Attachment A

Notice of Public Hearing
Industrial Siting Council
Wyoming Department of Environmental Quality
Rules and Regulations of the Industrial Siting Council, Chapter 1 and 2

3006

Pursuant to the provisions of the Wyoming Administrative Procedures Act and the Wyoming Industrial Siting Act 35-12-101 – 119 et. seq. notice is hereby given that the Industrial Siting Council (ISC) will consider proposed revisions to Chapters 1 and 2 of the Wyoming Department of Environmental Quality, Industrial Siting Division Rules and Regulations at a public hearing on **December 18, 2013** at the Platte Valley Community Center, 210 W Elm Ave, starting at 10 A.M. in Saratoga, Wyoming.

The proposed changes to Chapters 1 and 2 update the rules in include changes made to the Act by the Legislature, streamline the rules where possible and clarify administrative procedures for decommissioning, reclamation, and financial assurance, among other topics.

The ISC is seeking comment on the proposed revisions beginning October 11, 2013. All written comments must be received on or before 5 P.M., November 29, 2013 at the following address: DEQ/ISD, 122 West 25th Street, Herschler Building 4W, Cheyenne, WY 82002. The ISD will prepare an analysis of comments received. Comments submitted during the comment period can be viewed at the ISC website: http://deq.state.wy.us/isd. At the **December 18, 2013** hearing, the ISC will consider the proposed rules, written comments, and the analysis of comments, along with any modifications by the ISD to the draft rules.

The ISC will also hold an open house to receive public comment on **Tuesday, October 29, 2013** at the **DEQ Casper Field Office, 152 North Durbin Street, Suite 100 Casper, Wyoming** 82601 from 1 – 6 P.M. The purpose of the meeting is for the ISC to receive oral statements on the proposed rules from the public.

Copies of the Proposed Rules and the Statement of Principal Reasons are available for review at: http://deq.state.wy.us/isd/isdnews.htm. Persons may also request a copy of the proposed rules by contacting Kimber Wichmann at (307) 777-7369 or email at: kimber.wichmann@wyo.gov. Questions regarding the proposed rules may be directed to Luke Esch at (307) 777-7192.

In accordance with the Americans with Disabilities Act, special assistance or alternative formats will be made available upon request for individuals with disabilities.

Dated this 11th Day of October 2013
DEQ/Industrial Siting Division
122 West 25th Street, Herschler Building 4W
Cheyenne, WY 82002
Telephone: (307) 777-7369
Fax: (307) 777-5973
Email: kimber.wichmann@wyo.gov

Attachment B

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Tom	Lahti	Mr.	Chief, Renewable Energy	Bureau of Land Management	PO Box 1828	Cheyenne	WY	82003
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Carol	Seeger	Ms.	Attorney	Campbell County	500 South Gillette, Suite B200	Gillette	WY	82617
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Mike	Kelly	Mr.	Attorney	Carbon County	PO Box 1146	Rawlins	WY	82301
Robert	Kelly	Mr.		DKRW Energy, LLC	5444 Westheimer, Suite 1560	Houston	TX	77056
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David	Evans	Mr.	Attorney	Hickey & Evans	1800 Carey Avenue	Cheyenne	WY	82001
O'Kelly	Pearson	Ms.	Attorney	Hickey & Evans	1800 Carey Avenue	Cheyenne	WY	82001
Jenifer	Scoggin	Ms.	Attorney	Holland & Hart	2515 Warren Avenue, Suite 450	Cheyenne	WY	82001
Larry	Wolf	Mr.	Attorney	Holland & Hart	2515 Warren Avenue, Suite 450	Cheyenne	WY	82001
Cathy	MacPherson	Mrs.	Attorney	MacPherson Law Office	PO Box 999	Rawlins	WY	82301
Paul	Schierer	Mr.	Attorney	Pence & MacMillian, LLC	501 Garfield	Laramie	WY	82073
Bruce	Hinchey	Mr.		Petroleum Association of Wyoming	951 Werner Court, Suite 100	Casper	WY	82601
Shannon	Anderson	Ms.		Powder River Resource Council	934 North Main Street	Sheridan	WY	82801
Roxanne	Perrusso	Ms.		Power Company of Wyoming	555 17th Street, Suite 2400	Denver	CO	80202
Christopher	Heitman	Mr.		Shell WindEnergy, Inc.	150 North Dairy Ashford, Building C, #300	Houston	TX	77079
Rex	Johnson	Mr.	Attorney	Sherard, Sherard, & Johnson	602 10th Street	Wheatland	WY	82001
John	Sundahl	Mr.	Attorney	Sundahl, Powers, Kapp & Martin	1725 Carey Avenue	Cheyenne	WY	82001
Mary	Throne	Ms.	Attorney	Throne Law Office	POB 828	Cheyenne	WY	82001
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Christine	Mikell	Ms.	Project Manager	Wasatch Wind	4525 South Wasatch Blvd, Suite 120	Salt Lake City	UT	84124
Marion	Loomis	Mr.		Wyoming Mining Association	PO Box 866	Cheyenne	WY	82003
Nathon	Maxon	Mr.	Attorney	Wyoming Outdoor Council	262 Lincoln Street	Casper	WY	82520
Cheryl	Riley	Ms.	Exective Director	Wyoming Power Producers Cooperative	PO Box 21869	Cheyenne	WY	82003
Ed	Werner	Mr.			32 Cold Springs Road	Douglas	WY	82633
Reese	Johnson	Ms.			POB 28	Elk Mountain	WY	82324
Luke	Esch	Mr.		Industrial Siting Division	122 W 25th St, Herschler 4W	Cheyenne	WY	82002
Jeremiah	Williamson	Mr.		Industrial Siting Division	122 W 25th St, Herschler 4W	Cheyenne	WY	82002

Updated 10/23/13

Attachment C

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Wyoming State Office
P.O. Box 1828
Cheyenne, Wyoming 82003-1828

In Reply Refer To:
2800 (925Valle)

OCT 24 2013

Department of Environmental Quality
Industrial Siting Division
Kimber Wichmann, Principal Economist
122 West 25th Street
Cheyenne, WY 82002

Dear Ms. Wichmann:

We are in receipt of your letter and accompanying proposed rule changes dated October 14, 2013. We have no substantive comments at this time and we thank you for the opportunity to review and comment.

If you have any additional questions, please contact Mike Valle at 307-775-6049.

Sincerely,

for Larry Claypool
Deputy State Director
Minerals and Lands

Attachment D

Power Company of Wyoming LLC
555 Seventeenth Street
Suite 2400
Denver, CO 80202
Tel 303.298.1000
Fax 303.299.1518

VIA EMAIL and Federal Express

November 26, 2013

Luke Esch
Administrator
DEQ/Industrial Siting Division
122 West 25th Street
Herschler Building 4W
Cheyenne, WY 82002

Kimber Wichmann
Principal Economist
DEQ Industrial Siting Division
122 West 25th Street
Herschler Building 4W
Cheyenne, WY 82002

Re: Proposed Revisions WY DEQ/Industrial Siting Division Rules and Regulations

Dear Mr. Esch and Ms. Wichmann:

Thank you for the opportunity to consider and comment on the proposed revisions to Chapters 1 and 2 of the Wyoming Department of Environmental Quality, Industrial Siting Division Rules and Regulations. Our comments are limited to the proposed revisions to Chapter 1. We have organized this letter by first quoting or describing the proposed revision followed by our comment on the proposed revision.

Chapter 1

Proposed Revision 1: Section 2(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).

Comment 1: Section 2(c) is being added to define language used in W.S. 35-12-113(f) requiring service of a copy of the council's decision and findings on "local governments to be substantially affected" by the proposed facility.

We recommend the following revision: "Local governments to be substantially affected," as used in W.S. 35-12-113(f), shall mean counties and municipalities located in the "area primarily affected" as defined in Section 2(b)(i).

Proposed Revision 2: Section 2(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.

Power Company of Wyoming LLC

Comment 2: We recommend that the definition of Safety be revised as follows:

"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 revision would make the first sentence of the definition of the term "Safety" consistent with the second sentence, which uses "injury or threat of injury." Next, this revision makes the definition of "Safety" more consistent with the way the term is used in the statute. Under W.S. 35-12-109(a)(xii) the applicant must address "procedures proposed to avoid . . . endangering the public health and safety." The term endangering means to "bring into danger or peril" or "to create a dangerous situation." Thus, a threat of injury or injury would fall under endangering the public safety. *Merriam Webster.* In contrast, a person could have a fear of injury where there is no real threat; therefore, "threat of injury" should be used instead of "fear of injury" when defining the term safety.

Proposed Revision 3: Section 6(i) The application shall contain a table containing all commitments stated in the application and provide the page number where each commitment is discussed in the body of the application. The table shall also provide a narrative of all the commitments made to local governments in accordance with W.S. 35-12-107(b)(xi) and W.S. 35-12-109(a)(xiii).

Comment 3: The requirement that the table reflect "all commitments stated in the application" is overly broad and lacks definition. In contrast, the requirement for a table of the commitments made to local governments along with the statutory reference that sets out a list of discrete topics is narrowly tailored and defined.

