WYOMING STATUTES ANNOTATED

2015 Edition

Volume 3

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Title 12. Alcoholic Beverages
Title 13. Banks, Banking and Finance
Title 14. Children
Title 15. Cities and Towns
Title 16. City, County, State and Local Powers

(Includes legislation through the 2015 regular session.)

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4982120

ISBN 978-1-63283-065-4 (set)
ISBN 978-1-63283-167-5

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701 E. Water St., Charlottesville, VA 22902

(Pub. 49806)

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Applicability. — Where a county's growth management plan was adopted as an individual land use plan and not as a joint land use plan with two other cities, there was no need to comply with the statutory requirements under this chapter. Laughter v. Bd. of County Comm'rs, 2005 WY 54, 110 P.3d 875, 2005 Wyo. LEXIS 60 (Wyo. 2005).

Am. Jur. 2d, ALR and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 228.

62 C.J.S. Municipal Corporations §§ 105, 139 to 145.

ARTICLE 1. IN GENERAL

A joint powers board is not a "political subdivision" such that it would be required to comply with the requirements of article 16 § 7 of the Wyoming Constitution; a joint powers board is a "governmental entity" and therefore the requirements for § 1-39-113 for bringing a claim apply to a joint powers board. Weston County Hosp. Joint Powers Bd. v. Westates Constr. Co., 841 P.2d 841, 1992 Wyo. LEXIS 167 (Wyo. 1992).

A "governmental entity," such as a joint powers board, that is formed by a coalition of "political subdivisions" is not another "political subdivision" unless it is an entity of the same kind or class as a county, city, township, town or school district, and it has a prescribed geographic area, a requirement for having officers duly elected by the inhabitants of that area at a public election, and it has a legal power to levy and collect taxes. Weston County Hosp. Joint Powers Bd. v. Westates Constr. Co., 841 P.2d 841, 1992 Wyo. LEXIS 167 (Wyo. 1992).

§ 16-1-101. Authority to cooperate.

In exercising, performing or carrying out any power, privilege, authority, duty or function legally vested in any one (1) or more of them by Wyoming law, the state of Wyoming, and any one (1) or more of its counties, municipal corporations, school districts, special districts, public institutions, agencies, boards, commissions and political subdivisions, and any officer or legal representative of any one (1) or more of them, may cooperate with and assist each other, and like entities or authorities of other states, the United States and the Eastern Shoshone and Northern Arapaho Tribes of the Wind River Reservation. Cooperation may be informal or subject to resolution, ordinance or other appropriate action, and may be embodied in a written agreement specifying purposes, duration, means of financing, methods of operations, termination, acquisition and disposition of property, employment of executive and subordinate agents and other appropriate provisions.

History:
Laws 1971, ch. 239, § 1; W.S. 1957, § 9-18.7; W.S. 1977, § 9-1-128; Laws 1982, ch. 62, § 3; 1995, ch. 47, § 1.

Cross references. — For constitutional provision on interstate agreements, see U.S. Const., art. 1, § 10.

Joint enterprise of county, federal government, legal. — The joint enterprise of a county and

the U.S. forest service to condemn a private road to provide access to a national forest for recreation, the harvesting of timber, and the development and operation of oil and gas leases, did not violate either the Wyoming statutes or the Wyoming constitution. L.U. Sheep Co. v. Board of County Comm'rs, 790 P.2d 663, 1990 Wyo. LEXIS 39 (Wyo. 1990).

Cited in Bd. of County Comm'rs v. Crow, 2003 WY 40, 65 P.3d 720, 2003 Wyo. LEXIS 50 (Wyo. 2003).

§ 16-1-102. Short title.

This act shall be known and may be cited as the "Wyoming Joint Powers Act".

History:
Laws 1974, ch. 21, § 1; W.S. 1957, § 9-18.13; W.S. 1977, § 9-1-129; Laws 1982, ch. 62, § 3.

Meaning of "this act." — For the definition of "[t]his act," referred to in this section, see § 16-1-103(a)(ii).

Wyoming Joint Powers Act is companion act to Wyoming Community Development Act, § 9-7-101 et seq. Witzenburger v. State, 575 P.2d 1100, 1978 Wyo. LEXIS 266 (Wyo.), reh'g denied, 577 P.2d 1386, 1978 Wyo. LEXIS 289 (Wyo. 1978).

