

Wyoming Department of Environmental Quality

Rules and Regulations of the Industrial Siting Council – Chapter 1

Response to Public Comment

December 15, 2010

INDEX TO COMMENTERS

Commenter	Abbreviation	Written	Oral
1. Campbell County, County and Prosecuting Attorney's Office	CC	x	
2. Bill DeGraeve, True Co.	BD		x
3. DKRW	DKRW	x	
4. Hickey and Evans	HE	x	x
5. Holland and Hart	HH	x	
6. Petroleum Association of Wyoming	PAW	x	
7. Power Company of Wyoming	PCW	x	
8. Pence and MacMillan LLC	PM	x	x
9. Powder River Basin Resource Council	PRBRC	x	x
10. Shell WindEnergy Inc.	SWE	x	
11. Wyoming Mining Association	WMA	x	
12. Wyoming Outdoor Council	WOC	x	
13. Wyoming Power Producers Coalition	WPPC	x	

Applicable Section of Comment	Commenter	COMMENT	RESPONSE	RECOMMENDED CHANGE
2(f)	HE	As written, reference to “start” and “finish” are vague. It may be more accurate and provide better guidance to reference “commence[ment] of construction” as that term is defined in W.S. 35-12-102(a)(iii) and commencement of operation.	The division acknowledges that modification of the descriptive time line for the construction period is helpful to the reader. However, the division expands the modification to clarify that the construction schedule goes through completion of construction of the facility since commercial operation can begin in some instances before the completion of construction of the entire facility.	“Construction schedule” means the schedule of events by time, from the <u>commencement of construction through completion of construction and commencement of commercial operation of the facility, start to the finish of construction</u> as described in the application and any approved updates.
2(g)	HE	Add “are” actively permitting in the last line.	The suggested edit improves the grammar and provides clarity to this definition.	Proposed developments to be considered in cumulative impacts include those facilities which have public information available, or <u>are</u> actively permitting.
2(g)	PM	Retain the phrase “are actively planning”.	The division’s position is that it is appropriate to remove the phrase, “actively planning” because it does not provide factual information that can be relied upon.	No change
2(g)	PCW	Request that the proposed developments to be considered be limited to those identified as “reasonably foreseeable future” facilities.	This does not provide additional information or value to the definition. It is unclear how “reasonably foreseeable future” would be defined.	No change
2(h)	HE	Amend the definition of “Decommissioning” as follows: “means A CONTROLLED PROCESS USED TO SAFELY RETIRE A FACILITY THAT IS NO LONGER USED AND USEFUL, UPON REVOCATION OF A PERMIT AUTHORIZING THEIR OPERATION OR UPON THE HAPPENING OF ANY EVENT WHICH CAUSES OPERATION TO CEASE, INCLUDING the removal...”	The proposed language does not completely conform to the language of the statute and unnecessarily complicates the intended meaning of the definition.	No change
2(k)(ii)	HE	Proposed edit of the definition “school district” to be consistent with the statutory definition.	The statutory reference does not add clarity to the definition.	No change
2(o)	HE	Propose modifying the definition to include language from W.S. 35-12-105(e).	Consistent with statutory language, this would be an appropriate change. However, the division recommends that appropriateness of other forms of financial assurance be left to the discretion of the director because the DEQ will be the entity responsible for carrying out decommissioning and reclamation in the event the facility defaults on the responsibility. Through the adoption of these rules the council would meet its statutory obligation by creating the mechanism by which the council could authorize other forms of financial assurance through the director.	“Financial assurance” means a security serving as collateral in the form a surety bond, certificate of deposit, corporate guarantee, <u>letter of credit, deposit of account, insurance policy</u> or other form acceptable to the director to insure

				proper decommissioning and reclamation activities.
2(o)	HH	Recommend that the definition of “financial assurance” be clarified by using something like a “certificate” that serves as collateral.	The division recognizes that there are multiple definitions for the term security. The current language is clear in the context of the rule.	No change
2(o)	PRBRC	The definition should exclude “other form[s] of financial assurance} acceptable to the director”	This would unnecessarily constrain the use of other forms of evidence of financial capability available to the applicant.	No change
2(p)	HE	Propose adding specific examples of financial capabilities consistent with the range of evidence provided for financial assurance.	The comment seems to constrain the use of other forms of evidence of financial capability. The statutory reference pertains to financial assurance which is a subset of financial capability.	No change
2(p)	DKRW	2010 statutory changes provide enough guidance on “financial capability” and no additional definition is needed.	The definition is necessary to provide clarification of the terms financial capability and financial assurance.	No change
2(y)	HE	Modify the definition as follows: “means ANY FUTURE one of multiple acts of expansion or modification OF THE INDUSTRIAL FACILITY described in the application pursuant to W.S. 35-12-109 (a)(vi), and interpreted for jurisdiction by the Division.	The suggested language provides added clarity to the definition. The word “industrial” is dropped from the suggestion because “facility” is also a defined term in the statute.	“Phase” or “phase of construction” means <u>any future</u> one of multiple acts of expansion or <u>modification of the facility</u> described in the application pursuant to W.S. 35-12-109 (a)(vi), and interpreted for jurisdiction by the division.
2(ae)	HE	Modify the definition of study area as follows, “is <u>the</u> geographic and political boundary..” It is unclear how this definition is distinct from “impacted area” as defined by statute, which defines the area of study for impact assistance payments.	The grammatical change is appropriate. The distinction between impacted area and study area, “study area” is broader than the specific area of impact. The “study area” pertains to the preparation of the application, i.e. specific counties. The area of impact is a subset of the “study area”.	“Study area” is <u>the</u> geographic and political boundary, as designated by the administrator for the required governmental, social, and economic studies required for applications.
2(ae)	PCW	The term “political boundary” is not defined in the proposed amendment; use of the already defined terms set forth in section 2 (b) avoids confusion and maintains clarity.	The “study area” is broader than the specific area of impact. The “study area” pertains to the preparation of the application, i.e. specific counties, whereas the “area primarily affected” pertains to impact assistance payments and eligibility to become a party. Political boundaries match to school districts, property and excise tax districts, service districts.	No change
2(ae)	PM	We recommend this definition refer to the area of actual impact, including the surrounding lands impacted by the proposed facility. Impact assistance payments should extend to the full impacted area, not just the facility area.	The “study area” is broader than the specific area of impact. The “study area” pertains to the preparation of the application, i.e. specific counties, whereas the “area primarily affected” pertains to impact assistance payments and eligibility to become a party. The staff foot note has been amended.	No change. <i>Staff footnote amended as follows: “This defines the area of study that will be used to determine the area primarily affected, which in turn will define the local governments eligible for impact assistance and party eligibility”</i>