Therefore, we recommend that Section 6(i) be revised as follows: 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~~ providinge a narrative of all the commitments made to local governments in accordance with W.S. 35-12-107(b)(xi) and W.S. 35-12-109(a)(xiii).

Proposed Revision 4: Section 9(d)(iii)(C) (based on the new numbering) Other forms of assurance such as corporate guarantee, letter of credit, insurance policy, or other forms as may be acceptable to the Director.

Comment 4: The only proposed revision in this section was to capitalize Director. We would like to propose the following additional revision: Other forms of assurance such as corporate guarantee, letter of credit, insurance policy, separate bonding required by federal law with respect to federal lands, or other forms as may be acceptable to the Director.

This revision recognizes that where federal lands are involved in a project there may be separate requirements for bonding those lands. Specifically providing that this separate bonding requirement may be considered and accepted by the Director should prevent requiring the Applicant to unnecessarily double-bond portions of the Project.

Power Company of Wyoming LLC

Proposed Revision 5: Section 9(d)(iv)(A) and (B) (based on the new numbering). This new subsection addresses financial assurance forfeiture where the Permittee fails to decommission and reclaim as described in its permit. Specifically, Section 9(d)(iv)(B) provides that the Division: 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.

Comment 5: We recommend that when the Permittee is notified of the alleged violation of the terms of the permit, the Permittee be allowed 60 days in which to either cure the alleged violation or provide justification to the Division.

Suggested revision to Section 9(d)(iv)(B): Notify the Permittee in writing of the failure to perform reclamation in accordance with its approved reclamation plan and demand that within 60 days the Permittee must either cure its failure to perform or provide justification ~~be provided~~ to the Division. ~~within 15 days.~~

Suggested revision to Section 9(d)(iv)(B)(I): If the failure to perform is not cured and no justification acceptable to the Director 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.

Proposed Revision 6: Section 9(h) (based on new numbering) regarding the applicant's financial capability. This section requires the applicant to provide information demonstrating its financial capability to construct, maintain, operate, decommission, and reclaim the proposed facility. The section then states that if the Division requests "such documentation" it shall be held confidential to the extent authorized by Wyoming law and *shall* include the following specific documents: (i) commitment letters from the principal investors of the project, (ii) for applicants whose securities are publicly traded, publicly available financial statements or other public financial information, or (iii) for privately held applicants, financial statements of the majority of financial contributors to the project.

Comment 6: The main revision to Section (h) is to relocate it within Chapter 1 because it only applies to Wind Energy Facilities. We would like to propose one additional minor revision – that would allow the Division, if documentation is requested, flexibility in the type of documentation it may consider with respect to demonstrating the applicant's adequate financial capability.

Suggested revision to second sentence of Section 9(h):

Such documentation, if requested, shall be held confidential to the extent authorized by Wyoming law and ~~shall~~ may include: [].

Support for the suggested revision:

The Industrial Development Information and Siting Act requires the applicant provide information demonstrating its financial capability to construct, maintain, operate, decommission, and reclaim the proposed facility. *See* W.S. 35-12-109(a)(xxi); W.S. 35-12-113(a)(iv). The Act,

however, does not specify what information is required to make this demonstration, and does not require the documents specified in Section 9(h). To the contrary, W.S. 35-12-105(e) states that "the elements to consider when establishing adequate levels of financial assurance shall include credit worthiness, financial strength, credit history, credit rating and any other factors that reasonably bear upon the decision to accept a financial assurance." *See Northern Laramie Range Foundation v. Wasatch Wind Intermountain LLC*, 2012 WY 158 (Dec. 14, 2012) at ¶¶71-75 (construing the requirement to demonstrate financial capability). The problem with Section 9(h) as written is that if the Division requests documentation of the applicant's financial capability, the applicant ***must*** provide financial documents specified in the rule, which are only a narrow subset of the possible kinds of documentation that can demonstrate the applicant's adequate financial capability.

Moreover, the current requirement for "commitment letters from the principal investors of the project" can be construed to mean a contractual obligation to invest in the project, which is an unlikely obligation to exist prior to the issuance of a permit. Indeed, in *Laramie Range Foundation*, the Division was concerned that the potential investor of the wind energy project was not so contractually obligated and therefore conditioned the permit upon a later demonstration of financial capability prior to construction. The Wyoming Supreme Court upheld the Division's decision, making it clear that a contractual obligation to finance the facility is not required in order to issue the permit.

Finally, if the applicant is privately held, or if the majority of the project's financial contributors are privately held, then such private companies will very likely view their financial statements to be highly confidential and will likely not risk their disclosure to a governmental agency because the agency cannot guarantee they will remain confidential. Thus, Section 9(h) can place the privately-held applicant in a difficult position, even when such applicant can provide documentation other than confidential financial statements to demonstrate adequate financial capability. Such a narrow requirement does not comport with the flexibility provided by the Act or with the Court's reading of the financial capability requirement in *Northern Laramie Range Foundation.*

Proposed Revision 7: Section 14(b) (based on new numbering) addresses permit transfers and terminations. The new provisions allow for transfer of a permit if three conditions are satisfied. The last two conditions are:

(ii) The matter is heard by the Council at its next meeting after notice is published and the parties are notified.

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

Comment 7: Clarification as to how to properly comply with these two conditions is requested.

With respect to Section 14(b)(ii)'s requirement that the "notice is published," it would be helpful to have additional detail with respect to: (a) the required content of the notice; (b) where the notice must be published; and (c) how many days the notice must be published.

Power Company of Wyoming LLC

With respect to Section 14(b)(ii)'s requirement that the "parties are notified," it would be helpful to have additional information with respect to: (a) the parties to be notified; and (b) the required form of notification.

With respect to Section 14(b)(iii)'s requirement that the appropriate officers be present for examination by the Council, it would be helpful in ensuring the appropriate officers are in attendance to have additional detail with respect to the subject or subjects on which the Council may examine the officers for purposes of determining whether to approve the transfer of a permit.

Thank you for consideration of our comments. We have enjoyed our work with ISD staff over the past two years and look forward to working with you next year.

Sincerely,

Roxane Perruso

Roxane Perruso
Vice President and General Counsel

Attachment E

HICKEY & EVANS, LLP

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Special Counsel
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Of Counsel

*ALSO ADMITTED IN COLORADO

November 27, 2013

Via Hand Delivery:
Shawn Warner, Chairman
Industrial Siting Council
c/o DEQ/ISD
122 West 25th Street
Herschler Building 4W
Cheyenne, WY 82002

Re: Proposed Revisions to Chapters 1 and 2 of the Wyoming Department of Environmental Quality, Industrial Siting Division Rules and Regulations.

Dear Chairman Warner:

Hickey & Evans, LLP, on behalf of our client PacifiCorp, doing business in Wyoming as Rocky Mountain Power, appreciates the Industrial Siting Council's consideration of Rocky Mountain Power's comments on the proposed revisions to Chapters 1 and 2 of the Wyoming Department of Environmental Quality, Industrial Siting Division Rules and Regulations. Rocky Mountain Power appreciated the opportunity to provide oral comments at the Council's October 29th open house and commends the Industrial Siting Division (Division) and the Industrial Siting Council (Council) for undertaking the task to update, streamline, clarify and correct these rules. Rocky Mountain Power's additional comments are listed by Chapter and Section below.

Chapter 1, Section 2(c). This section defines the proposed new term "Area substantially affected." The proposed definition for this new term is "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)." The Council's rationale for this term is that it "provides a definition to a term used in the statute." *See* Statement of Principal Reasons of Adoption (SOPR), pg. 6. However, after searching within Chapter 12 of Title 35 of the Wyoming Statutes, Rocky Mountain Power was unable to locate the proposed term. The only place this term expressly appears in the proposed regulations is in this definition. The only time this definition is referenced in these regulations is the proposed cross-reference located in Section 8(g). Therefore, Rocky Mountain Power proposes that the Council delete this proposed new term and the corresponding numeric cross-reference contained in Section 8(g). *See also* Chapter 1, Section 8(g) comment below.

Chapter 1, Section 2(s). This section includes an orphan quotation mark. Rocky Mountain Power proposes that the Council insert a quotation mark at the end of the term "Job classification."

Chapter 1, Section 6(d). This section internally cross references "Section 16." Rocky Mountain Power proposes that the Council correct this cross reference to "Section 15."

Chapter 1, Section 6(i). Rocky Mountain Power supports this proposed requirement that the application include "a table containing all commitments stated in the application." Such a table should make it easier for all parties and the public to track those commitments.

Chapter 1, Section 8(g). The Council states that the change to this section "corrects the regulatory references and also removes unnecessary language which streamlines the rules while keeping the substantive requirements of the regulations in place." *See* Statement of Principal Reasons of Adoption (SOPR), pg. 12 (emphasis added). However, the currently effective regulatory requirement does not include any reference to the term "Area substantially affected." *See* Rules and Regulations of the Industrial Siting Council, Ch. 1, § 9(g) (May 31, 2011). Therefore, by adding the reference to Section 2(c) - the definition for "Area substantially affected" - the Council has increased the substantive requirements of these regulations. Because this is the only regulatory section of the proposed rules that references this proposed new term, Rocky Mountain Power proposes that the Council delete the proposed new term and this cross-reference to Section 2(c).