And joint powers board can borrow from Wyoming community development authority and pledge loan money to the authority as security for any loan from the latter. Witzenburger v. State, 575 P.2d 1100, 1978 Wyo. LEXIS 266 (Wyo.), reh'g denied, 577 P.2d 1386, 1978 Wyo. LEXIS 289 (Wyo. 1978).

Law reviews. — For comment, "Coping with Expansion: The State as Local Government Financier," see X Land & Water L. Rev. 577 (1975).

For article, "Wyoming's Local Governments and the Quality of Growth — A Preliminary Discussion," see XIV Land & Water L. Rev. 491 (1979).

§ 16-1-103. Definitions.

(a) As used in this act:

(i) "Agencies" means Wyoming counties, municipal corporations, school districts, community college districts, the joint business council of the Eastern Shoshone and Northern Arapaho Indian tribes, the business council of the Eastern Shoshone Indian tribe, the business council of the Northern Arapaho Indian tribe, joint powers boards formed pursuant to this act or special districts specifically involved in providing facilities or functions enumerated in W.S. 16-1-104(c);

(ii) "This act" means W.S. 16-1-102 through 16-1-110.

History:
Laws 1974, ch. 21, § 1; W.S. 1957, § 9-18.14; Laws 1975, ch. 178, § 1; W.S. 1977, § 9-1-130; Laws 1982, ch. 62, § 3; 1997, ch. 163, § 1; 2003, ch. 78, § 1; 2005, ch. 84, § 1; 2010, ch. 82, § 1.

Cross references. — As to school districts in general, see chapter 3 of title 21.

As to community college districts in general, see art. 3, chapter 18 of title 21.

The 2005 amendment, in (a)(i), inserted "the business council of the Eastern Shoshone Indian tribe, the business council of the Northern Arapaho Indian tribe."

Laws 2005, ch. 84, § 4, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 24, 2005.

The 2010 amendment, substituted "16-1-110" for "16-1-109" in (a)(ii).

Laws 2010, ch. 82, § 6, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 9, 2010.

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

Laws 2005, ch. 84, § 3, provides: "The state of Wyoming recognizes members of the Eastern Shoshone and Northern Arapaho Indian tribes are citizens of both their tribal governments and of Wyoming, as well as several of its political subdivisions. Those citizens can best be served if the business councils of both tribes, in addition to the joint business council, are allowed to work cooperatively with the state of Wyoming and the state's political subdivisions."

§ 16-1-104. Joint powers, functions and facilities; city-county airport board; eligible senior citizen centers.

(a) Any power, privilege or authority exercised or capable of being exercised by an agency may be exercised and enjoyed jointly with any other agency having a similar power, privilege or authority. No cost shall be incurred, debt accrued, nor money expended by any contracting party, which will be in excess of limits prescribed by law. If the joint business council of the Eastern Shoshone and Northern Arapaho Indian tribes, the business council of the Eastern Shoshone Indian tribe or the business council of the Northern Arapaho Indian tribe participates in a joint powers board under this act with political subdivisions and special districts of Wyoming, the powers of the joint business council, the powers of the business council of the Eastern Shoshone Indian tribe, the powers of the business council of the Northern Arapaho Indian tribe, Wyoming political

subdivisions and Wyoming special districts are neither increased or decreased by that participation. Rather the participation of the joint business council, the business council of the Eastern Shoshone Indian tribe or the business council of the Northern Arapaho Indian tribe is intended to facilitate implementation of programs and projects designed to more effectively benefit Wyoming's citizens.

(b) A county may enter into and operate under a joint powers agreement with one (1) or more counties, cities, school districts or community college districts for the performance of any function that the county, city, school district or community college district is authorized to perform, except the planning, expansion, creation, financing or operation of municipally owned electrical facilities.

(c) Specifically, without limiting but subject to the provisions of subsection (a) of this section, two (2) or more agencies may jointly plan, own, lease, assign, sell, create, expand, finance and operate:

(i) Water including surface water drainage, sewerage, water and soil conservation or solid waste facilities;

(ii) Recreational facilities;

(iii) Police protection agency facilities;

(iv) Fire protection agency facilities;

(v) Transportation systems facilities, including airports;

(vi) Public school facilities;

(vii) Community college facilities;

(viii) Hospital and related medical facilities;

(ix) Courthouse and jail or administrative office facilities;

(x) Public health facilities;

(xi) Electrical systems owned by municipalities prior to March 1, 1975;

(xii) Rights-of-way for electric transmission systems, oil and natural gas pipelines, telecommunications and utilities. Any right-of-way acquired under the provisions of this subsection shall follow an existing utility corridor whenever practical.

