

# Wyoming Department of Environmental Quality

## Rules and Regulations of the Industrial Siting Council

### Chapter 1

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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.

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 ~~or unit of local government or special district~~ 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 ~~area or local government body or special district is within the areas of site influence,~~ county, incorporated municipality, school district, or combination thereof formed under the Wyoming Joint Powers Act within (i) above.

*This clarifies the definition of district with W. S. 35-12-102 (a) (viii).*

(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 ~~7~~ 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: ~~(i)~~ Municipal or county operated landfills which receive wastes generated within the political subdivision of the municipality, county, or a solid waste district.

*Formatting improvement.*

(e) "Complete application" means an application which contains all of the information required by W.S. 35-12-109 and Section ~~7~~ 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) "Construction schedule" means the schedule of events by time, from the start to the finish of construction as described in the application and any approved updates.

*A new definition for critical information in the application.*

~~(f)~~ (g) "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 ~~included~~ considered in cumulative impacts include those ~~developments~~ facilities which ~~are actively planning and~~ have public information available, or ~~may be~~ actively permitting.

*Syntax improvements.*

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

*Defines a new term for subsequent use.*

~~(g)~~ (i) "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)~~ ~~(h)~~ “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)~~ “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.

*As stated in W. S. 35-12-102 (a) (viii) this limits the number of districts to be studied by an Applicant.*

~~(l)~~ ~~(i)~~ “Effective date of the Act” means May 30, 1975.

~~(m)~~ ~~(j)~~ “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.

~~(n)~~ ~~(k)~~ “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) 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) "Financial assurance" means a security serving as collateral in the form of a surety bond, certificate of deposit, corporate guarantee, or other form acceptable to the director to insure proper decommissioning and reclamation activities.

*This gives definition to a term used in the Act and in these Rules.*

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

*This gives definition to a term used in the Act sections 107, 109, and 113; and in these Rules.*

(q) ~~(h)~~ "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.

(r) ~~(m)~~ "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) "Job classification" means those of the Standard Occupational Classification system of the U. S. Department of Labor.

*This gives definition to a critical term in the Act and in these Rules. This classification system aids State agencies to evaluate the Application and hire of Wyoming job-seekers.*

(t) "Office" means either the director or administrator.

*This gives definition to a term used in the Act and these Rules.*

(u) (n) "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.

(v) (e) "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.

(w) (p) "Permit applicant" or "applicant" means any person who applies for a permit to construct an industrial facility, ~~as defined herein, in the State of Wyoming with respect to which the Industrial Siting Council must issue a permit prior to the commencement of any construction activities thereon, except as specifically allowed by W.S. 35-12-102(a)(iii)~~ pursuant to the Act and these regulations.

*To provide clarity.*

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

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

*This gives definition to a feature of the Act and procedures in these Rules. The term provides convenient reference (as Phase 1, Phase 2) to the authorization in the Act for "future additions and modifications to be approved in advance."*

(z) ~~(#)~~ "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.

(aa) ~~(s)~~ "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.

(ab) ~~(t)~~ "Site location" means the actual physical and geographical location of the proposed industrial facility and its dependent components.

(ac) ~~(u)~~ "Solid waste" means garbage and other discarded solid materials including solid waste materials resulting from industrial, commercial, and agricultural operations and from community activities.

(ad) ~~(v)~~ "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.

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

*This defines the area of study for impact assistance payments.*

(af) ~~(w)~~—"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.

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

*To provide clarity.*

### **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 ~~will~~ **shall** submit to the division an application 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 ~~the~~ estimated construction cost is less than eighty percent (80%) of the current threshold construction cost.

(ii) A 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~~(k)~~ (n) 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.

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

#### Section 4. Jurisdictional Meeting.

*This new section provides procedures for determinations to require permits, waivers, and exemptions.*

(a) Persons requesting the following authorizations 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 ; or
- (v) An exemption from a permit pursuant to W.S. 35-12-119.

(b) The jurisdictional meeting shall be held when the facility design and 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) Details 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 additions and modifications (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 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. Any such fee will:

(i) Be determined by the director;

(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.

**Section 4 5. 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.

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

(d) 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 ~~whoever of the following is applicable: a managing partner, the proprietor, a responsible executive officer, or designated manager~~ the president of the corporation or owner of the company, or another official designated by the bylaws to obligate and bind the applicant. The letter shall contain the following information:

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

(ii) Assurance that the company has the necessary financing to construct, maintain, operate, decommission and reclaim the facility; and

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

*This gives assurance that the company seeks the permit; and commits to the statements in the application.*

~~Furthermore, each~~ (e) Each application or request for waiver shall be considered to be continuing and the applicant is under a duty to immediately notify the division of any changes of facts or applicable law materially affecting such application or request for waiver up to and including the date on which the permit or request for waiver is issued or denied. The applicant shall notify the division immediately whenever it submits an application or receives a permit or approval subsequent to submitting an application under the Act which would require a material change in the design or location of the industrial facility. Such notification by the applicant may constitute a request for amendment pursuant to W.S. 35-12-106(c) and Section ~~13~~ 15 of these rules if the division determines that such differences materially change the nature, location or impact of the proposed industrial facility.