Chapter 1, Section 8(i). The Council states that the change to this section "combines the first and second sentence to streamline the rules but keeps the substantive requirements in place." *See* SOPR, pg. 12 (emphasis added). However, the last sentence of the first paragraph changes the requirement from "may include" to "shall include." This change increases the stringency of the substantive requirement instead of "keep[ing] the substantive requirements in place." Therefore, in order to maintain the stringency of the current substantive requirement, Rocky Mountain Power proposes that the Council delete the proposed language and retain the current "may include" language.

Chapter 1, Section 8(j). The Council proposes changing the word "evaluation" in the first sentence to "analysis." However, the word "evaluation" was left unchanged in the second sentence. For consistency purposes, Rocky Mountain Power proposes that the Council replace the word "evaluation" in the second sentence with the word "analysis."

Chapter 1, [new] Section 9. It appears that the Council proposed revisions to this section to address statutory changes adopted by Wyoming's legislature in 2010 and 2011. Of particular interest to Rocky Mountain Power are the proposed regulatory requirements resulting from the 2010 legislation that created Wyo. Stat. § 35-12-105(e). This statute prescribes that the Industrial Siting Council's financial assurance rules and regulations "shall not apply to facilities that are public utilities and regulated by the Wyoming public service commission." Rocky Mountain Power supports the proposed regulatory revisions to the extent that they are consistent with this statutory requirement.

Chapter 1, Section 9(d). This section addresses financial assurance provisions for wind energy facilities subject to regulation by the Public Service Commission and contains an internal cross-reference to Section 8(d). Section 8(d) refers to an unrelated requirement. Rocky Mountain Power proposes that the Council replace this internal cross reference with a cross reference to Section 9(e) addressing Cost Estimation for Decommission and Site Reclamation and Section 9(h) addressing additional financial assurance requirements. Rocky Mountain Power's proposed revision assures that these financial assurance provisions will "not apply to facilities that are public utilities and regulated by the Wyoming public service commission."

Chapter 1, Section 9(i). Romanette (iii) of this provision mandates that review comments "will be provided" to affected landowners. However, the provision does not state which entity is responsible for carrying out this mandate. Given that the Council proposes that the Division provide notice of the Application to the affected landowners (*see* § 9(i)(ii)), Rocky Mountain Power suggests that the Council similarly and expressly state that the Division is the entity responsible for providing the review comments to the affected landowner.

Chapter 1, Section 14(b). Section 35-12-106(b) of the Wyoming Statutes authorizes the Council to approve permit transfers "to a person who agrees to comply with the terms, conditions and modifications contained in the permit." (emphasis added). The Act defines "person" to include "an individual, group, firm, partnership, corporation, cooperative, association, or other entity excluding the state, federal government and local government." *See* Wyo. Stat. Ann. § 35-12-102(a)(xi). "Person" also includes "the parent company, partnership or holding entity for a commercial facility generating electricity from wind." *Id.*

The Council's proposed language authorizes it to approve permit transfers only to "a different company buying the assets of the permitted facility[.]" (emphasis added). The Council states that this change "establishes a procedure for parties to transfer permits in accordance with W.S. 35-12-106(b)." *See* SOPR, pg. 19. However, use of the specific word "company" limits the Council's transfer approval authority to companies whereas the statute authorizes permit transfers to the much broader category of "persons." In order to provide the Council with the statutory equivalent permit transfer authority, Rocky Mountain Power proposes that the Council replace the word "company" with the word "person" throughout this subsection.

Chapter 1, Section 17. The Council states that this section addresses "situations where [the Division] 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." *See* SOPR, pg. 19. The proposed regulation provides in relevant part:

> The Department may require reimbursement of costs incurred in producing the requested document(s) . . . 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).

Ch. 1, § 17(b) (emphasis added). However, Wyoming's Public Record Act expressly prohibits agencies from charging fees as a condition of making public records available for inspection: "Nothing in this section shall be construed as authorizing a fee to be charged as a condition of making a public record available for inspection." Wyo. Stat. Ann. § 16-4-204(a).

Rocky Mountain Power recognizes that the Division and the Department face resource constraints to respond to certain public records requests. Therefore, Rocky Mountain Power proposes that the Council revise this provision to align with the statutory requirements so that the Division and the Department may be reimbursed for statutorily authorized costs and fees. *See* Wyo. Stat. Ann. § 16-4-204(a) ("furnished copies, printouts or photographs"), Wyo. Stat. Ann. § 16-4-204(b) ("services rendered by [the official custodian] or his deputy in supervising the copying, printing out or photographing"). Rocky Mountain Power also proposes that the Council consider a future rulemaking effort to set the "reasonable fees and charges that may be assessed for the [statutorily authorized] costs and services." *See* Wyo. Stat. Ann. § 16-4-204(d).

Chapter 2, Section 5(a). This section addresses application submissions and includes an internal cross reference to Chapter 1, Section 4(a). However, Section 4(a) appears to be a reference to an unrelated requirement. Rocky Mountain Power proposes that the Council replace this internal cross reference with a cross reference to Chapter 1, Section 6(a) which prescribes the required number of application copies.

General Typographical Corrections. Rocky Mountain Power noted that the Council proposed capitalizing the first letter of several words such as "Act", "Administrator", "Director", and "Division" within several Sections of Chapters 1 and 2. However, in certain sections, the Council left the first letter formatted as lower case. For consistency, Rocky Mountain Power proposes that the Council update all of these lower case formatted words to the new upper case format.

We thank you for your consideration. We look forward to answering any questions the Council may have regarding these comments at the Council's public hearing on December 18th.

Sincerely,

Nancy E. Vehr

cc: Luke Esch, Administrator, Industrial Siting Division

Attachment F

Wyoming Department of Environmental Quality

Rules and Regulations of the
Industrial Siting Council

Chapter 1

~~March 16, 2011~~

Rules of the Industrial Siting Council
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Chapter 1

INDUSTRIAL DEVELOPMENT INFORMATION AND SITING

RULES AND REGULATIONS

Section 1. **Authority.**

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

Section 2. **Definitions.**

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

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

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

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

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

(c) "Areas of site influence" means the areas which may be affected environmentally, socially, or economically, in any significant degree, by the location of the industrial facility at the proposed site. A separate "area of influence" may be considered for each resource identified in Section ~~9~~ 8(i) of these rules.

~~(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.~~

~~(e)~~ (d) "Complete application" means an application which contains all of the information required by W.S. 35-12-109 and Section ~~9~~ 8 of these rules, except those portions of the application requirements that the Council has waived pursuant to W.S. 35-12-107; excluding proprietary information. If proprietary information is withheld, it must be stated in the application.

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

~~(g)~~ (f) "Cumulative impacts" means the combined impacts upon the environment or the social or economic conditions resulting from construction and operation of the proposed industrial facility and from construction and operation of other on-going or proposed developments in the area of site influence. Proposed developments to be considered in cumulative impacts include those facilities which have public information available, or are actively permitting.

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

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

~~(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.~~

~~(k)~~ (i) "District or Special District" means the following:

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

(ii) A public school district.

~~(l)~~ (j) "Effective date of the Act" means May 30, 1975.

~~(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.~~

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

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

acquisition expenditures including the acquisition costs of mineral rights and interests are not to be included in the estimated construction cost.

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

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

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

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

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

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

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

~~(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~~

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

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

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

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

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

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

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

~~(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.~~

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

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

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

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

(y) "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.

~~(ac) "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.~~

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

~~(ac)~~ (aa) "Study Area" is the geographic and political boundary, as designated by

the ~~a~~Administrator for the required governmental, social, and economic studies required for applications.

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

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

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

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

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

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

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

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

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

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

(i) A description of the proposed construction activity.

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

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

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

submitting an application for a permit.

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

(iii) Such notice shall state the following:

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

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

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

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

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

Section 4. **Jurisdictional Meeting.**

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

(i) A permit pursuant to W. S. 35-12-109;

(ii) Waiver or waivers of requirements;

(iii) A certificate of non-jurisdiction;

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

(v) An exemption from a permit pursuant to W.S. 35-12-119 (c).

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

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

(i) Details of ownership; and points of contact;

(ii) Description of the proposed facility including a site plan;

(iii) Proposed facility location and land ownership;

(iv) The location for the receipt of purchase and where title changes;

(v) Any future phases to be requested in the application;

(vi) The estimated cost of construction;

(vii) Information which the applicant feels to be pertinent.

(d) The Ddirector 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:

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

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

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

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

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

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

(a) At the jurisdictional meeting the ~~a~~Administrator shall specify the study area for the project application.

~~(i)~~ The study area provides the boundaries for studies of counties and municipalities.

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

the first informational meeting.

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

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

(i) The application fee;

(ii) The application document; and

(iii) The letter of transmittal.

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

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

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

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

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

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

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

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

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

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

~~(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~~

(~~i~~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 ~~a~~Applicant shall notify the ~~d~~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~~ 15 of these rules if the D~~d~~ivision determines that such differences materially change the nature, location or impact of the proposed industrial facility.

~~(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.

