction of any wind energy facility:

(ii) ~~The amount of the financial assurance, 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.

These subsections both address the financial assurance required to be in place at the commencement of construction and the ability of the Council to adjust the amount. These were combined to streamline the rules.

(iii) Additional financial assurances ...

...

(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 15 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.

Pursuant to W.S. 35-12-105(e), the Council is directed to promulgate rules and regulations to assure that permitted facilities will be properly reclaimed and decommissioned. These rules are proposed to provide an order process to follow in the event a bond which has been placed to assure proper reclamation and decommissioning is forfeited.

(e) Cost Estimation for Decommissioning and Site Reclamation ...

...

(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.

This requirement was moved verbatim from the previous section in accordance with the legislative change that the financial capability demonstration apply to wind energy projects alone.

(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.

(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.

Pursuant to W.S. 35-12-110(g), the Division is directed to request information from affected landowners of wind energy facilities and circulate comments received from state agencies to these affected landowners. The addition of this rule places the requirements of this statutory change into the rules.

Section 4-10. Application Information for Commercial Waste Disposal Facilities.

Application requirements for a commercial waste disposal facility shall include ...

...

~~(d) — A description of the effect the facility will have on recreation, wildlife, and aesthetic values and methods proposed to mitigate such impacts.~~

This was removed because a description of the recreational and wildlife impacts is already required in other sections of these rules. This removal would assist in the streamlining of the rules.

~~(e)(d) Specification of the types of wastes ...~~

~~...~~

~~(g) — Information on how the commercial waste disposal facility shall comply with all applicable local and state laws, including permit requirements of the Solid Waste e Management Program of the Department of Environmental Quality.~~

This was removed because all projects are required to comply with all local and state laws before they can receive a permit to construct. This removal would assist in the streamlining of the rules.

~~(h) (f) The applicant's assessment of impacts must include ...~~

~~...~~

Section ~~(12)~~ 11. **Decision of Council.**

~~(a) The Council shall either grant or deny the application as filed, or ...~~

~~...~~

~~(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 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) — "Environment" shall mean 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.~~

This definition was relocated to Section 2, Definitions.

~~—(ii)(i) In determining whether the proposed industrial facility ...~~

~~...~~

~~(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. For purposes of this subsection, the following definitions control:~~

(i) — Definitions.

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

(B) — “Safety” shall mean freedom from fear of 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.

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

(ii) — 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.

These definitions were relocated to Section 2, Definitions. In addition, subsection (ii) was combined with subsection (d) in order to provide the Council with an idea of what constitutes impairment of health, safety or welfare. Also, this will assist in the streamlining of the rules.

(e) If the Council is not ...

...

(j) Permit Term. During the application for a permit or permit waiver (W.S. 35-12-107 or 35-12-109), 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).

— (i) — 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:

These sections were combined to streamline the rules and the references to the statute were removed because they are unnecessary.

(A)(i) After the permit ...

...

Section 1514. **Permit Transfers and Terminations.**

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

(b) The Council may authorize transfers of permits to a different company 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.

The Division has encountered situations where changes take place to the name of the entity constructing or operating industrial facilities in Wyoming. In these situations, it would be beneficial if the Division could recommend changes to the names of permit holders at regularly scheduled meetings so the record accurately reflects an entity's proper name. This is the reason the Division has recommended the addition of subsection (a). Subsection (b) establishes a procedure for parties to transfer permits in accordance with W.S. 35-12-106(b).

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

(a)(i) Upon application for a permit termination, the Council may ...

Section 17. Costs and 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 producing the requested document(s). Costs will be reasonable in regard to the size of the request. For requests that require processing and review of records, the Department may require reimbursement for the time required to compile, review, and prepare the document(s) for distribution to the person requesting the document(s).

The Division is proposing this Section in order to address situations where it receives a large request for copies of documents. The cost of reviewing documents for confidential material, processing, and copying these documents puts a strain on the resources of the Division. As such, the Division has proposed the above procedures in order to recoup costs incurred in the production of large information requests.

Section 18. Severability.

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.

The substantive provisions of this Section were relocated to Section 1.