(d) Any city-county airport board heretofore organized and operating pursuant to W.S. 10-5-101 through 10-5-204 shall be deemed a joint powers board, and shall not be required to reorganize as provided for by W.S. 16-1-106(a) but is subject to all other provisions of this act.

(e) A governing body of an eligible senior citizen center may enter into a joint powers agreement under this act in order to participate in the local government self-insurance program as provided in W.S. 1-42-201 through 1-42-206. An eligible senior citizen center which enters into a joint powers agreement pursuant to this subsection shall be bound by all provisions of the agreement, but shall not be entitled to participate as a member of the joint powers board.

History:

Laws 1974, ch. 21, § 1; W.S. 1957, § 9-18.15; Laws 1975, ch. 178, § 1; W.S. 1977, § 9-1-131; Laws 1982, ch. 62, § 3; 1987, ch. 21, § 2; 1995, ch. 118, § 2; 1997, ch. 180, § 2; 2001, ch. 136, § 1; 2003, ch. 78, § 1; 2004, ch. 130, § 1; 2005, ch. 84, § 1; 2008, ch. 44, § 1.

Cross references. — As to intercity agreement to supply electric power, see § 15-7-202.

The 2004 amendment, in (d), substituted " W.S. 10-5-101 through 10-5-204" for " W.S. 10-4-101 through 10-4-105."

Laws 2004, ch. 130, § 4, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 19, 2004.

The 2005 amendment, in (a), inserted references to the business councils of the Eastern Shoshone and Northern Arapahoe Indian tribes.

Laws 2005, ch. 84, § 4, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 24, 2004.

The 2008 amendment, substituted "1-42-206" for "1-42-207" in (e).

Laws 2008, ch. 44, § 4, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, of the Wyo. Const. Approved March 5, 2008.

Editor's notes. — Laws 2005, ch. 84, § 3, provides: "The state of Wyoming recognizes members of the Eastern Shoshone and Northern Arapaho Indian tribes are citizens of both their tribal governments and of Wyoming, as well as several of its political subdivisions. Those citizens can best be served if the business councils of both tribes, in addition to the joint business council, are allowed to work cooperatively with the state of Wyoming and the state's political subdivisions."

Meaning of "this act." — For the definition of "[t]his act," referred to in this section, see § 16-1-103(a)(ii).

Conflicting legislation. — Laws 2004, ch. 130, § 3, provides: "Any other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

Laws 2008, ch. 44, § 3, provides: "Any other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

No constitutional prohibition against state subdivisions joining together. — There is no prohibition in the Wyoming constitution which would preclude the legislature from permitting political subdivisions from joining together, as allowed by this chapter. Frank v. Cody, 572 P.2d 1106, 1977 Wyo. LEXIS 304 (Wyo. 1977).

Intermunicipal agency to acquire electrical energy constitutional. — Neither a contract between several municipalities, authorizing an agency organized by them under this chapter to acquire electrical energy and providing, in turn, for its sale to the municipalities, nor the issuance by the agency of revenue bonds, secured by a pledge of payments to be received from the municipalities under the contract, creates a "debt" within the limitation of art. 16, § 4, Wyo. Const., where the contract specifically provides that payments due for electricity sold to each municipality are payable only from the revenues derived from the retail sale of electricity to the customers of the municipal distribution system. Frank v. Cody, 572 P.2d 1106, 1977 Wyo. LEXIS 304 (Wyo. 1977).

And agreement between agency and private corporation constitutional. — Where the participants in an electrical transmission system, including an agency organized by municipalities under this chapter and a private corporation, enter an agreement providing, among other things, for making up deficiencies created by a defaulting participant, but also that a pro rata share of the portion in system entitlements owned by the defaulter should accrue to the benefit of the other participants, such a provision does not conflict with art. 16, § 6, Wyo. Const., prohibiting municipalities from lending money or credit to a private entity. Frank v. Cody, 572 P.2d 1106, 1977 Wyo. LEXIS 304 (Wyo. 1977).