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

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

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

Section 7. **Request for Waiver ~~Information to be Submitted~~.**

(a) The request for waiver shall contain the information required by the ~~a~~Act with respect to both the construction period and on-line life of the proposed industrial facility and any additional information the applicant considers relevant to the needs of the Council and local units of government for making an informed decision for granting or refusing the waiver request. The waiver application shall follow the same format as the application contents described in Section ~~9~~8, less those parts identified as not necessary by the A~~a~~dministrator.

~~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 by the Council as provided by the act and considering the following:

(i) In order to find that the industrial facility would not produce an unacceptable impact, the Council must find that the granting of a waiver will not result in a significant detriment to, or significant impairment of, the environment or the social and economic condition of present or expected inhabitants. ~~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.

(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.~~

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

Section ~~9~~ 8. **Application Information to be Submitted.**

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

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

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

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

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

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

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

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

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

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

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

(g) The applicant shall identify what it deems to be the area of site influence and recommends as the local governments primarily affected by the proposed industrial facility as defined in Sections 2(c) and (b) ~~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.

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

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

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

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

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

(v) Provide estimates of wages; and

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

(i) ~~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 ~~a~~Administrator to define the needed projections, the projection period and issues for socioeconomic evaluation. The evaluation shall ~~may~~ include, but is not limited to:

(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;

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

(A) Employment projections by major sector;

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

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

(D) Unemployment rates;

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

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

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

(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;

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

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

(E) An analysis of health and hospital care facilities and services;

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

(G) An analysis of ~~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;~~.

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

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

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

(vii) A fiscal analysis over the projection period for all local governments and special districts identified by the applicant as primarily affected by the proposed industrial facility, including revenue structure, expenditure levels, mill levies, services provided through public financing, and the problems in providing public services. The analysis may include, but is not limited to:

(A) An estimate of the cost of the facility.

(B) An estimate of the cost of the facility construction subject to sales and use taxes.

(C) An estimate of sales and use taxes by year for each county if the facility is located in more than one county.

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

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

(j) An evaluation of the environmental impacts~~. 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.

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

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

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

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

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

(i) The project site, transportation routes, utilities, and collector systems.

(ii) County land use plans and zoning, if any.

(iii) Changes to agricultural production as a consequence of the project.

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

(i) An evaluation of potential impacts together with any plans and proposals to alleviate potential impacts. The evaluation shall include a recent survey for threatened and

endangered and rare species of concern (flora & fauna), as identified in the state wildlife action plan prepared by the Wyoming Game and Fish Department, found at the site location.

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

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

~~(p) The 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.~~

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

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

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

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

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

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

(B) When no electricity is generated for a continuous period of twelve

(12) months of the facility or individual wind turbine.

(C) The Council may extend the time period of Section ~~(9)~~(8)(a)(iii)(B) if the facility demonstrates good cause prior to the end of the continuous period of (12) months of the facility or wind energy generating towers not generating electricity.

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

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

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

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

(ii) Re-grading. ~~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:

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

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

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

(iii) Re-vegetation

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

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

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

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

(E) Re-vegetation of all affected lands shall be accomplished in a

manner consistent with the approved reclamation plan and the proposed future use of the land.

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

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

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

(d) Financial Assurance: The applicant shall provide financial assurances for a wind energy facility, sufficient to assure complete decommissioning and site reclamation of the facility in accordance with the provisions of these rules. Wind energy facilities subject to regulation by the Public Service Commission shall be exempt from these financial assurance provisions and from the Cost Estimation for Decommissioning and Site Reclamation provisions of Section 9 ~~8(d)~~ (e) and (h) 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.

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

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

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

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

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

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

(A) Determine that decommissioning or reclamation has not started

or it has fallen behind the approved schedule for more than six (6) months.

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

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

(II) The Permittee has 30 days from the date of receiving the notice of financial assurance forfeiture to request a hearing with the Council contesting the forfeiture of the financial assurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Reports by chartered financial analysts as published.

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

(i) Notice to affected landowners

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

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

pertain to their respective lands and interests.

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

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

Section ~~11~~ 10. **Application Information for Commercial Waste Disposal Facilities.**

Application requirements for a commercial waste disposal facility shall include information required for a request for waiver or permit application under W.S. 35-12-107, 35-12-109 and Sections 6~~,~~ ~~7~~ and ~~8~~ 7 of these rules and regulations and the information required in subsections (a) through ~~(h)~~ (f) of this section.

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

(i) A profit and loss statement

(ii) Debt to equity ratio

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

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

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

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

~~(f)~~ (e) A description of the record keeping procedures that will be maintained to assure accurate accounting and payment of the waste management surcharge. The applicant may also request that certain records be held as confidential in accordance with Section 16~~17~~(b) of these regulations.

~~(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.~~

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

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

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

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

(c) Threat of serious injury. In order to find that the industrial facility does not pose a threat of serious injury, the Council must find that the granting of a permit 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.~~

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

(A) Water treatment;

(B) Sanitary waste disposal;

(C) Solid waste collection;

(D) Housing;

(E) Police and fire protection;

(F) Medical facilities;

(G) Schools;

(H) Recreational facilities;

(I) Transportation systems;

(J) Mental health facilities;

(K) Social service facilities.

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

(A) Upgrading of jobs and increased income;

(B) Family and per capita income;

(C) Unemployment and underemployment rates within the area of site influence;

(D) Purchasing power of earnings within the area of site influence;

(E) Short-term and long-term fluctuations in resource consumption and resource availability;

(F) Employment dislocation and skill obsolescence;

(G) Employment opportunities;

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

(d) Substantially impair the health, safety or welfare. The Council must find that the proposed industrial facility will not substantially impair the health, safety or welfare of the present or expected inhabitants of the areas of site influence. ~~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.

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

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

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

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

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

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

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

(i) The construction schedule;

(ii) The estimated start of commercial operation;

(iii) Socio-economic baseline; and

(iv) Updates to those sections of the Application as defined by the ~~a~~Administrator where material changes are expected to occur.

(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).~~———~~

~~—~~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:

~~(A)~~(i) After the permit term (over the remaining life of the facility), no adverse environmental, social and economic impacts in the area of site influence may occur,

which are not regulated by another State regulatory agency. The life of the facility includes cessation of operations, site clearance and site reclamation.

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

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

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

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

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

(ii) Justify the need for the bond;

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

Justify the amount of the bond;

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

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

Section ~~13~~12. **Impact Assistance Funds.**

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

(b) Pursuant to W.S. 39-15-111 (c) and (d), and W. S. 39-16-111 (c) and (d) the Council shall, after consideration of all evidence and recommendations presented at the hearing held pursuant to W.S. 35-12-107(g) and W.S. 35-12-110(f), establish a ratio for distribution of impact assistance funds.

(i) The ratio of impacts shall be established in consideration of, but not limited to, the following factors:

(A) The residency pattern of the facility's direct and induced employment;

(B) The existing service levels, capital facility needs, social service needs, health care needs, transportation needs, recreational needs, and police and fire protection needs of the affected local governments;

(C) The revenue structure, expenditure level, mill levies and financial capabilities of the affected local governments; and

(D) The incremental cost of providing services to the project related new population for affected local governments.

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

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

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

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

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

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

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

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

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

(d) Pursuant to W.S. 39-15-111 (c) and (d), and W. S. 39-16-111 (c) and (d) the

Council, may determine that the social and economic impacts from construction of an industrial facility upon the adjoining county are significant and establish the ratio of impacts between all communities in the impact area.

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

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

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

Section 1~~4~~3. **Information Requirements Imposed Upon Exempt Activities.**

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

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

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

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

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

Section ~~15~~14. **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 person buying the assets of the permitted facility if:

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

(ii) The matter is heard by the Council at its next meeting after notice is published and parties are notified.

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

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

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

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

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

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

~~(iv)~~ (D) Permit termination would not conflict with any statute or rule governing the facility, and would not conflict with the purposes of ~~the Industrial Development Information and Siting~~ Act.

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

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

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

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

Section ~~16~~ 15. **Amendments.**

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

(i) Supplemental submittals shall not be considered amendments, if they do

not provide a significant change to the scope, purpose, size or scheduling of the project. In particular, material which is in the nature of a clarification in response to a request by the ~~d~~Division shall not be considered a permit application amendment.

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

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

Section ~~17~~ 16. **Waste Management Surcharge.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) Upon submittal of a permit application, request for waiver, or annually after permit approval, the Ddirector may require the Permittee or applicant to provide cost data so that the ~~Office~~ Division may evaluate the merits of a surcharge rate adjustment. The information requested may include, but is not limited to:

(i) Breakdown of operation costs.

(ii) Breakdown of construction costs.

(iii) Breakdown of transportation costs.

(iv) Current tipping charges.

Section 17. **Fees.**

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

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

~~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.~~

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CHAPTER ~~II~~ 2

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.

Section 2. **Scope.** These rules of practice and procedure relate to the procedures by which the Industrial Siting Council (Council) may reach informed decisions with respect to applications to construct industrial facilities, in which case, the ~~Industrial Siting Council~~ Council shall be the sole judge as to whether or not a permit shall be granted. These procedures provide a method by which all persons interested in the subject matter of such applications may present their views. Nothing contained herein shall be construed to prevent ~~the Industrial Siting Council~~ Council from conducting other investigations as may be deemed appropriate.