3	WMA & PAW	Eliminate Section 3- requiring a certificate of insufficient jurisdiction for proposed facilities meeting 80% of the jurisdictional threshold. There is no existing statutory authority.	This provision has been incorporated into the ISC rules since at least 1987. The Statement of Reasons states that this section sets forth a procedure by which a person may obtain a ruling by the Council as to whether or not a proposed construction venture is subject to the application or information requirements of the Act. These provisions are necessary in order to facilitate the administration and enforcement of the Act's permitting authority, particularly since the latest revisions to the Act	No change
4(a)	DKRW	The division lacks the statutory power to issue "authorizations," and these meetings typically have been for planning purposes. Modify the language as follows: Persons requesting a <u>determination</u> about the follow authorizations from the Division shall first request a jurisdictional meeting with the Division.	Rather than put the applicant at risk, this provision provides an orderly process to determine if permit requirements apply. However, adding clarification to this section would be beneficial.	Persons requesting a <u>jurisdictional determination</u> for the following- authorizations from the Division shall first request a jurisdictional meeting with the Division:
4(a)	PRBRC	Jurisdictional meetings should not occur until a project is fully planned and financed.	A jurisdictional determination is conditional and qualified. Cost estimates must be known, but financing is not required until the application is submitted.	No change
4(a)	PM	Recommend that a subsection be included requiring that the Council "serve notice of the jurisdictional meeting upon each local government that would be entitled to receive serve of a copy of the application for a permit under W.S. 35-12-110(a)(i). Recommend an additional subsection, stating, "The administrator shall, within ten (10) days after the request of a jurisdictional meeting, provide notice of the meeting throughout the state for four (4) consecutive weeks in newspapers of general circulation.	Advance notice to local governments prior to application submittal is already addressed in W.S. 35-12-109 (a) (xix). Jurisdictional meetings typically happen within a short period of time (less than 10 days). Adding the proposed requirement would result in unnecessary delays to the process and the addition of unfunded expenses to the agency.	No change
4(a)(iii)	DKRW	This term "certificate of non-jurisdiction" is not in the statue or the regulations. Is it the Division's intent to continue its practice of sending a letter of non-jurisdiction?	Yes.	No change
4(a)(iv)	DKRW	It is unclear what filing is being referenced.	Agree that it would be helpful to clarify what filings are being referenced.	An informational filing pursuant to W.S. 35-12-119 (a) and (b)
4(a)(v)	DRKW	Exempt facilities are not required to seek any determination from the division.	This is for the convenience of the exempt organization. To clarify what is being referenced added the additional citation.	An exemption from a permit pursuant to W.S. 35-12-119(c).
4(b)	HE	Exact construction schedule are often dependent upon the outcomes of the permitting process. Suggest the following edit "...held when the facility design and ESTIMATED construction schedule are known."	The ISD agrees that the facility design and construction schedule at this stage are preliminary and estimates.	The jurisdictional meeting shall be held when the <u>preliminary</u> facility design and <u>estimated</u> construction schedule are known.

	DKRW	Proposed language is impractical in terms of timing and inconsistent with the statute, which does not require an applicant to have a final design or schedule at the time of application. Suggest modifying the language as follows: "...the <u>preliminary</u> facility design and <u>estimated</u> construction schedule are known."		
4(b)	PCW	The proposed, "are known" standard is too stringent a requirement given the stage at which the jurisdictional meeting is held. Suggest adding "to the best knowledge and belief of the applicant seeking the authorizations listed in paragraph (a)."	In response to comments from HE and DKRW the changes to Section 4(b) adequately address this comment.	The jurisdictional meeting shall be held when the <u>preliminary</u> facility design and <u>estimated</u> construction schedule are known.
4(c)(i)	DKRW	Modify the language as follows: Details of Ownership; and points of contact.	Providing details of ownership is necessary to be able to make a determination of jurisdiction based on 35-12-102 (a)(xi).	No change
4(c)(ii)	DKRW	Use the word "description" rather than "details".	This is an acceptable change.	Details Description of the proposed facility including a site plan;
4(c)(v)	HE PCW	For clarity modify as follows: "any future additions and modifications (phases) to be requested in the application." Replace "additions" with the word "expansion".	The division agrees with the comment. The comment is addressed with the response to HE.	Any future additions and modifications phases to be requested in the application.
4(d)(i)	PCW	Modify (i) as follows: Be determined by the director <u>as reasonable and necessary</u> .	The features of the cost are defined in the Industrial Siting Act. However, for clarity reference to W.S. 35-12-109 (b) and (d) have been added.	Be determined by the director <u>in accordance with W.S. 35-12-109 (b) and (d)</u> .
4(d)(iii) and (iv)	PCW	Subparagraphs (iii) and (iv) should be revised to reflect the statutory language of 35-12-109 (b) and (d)	Subparagraph (iii) already makes reference to the applicable statute and no further reference is necessary. For clarity reference to W.S. 35-12-109 (b) and (d) have been added to subparagraph (iv).	...Division and Council <u>as specified by W.S. 35-12-109 (b) and (d)</u> .
4(d)	PCW	Add a subparagraph (v) to reflect an applicant is entitled to a refund of the unused fee.	Repeating of the statute in this instance is unnecessary.	No change
4(d)	DKRW	It would be helpful to applicants if the Director would develop a more specific fee structure.	The statutory mechanism is for a reimbursable system rather than a fee system.	No change.
5(d)	HE	Recommend modifying the language by striking "by the bylaws".	We believe it is more appropriate for the document to come from an official in the company to bind the agreement.	No change
5(d)	DKRW	The existing language is preferable and simpler to enforce than the proposed change.	The division supports the change as presented in the proposed rule because it gives assurance that the company seeks the permit and commits to the statements in the application.	No change