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

(~~f~~)(h) As part of the application, the applicant shall submit a summary of the entire application. The summary shall reference supporting data and analysis.

(~~g~~)(i) 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)~~(i) 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.

**Section 5 6. Request for Waiver Information to be Submitted.**

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 78, less those parts identified as not necessary by the administrator.

**Section 6 7. Decision of Council - Request for Waiver.**

(a) 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 9 11) 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 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.

*For clarification.*

(b) If the Council finds ~~and determines~~ that ~~these criteria~~ the considerations of subsection (a) 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 ~~and determine~~ 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 a any part or parts of the application requirements of W.S. 35-12-109 if it determines that it is justified by the circumstances.

*For clarification.*

Section 7 **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~~ Council determines necessary:

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

*To be able to physically locate the premises of the applicant.*

(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 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~~ 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) and (c), 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 initiation 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 those which are estimated to be in- migrating (from outside the study area at the time of hire for the facility) and identify 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.

*This provides detailed instructions for a key feature of the application.*

~~(h) The estimated number of employees needed to complete the construction and operation of the facility by the applicant, its contractors and subcontractors to include job classifications by calendar quarter. The estimate should also include:~~

~~(i) Seasonal fluctuations and the peak employment during both construction and operation;~~

~~(ii) Annual payroll;~~

~~(iii) Expected benefits, if any, to be provided including housing allowances, transportation allowances, and per diem allowances.~~

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

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

(iii) 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 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 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;

(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. An estimate of the cost of the facility construction subject to sales and use taxes. An estimate of sales and use taxes by quarter and year for each county if the facility is located in more than one county. Estimates of impact assistance payments which will result from the project.

*This separates and clarifies instructions for excise tax.*

~~(A) An estimate of the cost of the industrial facility subject to sales and use taxes and expected payments by quarter for the construction period. This estimate should include a breakdown by county if the components of the industrial facility will be located in more than one county. The estimate will also include projections of the impact assistance payments available under W.S. 39-6-411(e) and W.S. 39-6-512(d) W. S. 39-15-111 (e) and W. S. 39-16-111 (e) generated by the proposed industrial facility through the sales and use tax payments;~~

(B) 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 ~~including~~ 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.

*This implements W.S. 35-12-109 (b) (xii).*

(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.

*This implements W.S. 35-12-109 (a) (xiii) (Q).*

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

(i) 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.

*This implements W. S. 35-12-109 (a) (xiii) (S).*

(ii) An evaluation of the potential impacts to terrestrial and aquatic wildlife.

*This implements W. S. 35-12-109 (a) (xiii) (R).*

(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.

*This implements W. S. 35-12-107 (b) (viii) and 35-12-109 (a) (xviii).*

(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 information must be:

(i) Available for public inspection; and

(ii) Include confirmations or appraisals from financial sources.

*This implements W. S. 35-12-107 (b) (xiv) and 35-12-109 (a) (xxi).*

## Section 9. Additional Requirements for Wind Energy Facilities.

(a) Facility Decommissioning.

(i) Facility decommissioning documentation 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 both the surface landowner and the administrator:

(iii) Facility decommissioning shall begin within twelve (12) months after the end of the useful life, or when no electricity is generated for a continuous period of twelve (12) months of the facility or individual wind generating towers.

(b) Reclamation. Reclamation documentation shall include:

(i) Re-grading. Provisions regarding the re-grading of all tower foundations, roads, and all other surface disturbances within the facility boundary 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 the with 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.

(ii) 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) Reclamation documentation shall include seedbed preparation, application of mulch, seed and fertilizer, and post seeding maintenance of all disturbed areas.

(C) Reclamation shall restore the land to a condition and forage density equal to the original condition.

(D) 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.

(E) 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 in a per acre basis.

(F) The operator must control and minimize the introduction of noxious weeds into the re-vegetated areas for a period of at least five (5) years after the initial seeding.

(c) 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.

(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 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.

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

(iv) 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.

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

(i) Estimates of cost for decommissioning and site reclamation shall be made by an independent certified professional engineer retained by the facility 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 certified 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.

(e) Notice to owners of mineral rights. Before submitting the application, the Applicant shall provide notice to owners of mineral rights under and within the boundary of the proposed facility.

(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 owners of record.