Section 3. **Definitions.**

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

~~(b)~~ (a) "Permit Proceeding" means all components and parts of the statutory and regulatory process required by the Act; the Rules and Regulations of the Council and these rules are initiated by the filing of an application and is terminated by the final order which grants or rejects a permit.

~~(c)~~ (b) "Presiding Officer" means the Chairman of the Council or another person designated by the Chairman ~~of the Council~~ with the consent of the Council to serve as presiding officer.

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

Section 4. **Initiation of Proceeding.**

(a) All hearings before the Council shall be held pursuant to these rules, the provisions of the ~~Industrial Development Information and Siting~~ Act, and the Wyoming Administrative Procedures Act (WAPA).

(b) All hearings, other than rulemaking and rehearing proceedings, may be initiated by:

(i) The filing of an application pursuant to W.S. 35-12-109(a) of the Act.

(ii) The initiative of the Council.

(iii) Petition to the Council.

(c) Persons requesting a hearing shall file two (2) copies of the written petition directed to and served upon both the Chairman of the Council and the Director. Original service shall be by certified mail, return receipt requested. Thereafter, all service shall be in accordance with the Wyoming Rules of Civil Procedure (WRCP).

(d) The petition for hearing shall set forth:

(i) Name and address of the person making the request and the name and address of his attorney, if any.

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

(iii) A statement in ordinary, but concise language of the facts on which the request is based, including whenever possible particular reference to the statutes, rules or orders that the petitioner alleges have been violated.

(iv) A request for hearing before the Council.

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

(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.

Section 5. **Application provided to Parties; Party Application Submissions.**

(a) Upon filing a notice of an intent to be a party by a person or organization described in W.S. 35-12-111(a)(iii), the ~~d~~Division shall immediately provide such a person or organization with a complete copy of the application. To the extent that there are copies available from the copies supplied by the applicant under Chapter 1, Section ~~4~~ 6(a) ~~of the Industrial Development Information and Siting Rules~~, the copy will be provided without cost to such persons in the order of filing such notice of intent. All other copies will be supplied by the ~~d~~Division upon payment by such person or organization of the smaller of $100.00 or the actual cost of preparing duplicate copies.

(b) Any materials supplementing the permit application submitted by the applicant to the ~~d~~Division after the date of the application shall be mailed by the applicant on the date of submission to the ~~d~~Division to persons who are parties pursuant to W.S. 35-12-111(a) at the time of submission. The ~~d~~Division shall maintain a current list of parties, which will be supplied to any party (including the applicant) upon request.

Section 6. **Notice and Other Actions**

(a) Notice of hearings shall conform to W.S. 16-3-107(a) and (b). The manner and time for giving notice shall be as follows:

(i) When the Council determines that it shall hold a hearing on its own motion, is shall give notice as promptly as possible in advance of the hearing date to all parties.

(ii) When a party desires that a hearing be held before the Council, he shall file his petition and the ~~d~~Division shall forthwith set a date for hearing and notify all parties hereof.

Section 7. **Attorney General Presence.**

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

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

Section 8. **Docket.** When an application is filed with the division, it shall be assigned a number and entered with the date of its filing on a separate page of a docket provided for such a purpose. The ~~d~~Division shall establish a separate file for each such docketed case, in which shall be systematically placed all papers, documents, transcripts, evidence, exhibits, and motions pertaining thereto, and all such items shall have thereon the docket number assigned, and the date of filing.

Section 9. **Motions.** The Council or a presiding officer may upon reasonable notice to all parties, hear orally or otherwise, any motion filed in connection with hearings under these rules.

Section 10. **Subpoenas.**

(a) Subpoenas, requiring the attendance of witnesses from any place in the State of Wyoming at any designated place or hearing, or for the production of books, papers or other documents, or a subpoena duces tecum, may be issued by the Council upon application of any party to the proceeding or upon the motion of the Council at any time after the date the application for a permit is filed.

(b) Subpoenas for the production of books, papers or other documents, unless directed by the Council upon its own motion, will issue only upon application in writing, and

such application shall set forth the books, papers or other documents sought with a showing that they will be of service in the decision of the Council.

(c) Costs of service of subpoenas shall be paid by the parties requesting the service, or by the Office if requested by the Council.

Section 11. **Prehearing Conference**

(a) At least ten (10) days and no more than twenty (20) days before the day of any hearing, the Council may direct the parties to appear before the Council or its designated presiding officer to consider:

(i) The identification, simplification, and delineation of all issues to be considered at the hearing.

(ii) Formulating procedures to govern the hearing.

(iii) Such other matters as may aid in the disposition of the case.

(b) Such conferences shall be conducted informally. An order will be prepared and served on the parties no more than five (5) days after the prehearing conference that recites the actions taken at the conference. The prehearing conference will control the course of the hearing unless modified by the presiding officer to prevent manifest injustice. Any party may move to modify the order prior to the commencement of the hearing. The Council shall consider all motions and issue a final order prior to convening the hearing.

Section 12. **Appearances.**

(a) Appearances and representations of parties shall be made as follows:

(i) An individual may appear and be heard ~~in~~ on his own behalf.

(ii) A copartnership may appear and be represented by a copartner.

(iii) A corporation may appear and be represented by a corporate officer or a full-time employee of said corporation.

(iv) A local government may appear and be represented by a government officer, a member of a local government board, a full-time employee of said local government or the authorized representative of the local government.

(v) An unincorporated association may appear and be represented by a bonafide general officer or full-time employee of such association.

(vi) Any party to a proceeding may appear and be represented therein by an attorney at law who is duly admitted to practice in Wyoming. Any attorney, who is not licensed to practice law in Wyoming, shall not be entitled to enter his appearance in any proceeding before the Council unless he shall have associated with him in such action or proceeding an active member of the Wyoming State Bar.

(b) All parties, except the applicant and any entity of local government, which is a party to the hearing, shall be present at the hearing with or without counsel. Except as to the applicant and any local governmental entity which is a party to the hearing, failure to be present at the hearing and to participate orally shall result in a waive of the right to be a party.

(c) Any person may make a limited appearance in the proceeding by filing a statement in writing with the Council prior to the adjournment of the hearing.

Section 13. **Hearings.**

(a) Public hearings conducted by the Council shall be at a time and place as are designated by the Council as required by the Act.

(b) The ~~d~~Division shall serve notice of the hearings upon the applicant, local governments and all other parties to the permit proceeding, as established by Section 5(a) of these rules, in accordance with the provisions of W.S. 16-3-107 of the ~~Wyoming Administrative Procedure Act~~ WAPA. Such notice shall be served not less than seven (7) days prior to the date of the hearing. If notice of hearing is given by mail, the computation of time shall begin to run on the date the notice is deposited in the United States mail.

(c) The hearing shall be conducted by the Council with the Chairman ~~of the Council~~ or its designated presiding officer sitting as presiding officer. The designated hearing officer shall for purposes of the hearing, have all necessary powers normally vested in the Chairman.

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.

(a) The presiding officer shall announce that the Council is convened to hear the evidence relating to the application for an industrial siting permit and shall call by docket number and title the application to be considered.

(b) The presiding officer shall direct the reading into the record of the notice of hearing given by the Council through its Director and proof of publication thereof and shall direct that the record reflect the issuance of all subpoenas and all appearances of record including parties and their counsel of record, if any.

(c) All witnesses who are present to give testimony in the hearing shall rise, identify themselves and indicate on whose behalf their testimony will be given and be sworn by the presiding officer. All witnesses shall be administered the following oath by the presiding officer:

> Do you swear (or affirm) that the testimony which you are about to give in the matter or in the hearing before this Council is the truth, the whole truth and nothing but the truth?

(d) The parties will each be allowed an opening statement to briefly explain their position to the Council and outline the evidence they propose to offer together with the purpose

thereof. Opening statement shall be of a length and in an order as shall be determined by the presiding officer.

(e) The parties' evidence shall be heard in the following order and manner:

(i) The applicant.

(ii) Each local government entity, which is a party, shall then be heard in an order established by the presiding officer.

(iii) Each other party to the permit proceeding, in an order to be established by the presiding officer, shall then be allowed to present its evidence and be heard by the Council.

(iv) Witnesses may be cross-examined by any party or its attorney and by members of the Council and legal counsel.

(v) Parties may have the opportunity to offer, once only, rebuttal evidence in order.

(vi) Parties may have the opportunity to offer closing statements in order.

(f) At the request of the Council, the ~~d~~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.~~

(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.~~

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

~~(j)~~ (h) Documentary material used as evidence by any party or witness must be of size consistent with the ease of handling, transportation, and filing. Where relevant and material matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant, to the permit proceeding, the party must plainly designate the relevant matter so offered. If the material matter therein contains other material which unnecessarily encumbers the record, such book, paper or document will not be received in evidence, but may be marked for identification, and if properly authenticated, the relevant and material matter may be read into the record or, if the Council so directs, a true copy of such matter in proper form shall be received as an exhibit.

~~(k)~~ (i) After all parties have been offered the opportunity to be heard, the presiding officer shall excuse all witnesses and declare the evidence closed. The evidence may be reopened at a later date prior to a decision of the Council upon motion by a party or on the Council's own motion.