Municipal electric utilities extended same benefits as other utilities. — The legislature intended to extend liberally to municipal electric utilities the same benefits and efficiency available to other utilities through the combined ownership of a generating system. Frank v. Cody, 572 P.2d 1106, 1977 Wyo. LEXIS 304 (Wyo. 1977).

Joint powers board can only exercise power, privilege or authority held by participants. Frank v. Cody, 572 P.2d 1106, 1977 Wyo. LEXIS 304 (Wyo. 1977).

Fixed rate formula in power contract reasonable. — A fixed rate formula agreed upon in a power contract between municipalities organizing an agency under this chapter to produce and distribute electric power to their inhabitants is reasonable. Frank v. Cody, 572 P.2d 1106, 1977 Wyo. LEXIS 304 (Wyo. 1977).

Am. Jur. 2d, ALR and C.J.S. references. — Extension of police power of municipal corporation beyond territorial limits, 14 ALR2d 103.

§ 16-1-105. Joint agreements.

(a) Any two (2) or more agencies may enter into agreements with each other for joint or cooperative action pursuant to this act. No agreement hereunder nor amendment thereto is effective until:

(i) The governing body of each participating agency has approved the agreement or amendment;

(ii) The agreement or amendment is submitted to and approved by the Wyoming attorney general who shall determine whether the agreement or amendment is compatible with the laws and constitution of Wyoming; and

(iii) The agreement or amendment is filed with the keeper of records of each participating agency.

(b) Agreements shall provide:

(i) The duration of the agreement;

(ii) The organization, composition and nature of any separate legal entity created and the powers delegated to the entity;

(iii) The purpose of the agreement;

(iv) The percent ownership of any facility by each participating agency, unless the facility is to be owned by a joint powers board, in which case the agreement shall indicate the interest of each participating agency in the services or product of the joint powers board or the method by which the interest may be determined;

(v) The joint operation and maintenance of any facility unless delegated to an entity pursuant to paragraph (ii) of this subsection;

(vi) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

(vii) The partial or complete termination of the agreement, dissolution of any entity provided therein, and distribution of any facilities, improvements or other property upon partial or complete termination of the agreement;

(viii) Any other necessary and proper matters.

(c) If the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement may provide for an administrator or administrative board responsible for administering the joint or cooperative undertaking and representation of participating agencies on any administrative board.

History:
Laws 1974, ch. 21, § 1; W.S. 1957, § 9-18.16; Laws 1976, ch. 28, § 2; W.S. 1977, § 9-1-132; Laws 1982, ch. 62, § 3.

Meaning of "this act." — For the definition of "[t]his act," referred to in this section, see § 16-1-103(a)(ii).

Cited in Laughter v. Bd. of County Comm'rs for Sweetwater County, 2005 WY 54, 2005 Wyo. LEXIS 60, 110 P.3d 875 (2005).

§ 16-1-106. Joint powers boards; fiscal manager.

(a) An agreement pursuant to this act may create a joint powers board to conduct a joint or cooperative undertaking. A joint powers board shall consist of not fewer than five (5) members, all of whom shall be qualified electors of the counties in which the board operates. Members of a joint powers board shall be appointed by the governing bodies of the participating agencies in any proportion or number the bodies feel would adequately reflect their interest. The initial appointments shall be by mutual agreement with staggered terms of one (1), two (2) and three (3) years and are subject to reappointment. Thereafter, appointments for a full term shall be for three (3) year staggered terms. Vacancies for unexpired terms shall be filled by appointment by the governing bodies of the participating agencies. Members of the board may be removed by the governing bodies of the participating agencies. It is not incompatible office holding for an officer or legal representative of a county, municipal corporation, school district, special district, public institution, agency, board, commission or political subdivision to be a member of a joint powers board.

(b) Promptly following appointment of its members, a joint powers board shall meet, organize and elect from its membership a chairman, vice-chairman, secretary and treasurer. The secretary of a joint powers board shall notify the participating agencies of the board's organization and shall file a certificate with the county clerk and the secretary of state showing its organization. Upon filing the certificate, the joint powers board shall automatically become a body corporate and politic, and a public corporation with power to sue and be sued. The corporation has perpetual existence unless otherwise specified by the agreement providing for the corporation. No individual member of a joint powers board shall be personally liable for any actions or procedure of a joint powers board. When actually engaged in the performance of their duties, members of a joint powers board shall receive no compensation but shall be reimbursed for travel and per diem expenses as provided to state employees.

