

CHAPTER VI

REVIEW BY THE DIRECTOR

Section 1. Review by the Director.

(a) Pursuant to the supervisory authority recognized in W.S. 35-11-110, and subject to any applicable law and to any right of appeal to the Council, the Director may review by informal conference or otherwise and affirm, modify, terminate or vacate any decision, order, notice by the Administrator, or assessment of penalty by the agency.

(b) Such review and action shall be taken by the Director when required by law. Apart from this, the Director may grant a petition for review filed with him by any interested person after considering the following factors: the need for a consistent policy in the area; the final nature of the decision; the amount of discretion statutorily vested with the Administrator; any potential adverse environmental or public health or safetyrelated impacts; and consistency of the Administrator's decision with law or regulations.

Section 2. Initiation of Review.

(a) The petition for review by the Director shall set forth in writing those items required by Chapter I, Section 3.c.(1)-(3). Upon receipt, the Director shall forward a copy thereof to the affected Administrator and to any party who appeared in prior proceedings pertaining to the same matter. A petition for review of a notice of abatement under W.S. 35-11-437 shall be filed within thirty (30) days. All other notices shall be filed within fifteen (15) days.

(b) Within thirty (30) days the Director shall grant or deny the petition and schedule any requested conference. Notice of the decision on the petition shall be sent to the petitioner, the affected Administrator, any person served with the petition and all district offices. If the petition is denied, the Director shall give a brief statement of the reasons for the denial.

Section 3. Conduct of Conference and Decision.

(a) If an informal conference is held, any person has the right to attend and participate in the conference. The procedure shall be informal, with no pre-hearing conference, discovery or cross-examination. The Director may accept oral or written statements and any other relevant information from any participant to the conference. An electronic or stenographic record shall be made of the conference proceeding, unless waived by all the participants. The record shall be maintained and shall be accessible to the participants of the conference.

(b) Following the Director's review, including any informal conference, the Director shall give each participant and the Administrator a brief written statement of findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the agency's discretion, together with a notice of any available appeal to the Council.

Section 4. Appeal to the Council.

(a) Where an appeal to the Council of the Administrator's decision is afforded, a petition should be filed with the Council within the time provided by law. This proceeding will be stayed if an informal conference with the Director is requested until the Director has made his determination. If the petitioner is not satisfied with the Director's determination, he shall inform the Council that he wishes to proceed with appeal to the Council. The Council shall conduct the hearing as if the informal hearing had not occurred, provided however, that the Director's decision may be introduced into evidence.

(b) At formal review proceedings before the Council, no evidence as to statements made or evidence produced by one participant at a conference shall be introduced as evidence by another participant.

Section 5. Miscellaneous.

(a) This Chapter shall not be construed to allow the Director to review matters or issues and grant relief either in areas which are within the exclusive jurisdiction of the Council, or from any informal conference proceeding requested and held pursuant to W.S. 35-11-406(k).

(b) Unless review by the Director is required by law, failure to seek review shall not be construed as a failure to exhaust administrative remedies.

(c) For the purposes of this Chapter, "Administrator" shall also include the Solid Waste Management Program Supervisor.