~~(l)~~ (j) After the evidence is declared to be closed, the Council may request the parties to the permit proceeding to submit proposed findings of fact and conclusions of law within fifteen (15) days after the closing of the evidence.

~~(m)~~ (k) During all hearings under these rules, the presiding officer shall have the power to:

(v) Administer oaths and affirmations;

(vi) Issue subpoenas;

(vii) Rule upon offers of proof and receive relevant evidence;

(viii) Take or cause to be taken depositions;

(ix) Preside over the hearing and regulate its proceedings;

(x) Dispose of procedural requests. The presiding officer may be assisted by a representative of the Attorney General's office when such assistance is deemed necessary.

(xi) At his discretion, or with the consent of Council, require parties to tender written briefs and set the time for filing such briefs.

(xii) Preside over and set the time for such prehearing conferences as he deems necessary;

(xiii) Exclude all irrelevant, immaterial, or unduly repetitious evidence;

(xiv) Recess the hearing as required;

(xv) Officiate and officially close the hearing.

(xvi) With the consent of the Council, declare that the matter is taken under advisement and that the decision and order of the Council will be announced at a later date.

(xvii) Exclude any and all evidence and testimony which raises an issue of the jurisdiction of any agency which has regulatory authority over the industrial facility.

Section 15. **Record of Proceedings Reporter.** All hearings including all testimony, shall be reported verbatim by a competent reporter. The compensation of such reporter shall be paid as required by law and as ordered by the Council. If a transcript of the testimony is required by the Council, the cost thereof shall be paid by the Council, or as otherwise provided by law. The Council may direct any party or parties to assume the cost of the transcript if transcribed at his or their request.

Section 16. **Record.** The record in all cases shall include:

(a) All formal and informal notices;

(b) Evidence received or considered including matters officially noticed;

(c) Questions and offers of proof, objections, and rulings thereon;

(d) Any proposed findings and objections thereto;

(e) The decision and order of the Council.

Section 17. **Decision and Order.** The Council shall make written decision and order in all cases which decision shall contain findings of fact and conclusions. The decision and order of the Council shall be placed in the record of the case, which shall be retained by the Council. Notice of the Council's decision shall be given as provided by W.S. 35-12-113(f) of the Act.

Section 18. **Appeal.** Appeals to the District Court from decisions of the Council are governed by W.S. 16-3-114, Rule 12 of the Wyoming Rules of Appellate Procedure and by W.S. 35-12-114 of the Act.

Section 19. **Transcript of Appeal.** In case of an appeal as above provided from a final order of the Council, the party appealing shall secure and file a transcript of the testimony and all other evidence offered at the hearing, which transcript must be verified by the oath of the reporter who took the testimony as a true and correct transcript of the testimony and other evidence in the case. The compensation of the reporter for making the transcript of the testimony and all other costs involved in such appeal shall be borne by the party prosecuting such appeal.

Section 20. **Applicable Rules of Civil Procedure.** The ~~Wyoming Rules of Civil Procedure~~ WRCP, insofar as the same may be applicable and not inconsistent with the laws of the State and these rules shall apply to matters before the Council.

Section 21. **Rulemaking Hearings.**

(a) The provisions of the rules contained in this section shall govern:

(i) Any hearings conducted pursuant to a petition (within the meaning of W.S. 16-3-106 for the promulgation, amendment, or repeal of any rule (as defined in W.S. 16-3-101(a)(ix)).

(ii) Any hearings conducted pursuant to W.S. 16-3-103 for the promulgation of rules and regulations recommended by the Director.

(b) Any party may petition the Council to promulgate, amend, or repeal any rule or rules.

(i) Each petition must be submitted in duplicate to the Chairman of the ~~Industrial Siting~~ Council and to the Director ~~of the Department of Environmental Quality~~.

(ii) The filing of a petition under this Section shall not stay the effectiveness of any rule or rules.

(iii) After filing of a petition, the Council may hold a pre-hearing conference to review the petition and its persuasiveness.

(iv) As soon as practicable, the Council shall deny the petition in writing (stating its reasons for denial) or initiate rule-making procedures. The action of the Council in denying a petition is final and not subject to review.

(v) Before adoption, issuance, amendment, or repeal of any rule, or the commencement of any hearing on such proposed rule-making, the Council shall cause notice to be given in accordance with the provisions of W.S. 16-3-103.

(c) The adoption, amendment, or repeal of any rule, other than interpretive rules or statements of general policy, shall be in accordance with the requirements of the ~~Wyoming Administrative Procedure Act~~WAPA, except that the provisions of W.S. 16-3-107 through 16-3-112 (relating to conduct of hearings for contested cases) do not apply to hearings held under this section of these Rules. As a fact-finding legislative proceeding, each hearing is non-adversary and there are no formal pleadings or adverse parties. All information will be received by the Council without regard to rules of evidence.

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

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

(f) The Council may impose time limitations upon oral presentations.

(g) Witnesses

(i) The Council or designated hearing officer may direct that summaries of the testimony of witnesses be prepared in advance of the hearing. If so directed, copies of such summaries shall be served upon the members of the Council or Office or upon any other party as the designated hearing officer may direct.

(ii) Witnesses will be permitted to read summaries of their testimony into the record or make other oral statements as they so desire. Witnesses shall not be available for cross-examination, but will be permitted to answer questions directed to them by members of the Council.

(iii) When necessary to prevent undue prolongation of the hearing, the presiding officer may limit the number of times any witness may testify.

(h) All timely comments shall be considered by the Council before final action is taken on any proposal to promulgate, amend, or repeal any rule. Late filed comments may be considered so far as possible without incurring additional expense or delay.

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

~~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.~~

~~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 servable.~~

~~Section 24~~ 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.

Attachment G

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CHAPTER 1
INDUSTRIAL DEVELOPMENT INFORMATION AND SITING
RULES AND REGULATIONS

Section 1. **Authority.**

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

Section 2. **Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

(i) "District or Special District" means the following:

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

(ii) A public school district.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) A description of the proposed construction activity.

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

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

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

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

(ii) Such notice shall state the following:

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

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

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

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

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

Section 4. **Jurisdictional Meeting.**

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

(i) A permit pursuant to W. S. 35-12-109;

(ii) Waiver or waivers of requirements;

(iii) A certificate of non-jurisdiction;

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

(v) An exemption from a permit pursuant to W.S. 35-12-119 (c).

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

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

(i) Details of ownership; and points of contact;

(ii) Description of the proposed facility including a site plan;

(iii) Proposed facility location and land ownership;

(iv) The location for the receipt of purchase and where title changes;

(v) Any future phases to be requested in the application;

(vi) The estimated cost of construction;

(vii) Information which the applicant feels to be pertinent.

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

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

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

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

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

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

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

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

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

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

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

(i) The application fee;

(ii) The application document; and

(iii) The letter of transmittal.

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

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

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

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

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

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

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

(a) Prior to submitting its application or request for waiver, each applicant shall confer with the Division to determine the number of copies of the application or request for waiver to be filed with the Division. The applicant shall file a minimum of forty (40) copies of the application with the Division. The applicant shall not be required to file more than seventy-five (75) copies of

the application without prior approval of the Council.

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

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

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

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

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

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

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

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

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

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

Section 7. **Request for Waiver.**

(a) The request for waiver shall contain the information required by the Act with

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Provide estimates of wages; and

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

(i) The social and economic conditions in the area of site influence shall be inventoried and evaluated as they currently exist, projected as they would exist in the future without the proposed industrial facility and as they will exist with the facility. Prior to submitting its application, each applicant shall confer with the Administrator to define the needed projections, the

projection period and issues for socioeconomic evaluation. The evaluation shall include, but is not limited to:

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

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

(A) Employment projections by major sector;

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

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

(D) Unemployment rates;

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

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

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

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

(A) Facilities 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;

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

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

(E) An analysis of health and hospital care facilities and services;

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

(G) An analysis of community recreational facilities and programs and urban outdoor recreational opportunities;

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

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

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

(vii) A fiscal analysis over the projection period for all local governments and special districts identified by the applicant as primarily affected by the proposed industrial facility, including revenue structure, expenditure levels, mill levies, services provided through public financing, and the problems in providing public services. The analysis may include, but is not limited to:

(A) An estimate of the cost of the facility.

(B) An estimate of the cost of the facility construction subject to sales and use taxes.

(C) An estimate of sales and use taxes by year for each county if the facility is located in more than one county.

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

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

(j) An evaluation of the environmental impacts as they would exist if the proposed

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

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

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

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

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

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

(i) The project site, transportation routes, utilities, and collector systems.

(ii) County land use plans and zoning, if any.

(iii) Changes to agricultural production as a consequence of the project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Re-vegetation

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Certificate of deposit in the name of the "Department of

Environmental Quality" with a state or federally insured financial institution in Wyoming. The permittee shall be entitled to all interest payments.

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

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

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

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

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

(II) The Permittee has 30 days from the date of receiving the notice of financial assurance forfeiture to request a hearing with the Council contesting the forfeiture of the financial assurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Reports by chartered financial analysts as published.