5(d)	PCW	Modify the language as follows: Such application or request for waiver shall be signed by the president of the corporation, <u>manager of the limited liability company, general partner of the limited liability partnership</u> , or owner of the company or another official designated by the corporate bylaws, <u>limited liability company operating agreement, limited partnership agreement or a specific company resolution</u> to obligate and bind the applicant. <u>The application or request for waiver shall be accompanied by a letter of transmittal which</u> shall contain the following information:	We believe it is more appropriate for the document to come from an official in the company to bind the agreement. The addition of language “..application or request for waiver shall be accompanied by a.. of transmittal which..” adds clarity.	Such application or request for waiver shall be signed by the president of the corporation, or owner of the company or another official designated by the bylaws to obligate and bind the applicant. <u>The application or request for waiver shall be accompanied by a letter of transmittal which</u> shall contain the following information:
5(d)(ii)	WPPC	Suggest that the Application should have to provide evidence of the “capability” of securing financing prior to construction. Recommend that if evidence of financing must be provided to ISC, it should be required as a condition of the permit, not prior to issuance of the permit. Ambiguity around what operation financing really constitutes will make the clause difficult to enforce.	Financial capability information is required in the application by sections 107 (j)(xiv) and 109(a)(xxi) of the Act	No change
5(d)(ii)	HE	Modify the language as follows “Assurance that the company has the necessary financing FINANCIAL CAPABILITY to construct, maintain, operate, decommission and reclaim the facility; and” to maintain consistency of language throughout the rules.	The suggested change adds consistency to the rule and consistency with the statute. However, the actual demonstration of financial capability should be contained in the main body of the application. Therefore, the provision has also been modified to reflect that the transmittal letter should contain an attestation.	<u>Attestation</u> that the company has the necessary financing <u>financial capability</u> to construct, maintain, operate, decommission and reclaim the facility; and
5(d)(ii)	HE	Replace “necessary financing with “financial capability”.	We agree that this is in congruence with statutory language. the company has the necessary financing <u>financial capability</u> to construct, maintain, operate, decommission and reclaim the facility.
5(d)(ii)	DKRW	Provisions should be deleted. It is beyond the statutory authority requiring a demonstration of “financial capability”.	A letter of transmittal is part of the application, and in accordance with W.S. 35-12-109(a)(xxi)	No change.
5(d)(ii)	HH	It is unclear whether the ISC is merely looking for a statement in the letter or whether specific information must be submitted to the ISC demonstrating that the applicant is financially sound. Will the applicant be able to demonstrate its financial soundness in a way in which the	The executive may choose to provide a statement or detailed information. Yes, confidential documents and confidential testimony to the Council can be accommodated. The proposed rule requires that the applicant make a justification for the public record.	No change

		company can retain its confidential information, or will the applicant be required to formally submit financial records which will become public record? Who will determine whether the company's financial status is appropriate for the project and the criteria that will be used?	The term, financial status, is not defined. We guess that he intended term is, financial capability. The applicant is charged with supplying information to make its application complete. The Director determines if the application is complete. The Council decides if the company has the financial capability.	
5(d)(ii)	HH	Who and what criteria will be used to determine adequacy of financial information; and who will make that determination?	The Council decides if the company has the financial capability.	No change
5 (f),(g),(h), (i)	HE	The commenter points out a correction to the paragraph numbering after paragraph (e).	Correction noted.	Paragraphs g, h, i and j have been corrected to read as paragraphs f, g, h and i respectively.
8(h)	SWE	This section creates undue reporting requirements. There is no clear reason why this information is being requested, how the data will be used, and to what end. Recommend language in 8(h) be removed.	The requirement to report workforce estimates is a central feature of Industrial Siting and are required by sections 107, 109 and 119 of the Act for some time. This new wording is essential to standardize the information required by statute for evaluation of the project by state agencies, local governments; for the regulation of the project; and for the applicant to justify its evaluation of impacts of the project.	No change
8(h)	HE	Modify the language as follows: Using tables, provide a detailed tally of the estimated "TO THE EXTENT KNOWN AT THE TIME OF APPLICATION". The procurement process for construction services is not complete at the time of application.	The suggested language change is redundant. The existing language states that the tally is of the "estimated" work force. Further, staffing plans are known to a reasonable point in order to be able estimate construction costs.	No change
8(h)(ii)	HE	Use the word "commencement" instead of "initiation" to stay consistent with language.	The division agrees that the suggested will maintain consistency with W.S. 35-12-102.	Information by calendar quarter and year from the <u>commencement</u> initiation of construction through the first year of operation;
8(h)(iv)	HE	Modify the language as follows: "Identify and provide quarterly totals OF 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 MANAGEMENT OF construction;" Would like to be able to provide such information without revealing specific employee names or identifiers.	All employees of the applicant engaged in construction – direct and indirect labor – need to be reported. Management workers living in a distant state should not be included. There is no requirement for reporting employee names or identification numbers.	Identify and provide quarterly totals <u>of</u> those which are estimated to be in-migrating (from outside the study area at the time of hire for the facility) and identify <u>the number, job classification and recurrence</u> of those pre-existing employees of the Applicant engaged in construction.
8(h)(v)(i)	PCW	Modify the language as follows: Provide estimates of the <u>benefit load</u> . Paid benefits including per diem and paid fees.	The term load, begs a definition and could be misinterpreted by different applicants. The current terminology explicitly states what is to be provided.	No change.
8(i)(vii) (A)	PCW	Commenter questions whether estimates of impact assistance payments resulting from the project is something the applicant will be able to	The formula exists in the excise tax laws. Applicants have been successful in providing this in past applications.	No change