(c) A joint powers board shall meet at least once every three (3) months at the call of the chairman or within five (5) days after an oral or written request of a majority of the board members.

(d) Within the limits of its authorized and available funds, a joint powers board may employ technical, legal, administrative and clerical assistance and engage the services of research and consulting agencies. In the performance of its duties a joint powers board may utilize the services of any officer or employee of a participating agency with the approval of the governing body of the agency. Upon request of a joint powers board elected and appointed officers and employees of participating agencies shall promptly furnish the board information, statistics and reports under their control and shall otherwise cooperate with a joint powers board.

(e) Any agency participating in a joint powers project may appoint a joint powers board created by the agreement or any of the other agencies participating in the project as its agent to manage the project or to manage the finances of the project. The joint powers agreement may create a single fiscal manager to receive monies and make disbursements for the entire project. The fiscal manager may set up any necessary sinking funds, reserve funds or building funds for the use of the project.

History:
Laws 1974, ch. 21, § 1; W.S. 1957, § 9-18.17; Laws 1976, ch. 28, § 2; W.S. 1977, § 9-1-133; Laws 1982, ch. 62, § 3; 1989, ch. 83, § 1.

Cross references. — As to general powers of corporation, see § 17-16-302.

Meaning of "this act." — For the definition of "[t]his act," referred to in this section, see § 16-1-103(a)(ii).

Operation of electric utility not unconstitutional. — Because the operation of an electric utility is a proprietary and not a governmental function of a city, there is no unconstitutional delegation of a municipal function to an agency which is organized by authority of this chapter to provide electrical power and energy to the inhabitants of the participating municipalities. Frank v. Cody, 572 P.2d 1106, 1977 Wyo. LEXIS 304 (Wyo. 1977).

An agency organized by several municipalities under this chapter to provide electrical power and energy to their inhabitants does not unconstitutionally delegate its power to the electrical transmission system of which it is an owner, as a tenant in common, where under the agreement among the participants in the system, including a private corporation, the private corporation is the project manager during the construction of the generation station and transmis-

sion lines, and after construction is the operating agent of the station and related distribution facilities. Frank v. Cody, 572 P.2d 1106, 1977 Wyo. LEXIS 304 (Wyo. 1977).

Joint powers board is public corporation and the board members are public officers. Dickerson v. City Council, 582 P.2d 80, 1978 Wyo. LEXIS 221 (Wyo. 1978).

Law reviews. — For article, "Wyoming's Local Governments and the Quality of Growth — A Preliminary Discussion," see XIV Land & Water L. Rev. 491 (1979).

§ 16-1-107. Financing of joint projects.

(a) Any joint project consisting of property or improvements or an interest therein to be owned by participating agencies or a joint powers board undertaken pursuant to this act may be financed:

(i) By the contribution of funds from one (1) or more participating agencies which would be available to each agency if proceeding individually;

(ii) By bond issues by one (1) or more participating agencies to construct, improve or acquire an interest in any facility in the same manner as bonds may be issued by the agency for its individual construction, improvement or acquisition of such a facility;

(iii) By revenue bonds issued by a joint powers board to be repaid solely from revenues provided by this section or any revenue received by a joint powers board from the ownership, lease or operation of property or interest in property owned, leased or controlled by the board. Revenue securities may be issued upon majority approval of the members of a joint powers board and may be executed and delivered at any time, in the form, denominations and amounts, and may be redeemed or repurchased prior to maturity with or without premium, and may bear interest as provided by resolution of a joint powers board authorizing the issue. These securities shall meet the procedural requirements and provisions of W.S. 35-2-425 through 35-2-428 as provided for the issuance of bonds by hospital districts;

(iv) By facilities privately owned and leased to two (2) or more agencies or a joint powers board if the lease agreement provides that upon termination of the lease agreement title to the facilities vests in the participating agencies;

(v) By gifts, donations or grants of federal money;

(vi) By industrial development project bonds issued pursuant to W.S. 15-1-701 et seq.

(b) The state treasurer with the approval of the governor may if fiscally prudent invest any permanent state funds in bonds or securities issued pursuant to this act.