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

(i) Notice to affected landowners

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

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

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

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

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

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

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

(i) A profit and loss statement

(ii) Debt to equity ratio

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

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

(d) Specification of the types of wastes to be managed by the facility, an estimate of

the average waste volume the facility will manage in tons per day and the maximum tonnage the facility will be capable of handling, as well as a general description of the waste management methods used by the facility or associated operations.

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

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

Section 11. **Decision of Council.**

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

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

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

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

(A) Water treatment;

(B) Sanitary waste disposal;

(C) Solid waste collection;

(D) Housing;

(E) Police and fire protection;

(F) Medical facilities;

(G) Schools;

(H) Recreational facilities;

(I) Transportation systems;

(J) Mental health facilities;

(K) Social service facilities.

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

(A) Upgrading of jobs and increased income;

(B) Family and per capita income;

(C) Unemployment and underemployment rates within the area of site influence;

(D) Purchasing power of earnings within the area of site influence;

(E) Short-term and long-term fluctuations in resource consumption and resource availability;

(F) Employment dislocation and skill obsolescence;

(G) Employment opportunities;

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

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

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

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

(g) If the Council decides to grant a permit for the industrial facility, it shall issue the permit embodying the terms and conditions in detail, including the time specified to commence construction, which time shall be determined by the Council's decision as to the

reasonable capability of the local government, most substantially affected by the proposed industrial facility, to implement the necessary procedures to alleviate the impact. If the construction of the facility fails to follow the schedule used by the Council to make its decision, the Council may require an amendment to the permit in accordance with W.S. 35-12-106(c) and (d).

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

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

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

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

(i) The construction schedule;

(ii) The estimated start of commercial operation;

(iii) Socio-economic baseline; and

(iv) Updates to those sections of the Application as defined by the Administrator where material changes are expected to occur.

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

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

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

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

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

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

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

(ii) Justify the need for the bond;

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

(iv) Justify the amount of the bond;

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

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

Section 12. **Impact Assistance Funds.**

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

(b) Pursuant to W.S.39-15-111(c) and (d), and W S. 39-16-111 (c) and (d) the Council shall, after consideration of all evidence and recommendations presented at the hearing held pursuant to W.S. 35-12-107(g) and W.S. 35-12-110(f), establish a ratio for distribution of impact assistance funds.

(i) The ratio of impacts shall be established in consideration of, but not limited to, the following factors:

(A) The residency pattern of the facility's direct and induced employment;

(B) The existing service levels, capital facility needs, social service needs, health care needs, transportation needs, recreational needs, and police and fire protection needs of the affected local governments;

(C) The revenue structure, expenditure level, mill levies and financial capabilities of the affected local governments; and

(D) The incremental cost of providing services to the project related new population for affected local governments.

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

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

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

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

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

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

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

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

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

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

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

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

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

these regulations.

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

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

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

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

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

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

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

(a) The 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 person buying the assets of the permitted facility if:

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

(ii) The matter is heard by the Council at its next meeting after notice is published and parties are notified.

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

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

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

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

(B) Termination of the permit will not cause or add to any adverse

environmental, social and economic impacts in the area of site influence, which are not regulated by another State regulatory agency, during the remaining life of the facility. The remaining life of the facility includes cessation of operations, site clearance and site reclamation.

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

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

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

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

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

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

Section 15. **Amendments.**

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

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

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

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

Section 16. **Waste Management Surcharge.**

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

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

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

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

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

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

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

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

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

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

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

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

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

shall consider any of the following criteria as a basis for adjusting the surcharge rate:

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

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

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

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

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

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

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

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

(k) Upon submittal of a permit application, request for waiver, or annually after permit approval, the Director may require the Permittee or applicant to provide cost data so that the Division may evaluate the merits of a surcharge rate adjustment. The information requested may include, but is not limited to:

(i) Breakdown of operation costs.

(ii) Breakdown of construction costs.

(iii) Breakdown of transportation costs.

(iv) Current tipping charges.

Section 17. **Fees.**

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

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

Rules of the Industrial Siting Council
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CHAPTER 2
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.

Section 2. **Scope.** These rules of practice and procedure relate to the procedures by which the Industrial Siting Council (Council) may reach informed decisions with respect to applications to construct industrial facilities, in which case, the Council shall be the sole judge as to whether or not a permit shall be granted. These procedures provide a method by which all persons interested in the subject matter of such applications may present their views. Nothing contained herein shall be construed to prevent the Council from conducting other investigations as may be deemed appropriate.

Section 3. **Definitions.**

(a) "Permit Proceeding" means all components and parts of the statutory and regulatory process required by the Act; the Rules and Regulations of the Council and these rules are initiated by the filing of an application and is terminated by the final order which grants or rejects a permit.

(b) "Presiding Officer" means the Chairman of the Council or another person designated by the Chairman with the consent of the Council to serve as presiding officer.

Section 4. **Initiation of Proceeding.**

(a) All hearings before the Council shall be held pursuant to these rules, the provisions of the Act, and the Wyoming Administrative Procedures Act (WAPA).

(b) All hearings, other than rulemaking and rehearing proceedings, may be initiated by:

(i) The filing of an application pursuant to W.S. 35-12-109(a) of the Act.

(ii) The initiative of the Council.

(iii) Petition to the Council.

(c) Persons requesting a hearing shall file two (2) copies of the written petition directed to and served upon both the Chairman of the Council and the Director. Original service shall be by certified mail, return receipt requested. Thereafter, all service shall be in accordance with the Wyoming Rules of Civil Procedure (WRCP).

(d) The petition for hearing shall set forth:

(i) Name and address of the person making the request and the name and address of his attorney, if any.

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

(iii) A statement in ordinary, but concise language of the facts on which the request is based, including whenever possible particular reference to the statutes, rules or orders that the petitioner alleges have been violated.

(iv) A request for hearing before the Council.

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

(f) The 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.

Section 5. **Application provided to Parties; Party Application Submissions.**

(a) Upon filing a notice of an intent to be a party by a person or organization described in W.S. 35-12-111(a)(iii), the Division shall immediately provide such a person or organization with a complete copy of the application. To the extent that there are copies available from the copies supplied by the applicant under Chapter 1, Section 6(a), the copy will be provided without cost to such persons in the order of filing such notice of intent. All other copies will be supplied by the Division upon payment by such person or organization of the smaller of $100.00 or the actual cost of preparing duplicate copies.

(b) Any materials supplementing the permit application submitted by the applicant to the Division after the date of the application shall be mailed by the applicant on the date of submission to the Division to persons who are parties pursuant to W.S. 35-12-111(a) at the time of submission. The Division shall maintain a current list of parties, which will be supplied to any party (including the applicant) upon request.

Section 6. **Notice and Other Actions**

(a) Notice of hearings shall conform to W.S. 16-3-107(a) and (b). The manner and time for giving notice shall be as follows:

(i) When the Council determines that it shall hold a hearing on its own motion, is shall give notice as promptly as possible in advance of the hearing date to all parties.

(ii) When a party desires that a hearing be held before the Council, he shall file his petition and the Division shall forthwith set a date for hearing and notify all parties hereof.

Section 7. **Attorney General Presence.**

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

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

Section 8. **Docket.** When an application is filed with the division, it shall be assigned a number and entered with the date of its filing on a separate page of a docket provided for such a purpose. The Division shall establish a separate file for each such docketed case, in which shall be systematically placed all papers, documents, transcripts, evidence, exhibits, and motions pertaining thereto, and all such items shall have thereon the docket number assigned, and the date of filing.

Section 9. **Motions.** The Council or a presiding officer may upon reasonable notice to all parties, hear orally or otherwise, any motion filed in connection with hearings under these rules.

Section 10. **Subpoenas.**

(a) Subpoenas, requiring the attendance of witnesses from any place in the State of Wyoming at any designated place or hearing, or for the production of books, papers or other documents, or a subpoena duces tecum, may be issued by the Council upon application of any party to the proceeding or upon the motion of the Council at any time after the date the application for a permit is filed.

(b) Subpoenas for the production of books, papers or other documents, unless directed by the Council upon its own motion, will issue only upon application in writing, and such application shall set forth the books, papers or other documents sought with a showing that they will be of service in the decision of the Council.

(c) Costs of service of subpoenas shall be paid by the parties requesting the service, or by the Office if requested by the Council.

Section 11. **Prehearing Conference**

(a) At least ten (10) days and no more than twenty (20) days before the day of any hearing, the Council may direct the parties to appear before the Council or its designated presiding officer to consider:

(i) The identification, simplification, and delineation of all issues to be considered at the hearing.

(ii) Formulating procedures to govern the hearing.

(iii) Such other matters as may aid in the disposition of the case.

(b) Such conferences shall be conducted informally. An order will be prepared and served on the parties no more than five (5) days after the prehearing conference that recites the actions taken at the conference. The prehearing conference will control the course of the hearing unless modified by the presiding officer to prevent manifest injustice. Any party may move to modify the order prior to the commencement of the hearing. The Council shall consider all motions and issue a final order prior to convening the hearing.

Section 12. **Appearances.**

(a) Appearances and representations of parties shall be made as follows:

(i) An individual may appear and be heard on his own behalf.

(ii) A copartnership may appear and be represented by a copartner.