		properly estimate?		
8(i)(vii)(A)	HE	The need for this revised language is unclear.	The new text provides clarity and removes the burden of estimating sales tax payments on a quarterly basis, something very difficult to do in advance of purchase agreements and up to four years in the future. As a consequence of the comment the division recognizes that "quarter" should be deleted.	...An estimate of sales and use taxes by quarter and year for each county ...
8(l)	HE	Commenter corrects the statutory reference in the staff comments.	The division agrees with the correction.	Staff comment amended as follows: This implements W.S. 35-12-109 (b)(xii) (a)(xix)
8(l)	PM	This section is a very important addition to the current rules, as it makes it likelier that local jurisdictions will be directly involved in the siting process. Commend the ISC for taking this substantive step towards public participation and discussion.	Comment noted.	No change
8(m)	HE	This section is confusing and duplicative of 8(a) and (i)(i). Suggest deleting the entire section. Additional clarification required by 109(a)(xiii)(Q) with respect to agriculture should be addressed in 8(i)(i). Suggest incorporating (m)(iii) into 8(a) or (i).	This information is relevant to agencies who review applications. The intent here is to provide a clearly identifiable description for land use, transportation and agricultural use patterns.	No change
8(m) – (p)	PM	Concerned that these studies may not go far enough regarding the true impact to agriculture and wildlife regarding, specifically, wind energy development. Recommend that the proposed language in this section include "the most recent studies on habitat areas to local wildlife and aquatic populations, including, but not limited to, noise and flicker effects."	The provisions of paragraph (n)(ii) which requires an evaluation of the potential impacts to terrestrial and aquatic wildlife is sufficiently broad. Wildlife impact studies are conducted in advance at the instruction of WG&F, and are incorporated into the application as appendices according to existing instructions in sections 107 and 109 of the Act.	No change
8(n)(i)	PCW	Modify the language as follows: <u>A list of recent survey for Federally listed threatened and or endangered species and Wyoming Species of Greatest conservation Need (SGCN) rare species of concern (flora & fauna)</u> , as identified in the state wildlife action plan prepared by the Wyoming Game and Fish Department, <u>that found are known to occur or that have the potential to occur</u> at the site location.	The ISD requires actual examination of the project location besides consideration of historical data.	No change
8(p)	PCW	These requirement that the information be made "available for public inspection" and include "confirmations or appraisals" are not included in	While the ISD has been able to accommodate hard copy information and confidential testimony in regards to demonstration of financial capability, it is in the public interest to have a public record of some such evidence used to make a permit decision. Confirmations or appraisals from financial sources include quotations from published	No change

		W.S. 35-12-107(b)(xiv) and 35-12-109(a)(xxi) and should be struck.	documents such as Moody's, Standard & Poors, and other credit or security rating agencies. This requirement pertains to that which is shown in the application. The applicant may supply information in a confidential addendum or in testimony to the council which is in camera.	
8(p)	HH	The requirements to provide information demonstrating the applicant's financial capabilities for a section 109 permit are vague. It is unclear what "include confirmations or appraisals from financial sources" means.	Written statements about the financial capability of the applicant from non-related financial sources (e.g. A letter from an independent CPA for this purpose. A published appraisal of the company's securities by a Certified Financial Analyst. A rating published in Standard & Poor's or Moody's.) Ratings by credit companies, audited financial statements, or certifications by an independent CPA are examples of confirmations.	No change
8(p)	HH	The ISD must clearly articulate its goals in requiring proof of an applicant's financial viability. Consideration should be given to keeping the applicant's financial information confidential.	Confidential documents and in camera testimony can be used. The demonstration of financial capability is a requirement of the Industrial Siting Act.	No change
8(p)(i)& (ii)	DKRW	Delete "available for public inspection; and include confirmations or appraisals from financial sources". It is unrealistic to expect any applicant to submit a public document disclosing its financial information unless it is a publicly traded company with information in the public domain. If the ISC needs to see financial information, it will need to be protected as confidential business information, as in other permitting proceedings handled by the WDEQ. The regulations should rely on the statutory language to allow an applicant to submit information relevant to its project to demonstrate financial capability.	The public is entitled to examine "non-confidential" public record of information used by the Council to make its decision. Confidential documents and in camera testimony are an option.	No change
8(p)(iii)	HE	Expand acceptable financial capability information as follows: (ii) Include confirmations or appraisals for financial sources, OR (iii) FOR PUBLIC UTILITIES REGULATED BY THE WYOMING PUBLIC SERVICE COMMISSION, FINANCIAL CAPABILITY MAY BE DEMONSTRATED BY PROVIDING INFORMAITN FILED PURSUANT TO SECTION 226 OF THE PUBLIC SERVICE COMMISSION OF WYOMING'S SPECIAL PROCEDURAL RULES AND REGULATIONS. The legislature provided an exception for regulated public utilities to rules and regulations prescribing financial assurance requirements under W.S. 35-12-105(e). This edit is to address this exception and account for the jurisdiction of	The exemption of W.S. 35-12-105(e) applies to financial assurance but does not apply to financial capability of W.S. 35-12-109(a)(xxi).	No change

		the Commission.		
8(p) and 9(c)	WMA & PAW	Recommend that the proposed regulations rely on the statutory language which will allow each applicant to determine what information is relevant to demonstrate the viability of its project. In addition, provisions should be made for submitting confidential business information, which is not uncommon in land quality permit proceedings.	This information is required in the application by sections 105 (d) and (e), 107 (j)(iv) and 109 (a) (xxi) of the Act. Confidential information can be and have been accepted.	No change
9	PM	In full support of heightened standards regarding facility decommissioning, reclamation and financial assurances.	Comment noted.	No change
9	HH	ISD should recognize landowner agreements in this entire section.	Decommissioning instructions in the proposed rule may conflict with those negotiated with landowners. ISD would expect that the applicant would advise the ISD on the existence of multiple conflicting indemnification and decommissioning requirements (e.g. with BLM). To address differences that may occur with landowner agreements, the division suggests incorporating language that allows for a case-by-case determination by the council after being presented with evidence by the applicant.	Added Section 9(e). <u>The Council may give a case-by-case variance to requirements of this Section after considering evidence by the applicant or landowner</u>
9(a)(i)	SWE	A reasonable standard would be to remove foundations to 24 inches, allowing the underground collector system (cabling and electrical components) to remain in place. Requiring these areas to be disturbed to a depth of 48" would be disruptive to the environment as well as to the landowners' activities.	The 48 inch depth was determined on the advice and recommendation of experts in the practice of land reclamation. The commenter does not provide expert or scientific basis for his recommendation of 24 inches.	No change
9(a)(i)	HE	The rules should not establish a restrictive removal depth requirement. Establishing a prescriptive minimum removal depth for foundations ignores any contractual obligations between the facility owner and landowners and arbitrarily establishes a requirement that will, in most instances, result in unnecessary added foundation construction costs and underground cable installation costs. Necessary facility removal depths are site specific and should be determined by the landowner.	The depth of 48 inches is based on DEQ experience and expert advice with land reclamation. To address differences that may occur with landowner agreements, the division suggests incorporating language that allows for a case-by-case determination by the council after being presented with evidence by the applicant.	Added Section 9(e). <u>The Council may give a case-by-case variance to requirements of this Section after considering evidence by the applicant or landowner.</u>

