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CHAPTER III

RULES OF PRACTICE AND PROCEDURE APPLICABLE TO RULE-MAKING HEARINGS OR HEARINGS BY AN ADMINISTRATOR OF A DIVISION OF DEQ

Section 1.

Except as otherwise directed by the Council, the provisions of the Rules contained in this Chapter (III), (Sections 1 et seq.), shall govern:

- (a) Any hearings conducted pursuant to a petition (within the meaning of W.S. 9-4-106) for the promulgation, amendment, or repeal of any rules (as defined in W.S. 9-4-101(a)(vii)).
- (b) Any hearings conducted pursuant to W.S. 9-4-103 for the promulgation of rules and regulations recommended by the Director or Administrator.
- (c) Any hearings by the Administrator on land, air or water quality or solid waste management permits held because of significant public comment.
- (d) Any hearings by the Administrator for a variance under W.S. 35-11-601, excluding SO2 variances.
- (e) Any hearings by the Council to consider the designation of areas of unique and irreplaceable historical, archaeological, scenic or natural value pursuant to W.S. 35-11-112(a)(v).
- (f) Any informal conference held by the administrator of Land Quality on a permit application. However, a record shall be made of the conference, unless waived by all parties. Such record shall be maintained and shall be accessible to the parties until final release of the performance bond.

Section 2.

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

- (a) Each petition must be submitted in duplicate to the Chairman of the Environmental Quality Council and to the Director of the Department of Environmental Quality.
- (b) Except as otherwise provided by the Council, the filing of a petition under this section shall not stay the effectiveness of any rule or rules.
- (c) After filing of the petition, the Council may hold a prehearing conference to review the petition and its persuasiveness.
- (d) As soon as practicable, the Council shall deny the petition in writing (stating its reasons for the denial) or initiate rule-making procedures.
- (e) Before the adoption, issuance, amendment, or repeal of any rule, or the commencement of any hearing on such proposed rule-making, the Council shall cause notice to be given in accordance with the provisions of W.S. 9-4-103.

Section 3. Informal Conference.

(a) Any request that the Administrator hold an informal conference on any application for a surface coal mining permit shall briefly state the issues to be discussed, whether the requester desires the conference to be held in the locality of the proposed mining operation, and whether access to the proposed permit area is desired. If requested, the Administrator may arrange with the applicant to grant parties to the conference access to the permit area for the purpose of gathering information relative to the conference. The conference shall be held in the locality of the operation or at the state capitol, at the option of the requester, within 20 days after the final date for filing objections unless a different period is stipulated to by the parties. If all parties requesting the conference reach agreement and withdraw their request, the conference need not be held.

(b) Where a hearing is requested pursuant to Chapter I, Section 16b, the Council may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

- (i) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;
- (ii) The person requesting that relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding;
- (iii) Such relief will not adversely affect the

public health or safety or cause significant imminent environmental harm to land, air or water resources; and

(iv) The relief sought is not the issuance of a permit where a permit has been denied by the Administrator.

Section 4.

(a) The provisions of W.S. 9-4-107 through 9-4-112 (relating to the conduct of hearings for contested cases) do not apply to hearings held under this Chapter (III) of these Rules.

As a fact-finding legislative proceeding, each hearing is nonadversary and there are no formal pleadings or adverse parties.

(b) Prior to the adoption, amendment or repeal of any rules, other than interpretive rules or statements of general policy, the Department shall publish notice of its intended action, including the date, time and place of any hearing, in a newspaper of general circulation in the state, and afford a thirty (30) day public comment period after the last publication. In addition, the council will hold at least one public hearing on the proposed action. All information will be received by the council without regard to rules of evidence.

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

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

(e) The Council or Administrator may impose time limitations upon oral presentations.

Section 5. Witnesses.

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

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

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

Section 6. Comments.

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

Section 7. Decision.

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