(iii) The notice shall be published twice in a news paper 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 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.

#### Section 8-10. ~~Application information for commercial waste disposal facilities~~

##### 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 ~~through~~ , 35-12-109 and Sections ~~4, 5, 6~~ 5, 6, and 7 of these rules and regulations and the information required in subsections (a) through (h) of this section.

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

(i) a 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 271-279 and 40 CRF 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) Specification of the types of wastes to be ~~handled~~ managed by the facility, an estimate of the average waste volume the facility will ~~handle~~ manage in tons per day and the maximum tonnage the facility will be capable of handling, as well as a general description of the ~~disposal technology and waste recycling or treatment methods~~ waste management methods used by the facility or associated operations.

*To provide for clarity.*

(f) 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 14 16(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 Management Program of the Department of Environmental Quality.

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

Section 9- 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.

*Clarifies the date that a permit takes effect.*

~~(a)~~(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.

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

~~(f)~~ (e)—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)~~ (f) 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).

*This enables W. S. 35-12-113 (d), specifying the start of construction; and other references to tasks related to the construction schedule.*

(h) (g) A permit to construct shall expire if construction is not commenced with ~~thirty six months (36)~~ after receipt of such a permit, or if construction is discontinued for a period of ~~thirty six (36) months or more~~. The Council may extend such periods for good cause. 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;

*After 36 months the information in the application has become obsolete and socio-economic conditions changed. The Council must (W.S. 35-12-113 (d)) predicate the start of construction on local government ability to handle impacts.*

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

*This provides for a review of the status of the project to advise the State Treasurer according to W.S. 39-15-111 (c).*

(j) The Council may extend ~~such time periods for good cause~~. the time periods of paragraphs (i) and (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.

*This enables W. S. 35-12-113 (d), specifying the start of construction; and other references to tasks related to the construction schedule.*

(i) ~~(h)~~ Permit Term. During the application for a permit or permit waiver (W.S. 35-12-107 or 35-12- 109), an applicant may request that the permit be issued for a term of less than the life of the facility, but not less than the construction phase(s).

(i) The Council may authorize a permit for a term less than the life of a facility if the applicant demonstrates that all of the following conditions exist:

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

(j) 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 to the facility; and

(vi) Recommend 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.

*This implements and gives procedures for W.S. 35-12-113 (e).*

Section ~~40~~ 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 of site influence primarily affected has not been provided to the ~~division~~ Division ~~prior to the meeting with local governments required by W.S. 35-12-107(f) or within 30 days of filing of a non-waiver application,~~ within 30 days of filing an application or waiver of permit application, the ~~division~~ Division will provide to city, town and county governments within the area of site influence primarily affected a draft of the administrator's recommendation to the ~~council~~ Council for distribution of the impact assistance funds. Governments in disagreement with the administrator's draft recommendation shall provide to the ~~council~~ Council supporting information as outlined in Section ~~40~~ 12 (b).

(b) Pursuant to ~~W.S. 39-6-411(e) and W.S. 39-6-512(d),~~ 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~~ 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. 39-6-411(c) and W.S. 39-6-512(b)~~, 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. 39-6-411(c) and 39-6-512(d)~~, 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(k)~~ (n) of these regulations.

### Section 11 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 ~~12~~ **14. Permit Termination.**

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

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

(c) 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 ~~of site influence~~ 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) 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) The applicant shall pay an application fee ~~as required by W.S. 35-12-108(b)~~ to cover the costs of processing the application, inspecting, and for compliance activities. ~~(Note to reader: The statute is 35-12-109(b). The amount payable is calculated by DEQ Administration Division.)~~ shall be calculated by the director.

*Payment of the fee is authorized by W. S. 35-12-109 (b).*

Section 13 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 a daily log of all wastes received by the applicant by weight, source and content;

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

(iii) A a daily record of ~~recycled wastes sold or removed from the site or treated hazardous waste, whichever is applicable.~~ solid wastes removed from the facility and recycled or reused; and

(iv) A daily record of hazardous wastes treated at the facility.  
*Changes to relate to the work of the Solid & Hazardous Waste Division.*

(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 Permittee 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 Permittee 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) ~~(j)~~ 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) ~~(k)~~ 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) (4) 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 Office 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 15 ~~17~~. ~~Date of Application.~~ Pre-Filing and Filing.

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

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

(ii) 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.

(iii) 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.

(b) 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.

(c) 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.

(d) After receipt and examination of the application the administrator shall determine the area primarily affected.

(e) 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 subparagraphs (i) through (v) in paragraph (f) below;

(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.

*Additions to this section specify the study area, that region to be analyzed in the Application, and the area primarily affected. This enables compliance with W. S. 35-12-109 (a) (xix).*

Section 16 **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.