9(a)(ii)& (b)(i)(C)	PCW	Amend to provide that any such consent should be recorded in county clerk's office where the buildings and/or roads are located and once recorded are binding on subsequent land owners.	It is the burden of the departing tenant to update property tax records with the county officer. The ISD is not privy to lease agreements with the landowner.	No change
9(a)(iii)	HE	Modify the language as follows: "Facility decommissioning shall begin within twelve (12) months after the end of the useful life OF THE FACILITY, or when no electricity is generated for a continuous period of twelve (12) months of the facility or individual wind generating towers. FOR PUBLIC UTILITIES REGULATED BY THE PUBLIC SERVICE COMMISSION OF WYOMING, DECOMMISSIONING SHALL BEGIN WITHIN THREE (3) MONTHS FROM THE DATE THE PUBLIC SERVICE COMMISSION OF WYOMING HAS ENTERED ITS ORDER PURSUANT TO W.S. 37-2-205 AND SECTION 208 OF THE PUBLIC SERVICE COMMISSION OF WYOMING'S SPECIAL PROCEDURAL RULES AND REGULATIONS.	Rather than incorporate PSC requirements (which may change from time to time), it would be reasonable to incorporate language that allows for a case-by-case determination by the council after being presented with evidence by the applicant.	Added Section 9(e). <u>The Council may give a case-by-case variance to requirements of this Section after considering evidence by the applicant or landowner.</u>
9(a)(iii)	HH	Rather than make a blanket rule to decommission the facility under these circumstances, the ISC should allow a "for good cause shown" exception, which would allow the facility to continue operating upon such a showing to the ISC. There may be a reasonable explanation as to why a turbine or facility may not generate electricity for 12 months.	This is a reasonable request.	Facility decommissioning shall begin: <u>(A) Within twelve (12) months after the end of the useful life of the facility or wind energy generating towers, or</u> <u>(B) When no electricity is generated for a continuous period of twelve (12) months of the facility or wind energy generating towers.</u> <u>(C) The Council may extend the time period of Section 9(a)(iii)(B) if the facility demonstrates good cause prior to the end of the continuous period of (12) months of the facility or wind energy generating towers not generating electricity.</u>
9(b)	PRBRC	ISD should adopt stricter guidelines for reclamation. It is important to clarify in the regulations that a description of site conditions, including topography, vegetation, climate, water	The suggested addition of site conditions would be appropriate to establish a baseline.	<u>(c) Final Reclamation. Final Reclamation documentation shall include: (i) A detailed description of site conditions prior to</u>

		resources, and land uses, needs to be included in the application. It is important to clarify in the regulations that reports and inspections will be required.		<u>construction, including topography, vegetative cover (including plant species and plant community structure), climate, and land uses.</u>
9(b)	WOC	To fully implement the legislative directive, the ISC's standards must assure that land will be properly reclaimed during construction and operation as well as after decommissioning. We urge ISC to clearly define "proper" standards for both interim and final reclamation. The goal of interim reclamation is to stabilize a site, prevent the invasion of noxious weeds, and provide basic resource productivity. The goal of final reclamation is to restore land to its pre-disturbance condition. The LQD has prepared guidelines that may be helpful to ISD in setting final reclamation standards and methods for determining whether the standards have been met.	The need for interim reclamation standards is identified in W.S. 35-12-105(d). The ISD has conferred with LQD regarding appropriate reclamation standards.	<u>(b) Interim Reclamation. Interim reclamation shall comply with the applicable permitting requirements of the Department of Environmental Quality, Water Quality Division stormwater program.</u>
9(b)	WOC	Prior planning that will result in minimal disturbances, an understanding of baseline conditions, and the proper salvaging of topsoil will result in less expensive and more effective reclamation and should be required in reclamation documentation for all wind energy facilities permitted by the ISC. Baseline monitoring should include an inventory of soil characteristics as well as plant species and plant community structure. Urge the ISC adopt reclamation standards for baseline data collection, baseline plant and soil characterization, and topsoil salvaging, seeding and preservation requirements that are at least as stringent as those standards set forth in LQD's regulations.	Agree that baseline information should be collected for purposes of final reclamation.	<u>(c) Final Reclamation. Final Reclamation documentation shall include: (i) A detailed description of site conditions prior to construction, including topography, vegetative cover (including plant species and plant community structure), climate, and land uses.</u>
9(b)	HE	Modify the language as follows: Reclamation documentation shall include, THE FOLLOWING, UNLESS OTHERWISE AGREED TO WITH THE LANDOWNER:	This comment is addressed with the addition of Section 9(e) in response to earlier comments.	Added Section 9(e). <u>The Council may give a case-by-case variance to requirements of this Section after considering evidence by the applicant or landowner.</u>
9(b)(i)	HE	Minor grammatical edit – change Roads to roads.	The division agrees with the grammatical correction.	Minor grammatical correction made.
9(b)(i)(D)	HE	Add a paragraph (D) as follows: THE	This comment is addressed with the addition of Section (9)(e) in response to earlier comments.	Added Section 9(e). <u>The Council</u>

