

**Rules of the Industrial Siting Council
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CHAPTER ~~H~~ 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.~~

~~(e) (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 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(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 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, it 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 ~~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 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 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.~~

~~(g)~~ (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)~~ (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)~~ (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)~~ (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)~~ (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-WRC~~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 severable.~~

~~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.