CHAPTER II

RULES OF PRACTICE AND PROCEDURE
INDUSTRIAL SITING COUNCIL

Section 1. **Authority.** In accordance with the provisions of W.S. 16-3-101 through 16-3-115 and W.S. 35-12-105(b), these rules of practice and procedure are hereby adopted. If any provision of these rules or the application thereof to any person or circumstance 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 servable.

The text from Section 23, Severability, was removed and combined with this section. This change was made in effort to streamline the Rules.

...

Section 3. **Definitions.**

(a) ~~“Act” means the Wyoming Industrial Development Information and Siting Act which may be cited as W.S. 35-12-101 through 35-12-119.~~

This definition was removed because it is already defined in the Act.

(b) (a) ~~“Permit Proceeding” means ...~~

...

(d) ~~“Division” means the Industrial Siting Division of the Wyoming Department of Environmental Quality as is provided for in the Act.~~

This definition was removed because it is already defined in the Act.

Section 4. **Initiation of Proceeding.**

(a) All hearings before the Council shall be held ...

...

(f) ~~The administrator shall schedule a meeting of the Council within 60 days of receipt of the petition for Council consideration~~ Council shall consider the petition at its next scheduled meeting unless otherwise agreed to by the parties. After presentation of the arguments in support of and in opposition to the petition for hearing, the Council shall:

- (i) Schedule a hearing with reasonable notice; or
- (ii) Request additional information of the parties; or
- (iii) Deny the petition and provide a statement of reasons for denial.

This modification provides the Division with flexibility in the scheduling of meetings

of the Council and allows parties the opportunity to delay the discussion of a petition if additional time is requested.

...

Section 14. **Order of Procedure at Hearings.** As nearly as possible and feasible, hearings shall be conducted in accordance with the following order of procedure. The presiding officer shall determine all procedural questions not governed by these rules of practice and procedure.

...

(f) At the request of the Council, the division or any party, state agencies, which act as advisory members of the Council, shall have an opportunity to present statements concerning the advisability of issuance of a permit after the parties' evidence is heard.

(i) Such statements shall be limited in scope to the particular area of expertise, which the agency has and/or to the specific area of study assigned to an agency by the Council.

~~(ii) The order in which statements are presented shall be established by the presiding officer.~~

~~(iii) The statements may be limited in length by the presiding officer.~~

These subsections were removed because the presiding officer already has authority to make such determinations. Furthermore, they were removed in order to streamline the rules.

~~(iv)(ii) Upon objection by any party to the permit proceeding to the admission of such statements into the record, the objecting party shall be afforded the opportunity to cross-examine the state agency presenting the statement.~~

~~(g) The Chairman or presiding officer may offer any evidence necessary on behalf of the Council, subject to the right of rebuttal by the parties, providing that rebuttal evidence is found by the presiding officer to be material, relevant, and competent.~~

~~(h) The Council may allow, after service of copies on all parties of record, the direct testimony of a witness to be in writing, either in narrative or question and answer form, upon the witness being sworn and identifying the written testimony. It may be received into the record as if read, in accordance with W.S. 16-3-109 of the Wyoming Administrative Procedures Act. The witness giving testimony in writing shall be subject to cross-examination and such evidence shall be received into the record subject to a motion to strike. The written testimony must be served on all other parties and the Council in advance to allow a reasonable time to prepare cross-examination.~~

This change streamlines the rules while keeping the substantive requirements of the regulations in place.

~~(g) Every person testifying ...~~

...

~~Section 22. Rehearing.~~

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

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

~~(c) Except as the Council may otherwise direct, the filing of a petition under this section shall not stay the effectiveness of the decision of the Council.~~

This section was removed because the procedures for appealing decisions of the Council are already in place. This was also removed in an effort to reduce and streamline the rules.

~~Section 23. Severability. If any provision of these rules or the application thereof to any person or circumstance 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 severable.~~

This section was combined with Section 1 and removed in an effort to reduce and streamline the rules.

Section 22. **Amendment.** Any amendment to these rules shall become effective as provided by W.S. 16-4-102 through 16-4-106 of the Wyoming Administrative Procedure Act.