		FACILITY MAY LEAVE ONE OR MORE FOUNDATIONS EXPOSED AT THE SURFACE IF APPROVAL IS OBTAINED FROM BOTH THE SURFACE LANDOWNER AND THE ADMINISTRATOR. The surface landowner may wish to have direct access to certain foundations for the ongoing use of the land.		<u>may give a case-by-case variance to requirements of this Section after considering evidence by the applicant or landowner.</u>
9(b)(ii)	HE	These requirements do not take into account agreements with landowners. The rules need to recognize landowner agreements will be in place that may control these obligations.	This comment is addressed with the addition of Section (9)(e) in response to earlier comments.	Added Section 9(e). <u>The Council may give a case-by-case variance to requirements of this Section after considering evidence by the applicant or landowner.</u>
9(b)(ii) (A)to(F)	PCW	Section is too prescriptive. Suggest that section (b) Reclamation include a statement of policy that the applicant shall provide reclamation plan developed in consultation with the land management agency having jurisdiction over the site and/or the land owner (as appropriate) and the DEQ.	This comment is addressed with the addition of Section (9)(e) in response to earlier comments.	Added Section 9(e). <u>The Council may give a case-by-case variance to requirements of this Section after considering evidence by the applicant or landowner.</u>
9(b)(ii) (C)	HH	Restoring the land to a condition and forage density equal to the original condition may not be possible due to the fact that climate conditions at the commencement of the project may not be the same at the end of the project. Recommend removing the term "equal" and inserting the terms "as reasonably as practicable to" before the terms "the original condition."	Indeed there are dry, difficult years and wet, easy years for restoring ground cover. DEQ has ample experience with re-vegetation methods can advise the permit holder to assure success with the termination of the facility.	No change
9(b)(ii) (E)	WOC	Despite abnormal climatic conditions, developers should be required to meet the interim reclamation goals of soil stability and prevention of invasive species infestations.	Comment noted.	No change
9(b)(ii) (F)	WOC	A five year noxious weed control period is arbitrary. Operators have a responsibility throughout the life of a project to control noxious weeds in re-vegetated areas.	Noxious weed control should be through final reclamation.	The operator must control and minimize the introduction of noxious weeds into the re-vegetated areas <u>until final reclamation is achieved. For a period of at least five (5) years after the initial seeding.</u>
9(b)(ii)(F)	PRBRC	Noxious weeds should be controlled until final bond release. Also recommended adoption of LQD regulations that specify that noxious and invasive weeds will not be included in percent	Noxious weed control should be through final reclamation.	The operator must control and minimize the introduction of noxious weeds into the re-vegetated areas <u>until final</u>

		cover in determining reclamation success.		reclamation is achieved. For a period of at least five (5) years after the initial seeding. “...vegetative cover with a density of 90% of the native or adaptive background vegetative cover. <u>Noxious weeds shall not be included in percent cover in determining reclamation success.</u> ”
9(c)	PCW	Suggest adding language as follows. <u>The portion of a wind energy facility located on public lands and subject to federal bonding requirements shall be exempt from these financial assurance provisions.</u> Wind energy facilities subject to regulation by the Public Service Commission shall be exempt from these financial assurance provisions. <u>In addition, wind energy facilities located on land owned by the State of Wyoming, board of Land Commissioners shall be exempt from these financial assurance provisions.</u>	Calculations for financial assurance differ from agency to agency. The ISD, BLM and Office of State Lands are prepared to cooperate and coordinate their individual regulations.	No change
9(c)(i)&(ii)	HH	Suggest that these provisions be removed and the and that the first sentence in Section 9(c) be changed to provide, “Upon completion of construction of the wind energy facility, the Applicant will be required to assess the net cost of decommissioning every five years and provide security to cover those costs, if any.”	Such cost estimates must be provided prior to any permit and at the time the application is reviewed by different agencies. Refer to Section 113 (a)(iv) of the Act.	No change
9(c)(iii)	SWE	Request that this section be omitted. This section gives the director extremely broad discretion to increase financial assurance amounts with no opportunity to challenge the director’s reasons or the amount.	This provision provides an orderly mechanism to remedy problem and omissions at a later time. The reclamation plan and initial estimate of reclamation cost are prepared by the applicant. This provides a remedy to the state if such were incorrect.	No change
9(c)(iii)	PCW	Modify the language as follows: “...may be required at any time by the director <u>as reasonable and necessary</u> , provided the director first gives thirty (30) days written notice...”	The change assures the additional assurance would be justifiable.	“...may be required at any time by the director, <u>as reasonable and necessary</u> , provided the director first gives thirty (30) days written notice...”
9(c)(iv)(C)	PRBRC	Definition should exclude "other forms of financial assurance acceptable to the director". Clearly specify what financial assurances will be acceptable.	There is an implicit responsibility for the Director to ensure that financial assurance will be available should the need arise and consequently acutely aware of the importance of the choice of assurance. The aim in the choice of the phrase, “other forms” is to afford latitude in choice due to conditions and changes in the financial markets.	No change

9(c)(iv) (C)	WOC	<p>A “corporate guarantee” or “other forms as may be acceptable to the director” are not adequate financial assurances, especially considering the probable long lifespan of a wind energy facility.</p> <p>If the ISC does allow corporate guarantees, without requiring collateral or a lien on assets, then reevaluation of such a “guarantee” must be conducted on a very frequent basis, such as every two years. This reevaluation should also include a reassessment of the reclamation amount as well.</p>	The financial assurance is reviewed and renewed at five year intervals. Under Section 9 (c) (iii) the Director may take corrective actions on 30 days notice.	No change
9(d)	HE	It should be noted that public utilities are exempt from this provision, as it related to financial assurance for decommissioning and site reclamation, from which they are exempt.	As in paragraph (c) it should be clear that paragraph (d) does not apply to facilities regulated by the PSC.	(c) ...Wind energy facilities subject to regulation by the Public Service Commission shall be exempt from these financial assurance provisions <u>and from the Cost Estimation for Decommissioning and Site Reclamation provisions of Section (9)(d) of these rules.</u>
9(d)(ii)	HH	Recommend that the private landowner agreements also control the issue of financial assurance for decommissioning. In the absence of such provisions in the landowner agreements, the Revised ISC Regulations may control. In that case we recommend that Section 9(d)(ii) be changed to provide that “Total decommissioning cost may be estimated with regard to salvage value of the facilities”.	The state must ensure that adequate financial resources are available to decommission and reclaim the site should the facility owner default. Salvage value applies to a depreciating asset (e.g. market value of turbines) The financial assurance mechanism is to cover costs for labor and material for decommissioning and reclamation.	No change
9(d)(ii)	CC	Support the financial assurance provisions for reclamation and decommissioning. In particular support retaining the provision providing for a cost estimation by a certified professional engineer which cost estimate is to be determined without regard to salvage value.	Comment noted	No change
9(d)(iv)	HE	Modify the language as follows: AN The certified professional engineer estimate of decommissioning and reclamation costs REVIEWED BY A LICENSED PROFESSIONAL ENGINEER shall include the following:	The use of the term “licensed professional engineer” is more appropriate than “certified professional engineer” and should be changed throughout section (d). It is the position of the division that the estimates should be made by the licensed professional engineer (one possessing the credentials to make such calculations) rather than just reviewing.	Changed the reference to certified professional engineer throughout paragraph (d) to “licensed professional engineer”.