(iii) A corporation may appear and be represented by a corporate officer or a full-time employee of said corporation.

(iv) A local government may appear and be represented by a government officer, a member of a local government board, a full-time employee of said local government or the authorized representative of the local government.

(v) An unincorporated association may appear and be represented by a bonafide general officer or full-time employee of such association.

(vi) Any party to a proceeding may appear and be represented therein by an attorney at law who is duly admitted to practice in Wyoming. Any attorney, who is not licensed to practice law in Wyoming, shall not be entitled to enter his appearance in any proceeding before the Council unless he shall have associated with him in such action or proceeding an active member of the Wyoming State Bar.

(b) All parties, except the applicant and any entity of local government, which is a party to the hearing, shall be present at the hearing with or without counsel. Except as to the applicant and any local governmental entity which is a party to the hearing, failure to be present at the hearing and to participate orally shall result in a waive of the right to be a party.

(c) Any person may make a limited appearance in the proceeding by filing a statement in writing with the Council prior to the adjournment of the hearing.

Section 13. **Hearings.**

(a) Public hearings conducted by the Council shall be at a time and place as are designated by the Council as required by the Act.

(b) The Division shall serve notice of the hearings upon the applicant, local governments and all other parties to the permit proceeding, as established by Section 5(a) of these rules, in accordance with the provisions of W.S. 16-3-107 of the WAPA. Such notice shall be served not less than seven (7) days prior to the date of the hearing. If notice of hearing is given by mail, the computation of time shall begin to run on the date the notice is deposited in the United States mail.

(c) The hearing shall be conducted by the Council with the Chairman or its designated presiding officer sitting as presiding officer. The designated hearing officer shall for purposes of the hearing, have all necessary powers normally vested in the Chairman.

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.

(a) The presiding officer shall announce that the Council is convened to hear the evidence relating to the application for an industrial siting permit and shall call by docket number and title the application to be considered.

(b) The presiding officer shall direct the reading into the record of the notice of hearing given by the Council through its Director and proof of publication thereof and shall direct that the record reflect the issuance of all subpoenas and all appearances of record including parties and their counsel of record, if any.

(c) All witnesses who are present to give testimony in the hearing shall rise, identify themselves and indicate on whose behalf their testimony will be given and be sworn by the presiding officer. All witnesses shall be administered the following oath by the presiding officer:

> Do you swear (or affirm) that the testimony which you are about to give in the matter or in the hearing before this Council is the truth, the whole truth and nothing but the truth?

(d) The parties will each be allowed an opening statement to briefly explain their position to the Council and outline the evidence they propose to offer together with the purpose thereof. Opening statement shall be of a length and in an order as shall be determined by the presiding officer.

(e) The parties' evidence shall be heard in the following order and manner:

(i) The applicant.

(ii) Each local government entity, which is a party, shall then be heard in an order established by the presiding officer.

(iii) Each other party to the permit proceeding, in an order to be established by the presiding officer, shall then be allowed to present its evidence and be heard by the Council.

(iv) Witnesses may be cross-examined by any party or its attorney and by members of the Council and legal counsel.

(v) Parties may have the opportunity to offer, once only, rebuttal evidence in order.

(vi) Parties may have the opportunity to offer closing statements in order.

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

(h) Documentary material used as evidence by any party or witness must be of size consistent with the ease of handling, transportation, and filing. Where relevant and material matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant, to the permit proceeding, the party must plainly designate the relevant matter so offered. If the material matter therein contains other material which unnecessarily encumbers the record, such book, paper or document will not be received in evidence, but may be marked for identification, and if properly authenticated, the relevant and material matter may be read into the record or, if the Council so directs, a true copy of such matter in proper form shall be received as an exhibit.

(i) After all parties have been offered the opportunity to be heard, the presiding officer shall excuse all witnesses and declare the evidence closed. The evidence may be reopened at a later date prior to a decision of the Council upon motion by a party or on the Council's own motion.

(j) After the evidence is declared to be closed, the Council may request the parties to the permit proceeding to submit proposed findings of fact and conclusions of law within fifteen (15) days after the closing of the evidence.

(k) During all hearings under these rules, the presiding officer shall have the power to:

(i) Administer oaths and affirmations;

(ii) Issue subpoenas;

(iii) Rule upon offers of proof and receive relevant evidence;

(iv) Take or cause to be taken depositions;

(v) Preside over the hearing and regulate its proceedings;

(vi) Dispose of procedural requests. The presiding officer may be assisted by a representative of the Attorney General's office when such assistance is deemed necessary.

(vii) At his discretion, or with the consent of Council, require parties to tender written briefs and set the time for filing such briefs.

(viii) Preside over and set the time for such prehearing conferences as he deems necessary;

(ix) Exclude all irrelevant, immaterial, or unduly repetitious evidence;

(x) Recess the hearing as required;

(xi) Officiate and officially close the hearing.

(xii) With the consent of the Council, declare that the matter is taken under advisement and that the decision and order of the Council will be announced at a later date.

(xiii) Exclude any and all evidence and testimony which raises an issue of the jurisdiction of any agency which has regulatory authority over the industrial facility.

Section 15. **Record of Proceedings Reporter.** All hearings including all testimony, shall be reported verbatim by a competent reporter. The compensation of such reporter shall be paid as required by law and as ordered by the Council. If a transcript of the testimony is required by the Council, the cost thereof shall be paid by the Council, or as otherwise provided by law. The Council may direct any party or parties to assume the cost of the transcript if transcribed at his or their request.

Section 16. **Record.** The record in all cases shall include:

(a) All formal and informal notices;

(b) Evidence received or considered including matters officially noticed;

(c) Questions and offers of proof, objections, and rulings thereon;

(d) Any proposed findings and objections thereto;

(e) The decision and order of the Council.

Section 17. **Decision and Order.** The Council shall make written decision and order in all cases which decision shall contain findings of fact and conclusions. The decision and order

of the Council shall be placed in the record of the case, which shall be retained by the Council. Notice of the Council's decision shall be given as provided by W.S. 35-12-113(f) of the Act.

Section 18. **Appeal.** Appeals to the District Court from decisions of the Council are governed by W.S. 16-3-114, Rule 12 of the Wyoming Rules of Appellate Procedure and by W.S. 35-12-114 of the Act.

Section 19. **Transcript of Appeal.** In case of an appeal as above provided from a final order of the Council, the party appealing shall secure and file a transcript of the testimony and all other evidence offered at the hearing, which transcript must be verified by the oath of the reporter who took the testimony as a true and correct transcript of the testimony and other evidence in the case. The compensation of the reporter for making the transcript of the testimony and all other costs involved in such appeal shall be borne by the party prosecuting such appeal.

Section 20. **Applicable Rules of Civil Procedure.** The WRCP, insofar as the same may be applicable and not inconsistent with the laws of the State and these rules shall apply to matters before the Council.

Section 21. **Rulemaking Hearings.**

(a) The provisions of the rules contained in this section shall govern:

(i) Any hearings conducted pursuant to a petition (within the meaning of W.S. 16-3-106 for the promulgation, amendment, or repeal of any rule (as defined in W.S. 16-3-101(a)(ix)).

(ii) Any hearings conducted pursuant to W.S. 16-3-103 for the promulgation of rules and regulations recommended by the Director.

(b) Any party may petition the Council to promulgate, amend, or repeal any rule or rules.

(i) Each petition must be submitted in duplicate to the Chairman of the Council and to the Director.

(ii) The filing of a petition under this Section shall not stay the effectiveness of any rule or rules.

(iii) After filing of a petition, the Council may hold a pre-hearing conference to review the petition and its persuasiveness.

(iv) As soon as practicable, the Council shall deny the petition in writing (stating its reasons for denial) or initiate rule-making procedures. The action of the Council in denying a petition is final and not subject to review.

(v) Before adoption, issuance, amendment, or repeal of any rule, or the commencement of any hearing on such proposed rule-making, the Council shall cause notice to be given in accordance with the provisions of W.S. 16-3-103.

(c) The adoption, amendment, or repeal of any rule, other than interpretive rules or statements of general policy, shall be in accordance with the requirements of the WAPA, except that the provisions of W.S. 16-3-107 through 16-3-112 (relating to conduct of hearings for contested cases) do not apply to hearings held under this section of these Rules. As a fact-finding legislative proceeding, each hearing is non-adversary and there are no formal pleadings or adverse parties. All information will be received by the Council without regard to rules of evidence.

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

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

(f) The Council may impose time limitations upon oral presentations.

(g) Witnesses

(i) The Council or designated hearing officer may direct that summaries of the testimony of witnesses be prepared in advance of the hearing. If so directed, copies of such summaries shall be served upon the members of the Council or Office or upon any other party as the designated hearing officer may direct.

(ii) Witnesses will be permitted to read summaries of their testimony into the record or make other oral statements as they so desire. Witnesses shall not be available for cross-examination, but will be permitted to answer questions directed to them by members of the Council.

(iii) When necessary to prevent undue prolongation of the hearing, the presiding officer may limit the number of times any witness may testify.

(h) All timely comments shall be considered by the Council before final action is taken on any proposal to promulgate, amend, or repeal any rule. Late filed comments may be considered so far as possible without incurring additional expense or delay.

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

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.