		The proposed edit clarifies that the estimate shall be reviewed by a licensed engineer but that the estimate is unlikely to be stamped since it does not constitute a design.		
9(d)(v)	PCW	Modify the language as follows: The facility may request release of the financial assurance mechanism when the facility has achieved final reclamation <u>in accordance with the approved reclamation plan.</u>	The existing language provides a measure of performance as proof that the restoration plan actually worked as intended.	No change
9(d)(v)	PRBRC	Encourage the adoption of the LQD's requirements for bond release (for non-coal mining).	The LQD requirements for bond release were consulted.	No change
9(e)	WMA & PAW	At a minimum "minerals owners of record" needs to be defined to include "mining claim holders of record and leases of record". If the agency does not want to define "mineral owners" then the language including "claim holders and leases of record" needs to be inserted into the rule along with mineral owners. All of the claims on federal minerals are registered in the county court house as well as at the BLM offices, so the burden should not be too onerous. Likewise leases are registered at the BLM offices for leasable minerals or at the State Land Office for those located on state lands.	Expanding the notification requirement to claim holders or leases of record goes beyond the statutory requirements of W.S. 35-12-105 (f)	No change
9(e)	SWE	Notice to be made by first class mail to all owners of record is likely to create significant delay in development of projects. Suggest the following modification: (ii) The notice may be mailed by first class mail to all owners of record whose identity and current addresses are readily obtainable from publicly available documents. (iii) The notice shall be published twice in a newspaper of general circulation in the county or counties where the project is located.	The division suggests that the proposed language is a reasonable means of complying with the statutory requirements of W.S. 35-12-105(f).	(ii) The notice may be mailed by first class mail to all owners of record <u>whose identity and current addresses are readily obtainable from publicly available documents.</u> (iii) The notice shall be published twice in a newspaper of general circulation in the county or counties where the project is located.
9(e)	PCW	This provision imposes an unreasonable burden and potentially large expense upon an applicant for a wind energy project.	The provision is necessary to comply with the statutory requirements of W.S. 35-12-105(f).	No change
9(e)(ii)	HE	Modify the language as follows: (ii) The notice:	The division disagrees with the interpretation that it is one or the other. The division's interpretation is that the	No change

		(A) shall MAY be mailed by first class mail to all owners of record; OR (iii) notice shall (B) MAY be published twice in a news paper of general circulations in the county or counties where the project is to be located. W.S. 35-12-105 includes the ability to provide notice by publication.	notice may INCLUDE notice by publication.	
11(b)	PCW	With the addition of Section 17(b), the language of paragraph (b), fifth line, should be changed from “which were in force on the date of application” to “which were in force on the date of filing an application.”	The comment is remedied by reading the paragraph in its entirety.	No change
11(g)	HE	Modify the language as follows: If the construction of the facility fails to follow MATERIALLY DEVIATES FROM 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). The edit allows for minimal alternations in construction schedule caused by forces outside control of the Applicant.	“Fails to follow” requires a judgment with evidence just as “materially deviates from.” It is understood that a schedule is complex and consists of many component schedules which are dynamic.	No change
11(g)	DKRW	The new language is unnecessary and should be deleted. The current standard permit conditions allow changes in construction schedules with a minimum o process. Section 113 of the ISA also does not provide authority for the language as it focuses on the commencement of construction. The proposal is also inconsistent with the existing language of Section 13 which only requires an amendment if there is a “significant change” resulting in “different impacts” not within the scope of the permit.	Permit conditions result from the rules, not the other way around. Permit conditions are crafted on a case by case basis by the Council. Methods to change approved construction schedules are important to provide to permit holders.	No change
11g	PRBRC	The discretionary language should change to a mandatory requirement: the company “shall” submit a permit amendment.	The changes avoid ambiguity in the current version of the Rules. The ISD appreciates the endorsement and exhortion of the comment. The ISD also needs to afford projects a degree of latitude to cope with delays.	No change
11(h)(i)	DKRW	The Council should consider a permit term of 5 years, with an update at 36-months if construction is not commenced. This will reduce the regulatory burden on the permittee and the Council while allowing governments to prepare	Permits govern the entire life of a facility and are ended by an act of the Council. Further, the evidence relied upon to inform permitting decisions by the Council and the parties becomes unreliable after three years.	No change

		for impacts.		
11(h)(ii)	DKRW	Provisions regarding payment of impact assistance, W.S. 39-15-111 (c) does not justify the addition of this language. It is possible to report to the Treasurer regarding cessation of construction without terminating the permit. This situation is better handled through existing procedures for schedule changes and permit amendments, as necessary.	The permit holder has abilities/procedures available to change the construction schedule.	No change
11(h)(ii)	PCW	Change "12 months" to "12 continuous months".	The suggested comment provides clarity.	If commenced construction has discontinued before the completion of the described project for a period of twelve (12) consecutive months, provided that the discontinuance is not in an approved schedule or for approved phases.
11(j)	PCW	Suggest that either the time period for making the request for a bond be made at least 45 days prior to the date set for hearing and/or prior to a local government requesting a bond, the governmental entity must show that it has requested a meeting with the applicant, provided a description to the applicant of the need for the bond, and provided the applicant an opportunity to ask questions regarding the need for a bond at least forty-five (45) days prior to the date set for the hearing of the permit application.	45 days is soon in the process since it includes (a) time the applicant is making changes in the information supplied (errata, and addenda are being prepared), (b) time allowed for comment by state agencies, and (c) cuts into time for a local government to intervene (20 days before the hearing).	No change
11(j)	DKRW	"Timely" should be a number.	The word, timely, is linked to a requirement to furnish information, "as defined by the administrator." Thus, a degree of latitude is implicit.	No change
11(j)	PRBRC	This provision is vague. The meaning of "good cause" is unclear. Any new information submissions should be treated as a formal amendment and allow public participation and a new hearing, if requested. Suggest the following be included as criteria for "good cause": -There have not been any significant changes to cumulative socio-economic and environmental conditions in the permit area that would warrant a major modification subject to public hearing;	The updates required in this paragraph provide sufficient information for the Council to make a decision regarding a time extension.	No change

		<p>-The applicant is able to demonstrate that the project remains viable: e.g., through a power purchase agreement, financing documents, or a valid Engineering, Procurement, and Construction (EPC) contract; and</p> <p>- All other state permits belonging to the applicant have remained valid and have been updated to comply with current environmental regulations.</p>		
11(j)	PRPRC	Suggest that there be a limit of two times for which an applicant can obtain an extension.	There are many justifiable reasons that may cause a delay. The rules as proposed will afford the Council opportunity to require and receive additional information from the permittee to ascertain the appropriateness of an extension.	No change
11(j)(v)	HE	<p>Add a paragraph (v) as follows: DELAYS CAUSED URSUANT TO PERMITTING PROCESSESS OF OTHER AGENCIES IS A FACTOR TO BE CONSIDERED IN DETERMINING "GOOD CAUSE".</p> <p>It is possible an accommodation made with regard to one regulatory entity may trigger amendments to other unrelated permits.</p>	The instruction here is to provide updates to the application. The time lines for other permits are not in the application. It is obvious that a delay obtaining another permit is a good cause to delay the start of construction and needs no special highlight.	No change
11j 11(j)(vi) 11(j)(vii)	HE	<p>11(j) minor grammatical edit in line 2 noted.</p> <p>11(j) (vi) minor grammatical edit noted.</p> <p>Suggest adding new paragraph 11(j)(vi) as follows: DESCRIBE WHY THE PREPARATIONS MADED BY LOCAL GOVERNMENTS WOULD NOT BE COVERED UNDER REVENUE STREAMS ASSOCIATED WITH THE FACILITY OR WRITTEN AGREEMENTS BETWEEN THE LOCAL GOVERNMENT AND THE OWNER OF THE FACILITY.</p> <p>The legislature has enacted taxes applicable to certain type of facilities where the intent of the tax is to provide additional impact abatement payments to local governments. In addition, it is common for local governments to enter into written agreements with facility proponents to mitigate local impacts.</p>	<p>The minor grammatical edits are appropriate.</p> <p>The division believes this concern is addressed in the instruction: (ii) Justify the need for the bond. In addition the provisions of 35-12-113(e) are to allow local governments to recover expenditures in preparation for impact to be caused by a facility if the permit holder does not complete the facility as proposed.</p>	<p>Minor edit changes made. Paragraphs (j)(k)(j) corrected to (i)(j)(k).</p> <p>No change</p>
14(e)	PCW	Modify the language as follows: The amount as <u>reasonable and necessary</u> shall be calculated by	The amount is based on the historical, actual costs of prior applications.	No change

		the director.		
17	HE	It may be more logical to insert Section 17 after section 4.	The division agrees with the comment.	Section 17 will be moved to Section 4 and the subsequent Sections renumbered accordingly. To avoid confusion at the December 15, 2010 hearing the Section has not been moved in the redraft yet.
17	HE	Paragraph (a)(ii) should be paragraph (b) and subsequent paragraphs should be updated accordingly.	The division agrees with the comment.	Paragraph (a)(ii) has been changed to (b) and subsequent paragraphs have been updated accordingly.
17(a)	HE	It is unclear why there needs to be separate definitions for study area and area of site influence. Throughout these rules, it is difficult to differentiate between the uses of "area of site influence", "areas primarily affected" and the newly proposed "study area".	The study area is assigned as the scope of study for the application. The area of influence is determined by the applicant. The area primarily affected is determined by the ISD after receipt of the application for eligibility to participate as parties.	No change
17(a)	PM	Support the ISC's effort to facilitate more input by local officials prior to the application.	Comment noted.	No change
17(a)(i)	PCW	Modify the language as follows: <u>The study area provides the boundaries for studies of counties and municipalities defined geographic area and local governments primarily affected by the proposed industrial facility for the required governmental, social and economic studies required for the application.</u>	The study area describes aspects of the scope of the application. The area primarily affected determines who is able to be a party and receive impact assistance.	No change
17(d)	PCW	Modify the language as follows: After receipt and examination of the application the administrator shall determine <u>the area primarily affected the defined geographic area, and local governments primarily affected by the proposed industrial facility.</u>	The phrase primarily affected is adequately defined in Section 2(b)(i) and addresses the comment.	No change
17(e)	HE	There is no paragraph (t) as referenced.	The commenter is correct.	Section 17(e)(i) modified as follows: Information obtained from the applicant in Section 4(c) subparagraphs (i) through (v) in paragraph (f) below.
General Comment	HH	Recommend that the ISD also set a public hearing in Cheyenne to encourage maximum stakeholder participation.	Casper was selected for the location of both hearings on the basis of its central location. The ISD and ISC will consider other locations, including Cheyenne, for future meetings and hearings of the council.	No change.
General	BD	Is there a reason that the thresholds for ISA	The jurisdictional threshold is clearly and adequately described in the statute. No need to reiterate.	No change

Comment		jurisdiction are not addressed in the rules?		
General Comment	BD	The rules should take into account landowner agreements which may differ (more or less stringent).	The ISD recognizes that there may be instances where landowner agreements may differ.	Added Section 9(e). <u>The Council may give a case-by-case variance to requirements of this Section after considering evidence by the applicant or landowner.</u>
General Comment	BD	Two edit comments: On page 22-40 paragraph (e) should be (d). On page 24-40 Under Section 10 it is not clear if the phrase "Information for Commercial Waste Disposal Facilities" belongs in the title of the section or if it is misplaced.	The labeling of paragraphs seems to be correct. The phrase "Information for Commercial Waste Disposal Facilities" belongs in the title and is on the line below because of the strikeout.	No change