History:

Laws 1974, ch. 21, § 1; W.S. 1957, § 9-18.18; Laws 1976, ch. 28, § 2; W.S. 1977, § 9-1-134; Laws 1981, ch. 143, § 1; 1982, ch. 62, § 3; 2001, ch. 136, § 1.

Cross references. — As to public securities generally, see chapter 5 of this title.

As to investment of state funds generally, see art. 7, chapter 4 of title 9.

As to municipal funding and refunding bonds, see chapter 8 of title 15.

As to county financing generally, see chapter 4 of title 18.

Meaning of "this act." — For the definition of "[t]his act," referred to in this section, see § 16-1-103(a)(ii).

Agreement between agency and private corporation participating in electric transmission system constitutional. — Where the participants in an electrical transmission system, including an agency organized by municipalities under this chapter and a private corporation, enter an agreement providing, among other things, for making up deficiencies created by a defaulting participant, but also that a pro rata share of the portion in system entitlements owned by the defaulter should accrue to the benefit of the other participants, such a provision does not conflict with art. 16, § 6, Wyo. Const., prohibiting municipalities from lending money or credit to a private entity. Frank v. Cody, 572 P.2d 1106, 1977 Wyo. LEXIS 304 (Wyo. 1977).

As is provision requiring securities to meet hospital district bonding provisions. — The use of the reference technique in the last sentence of subsection (a)(iii), which provides, "These securities shall meet the procedural requirements and provisions of W.S. 35-2-425 through 35-2-428 as provided for the issuance of bonds by hospital districts," is not constitutionally objectionable. Frank v. Cody, 572 P.2d 1106, 1977 Wyo. LEXIS 304 (Wyo. 1977).

Board's majority given exclusive authority to issue bonds. — The clear language of subsection (a)(iii) indicates that a majority of the agency's joint powers board has been given the exclusive authority to issue revenue bonds at any time. Frank v. Cody, 572 P.2d 1106, 1977 Wyo. LEXIS 304 (Wyo. 1977).

And no election is necessary before the issuance of revenue bonds by an agency and there is no illegality for noncompliance with the Political Subdivision Bond Election Law, § 22-21-101 et seq. Frank v. Cody, 572 P.2d 1106, 1977 Wyo. LEXIS 304 (Wyo. 1977).

Stated in Laramie Citizens for Good Gov't v. City of Laramie, 617 P.2d 474, 1980 Wyo. LEXIS 307 (Wyo. 1980).

§ 16-1-108. Obligations and responsibilities of participating agencies.

(a) No participating agency nor any legal entity created pursuant to this act shall construct, operate or maintain any facility or improvement other than for service to and use by the participating agencies and their resident customers, except for undertakings pursuant to W.S. 16-1-104(c)(xii).

(b) No agreement pursuant to this act shall relieve any participating agency of any obligation or responsibility imposed upon it by law except to the extent of actual and timely performance thereof by a joint powers board or other legal or administrative entity created by an agreement hereunder, the performance may be offered in satisfaction of the obligation or responsibility.

(c) After April 1, 1998, any legal entity created pursuant to this act or any of its participating agencies, which owns, constructs, operates or maintains a municipal or rural domestic water supply system funded in whole or in part by state grants or loans, shall not assess public entities or individual water users in the cooperating agencies' service area water rate charges which exceed the actual costs of providing and delivering water to the point of connection to the public entities' or individual water users' water system. The governing body of the entity may establish one (1) or more service areas in each of which an average water rate may be used for all customers. A one time connection fee or system investment fee reasonably calculated to permit recovery of a proportionate share of the system infrastructure cost necessary to treat and convey the water may also be charged. A one-time fee may also be charged to recover reasonable expenses incurred by the public entity in determining the actual costs of treating and delivering water to the point of connection. Charges for special services such as customer's line maintenance shall be in addition to the water rate. As used in this subsection, "actual costs of providing and delivering water" shall include a proportionate share of the following costs related to the water system:

(i) Fees, interest charges and principal payments on all bonds issued and other indebtedness incurred to construct, purchase or improve the utility;

(ii) Salaries and wages of employees;

(iii) The cost of materials, supplies, utilities and outside services;

(iv) Other costs directly related to the delivery system;

(v) The cost for providing and maintaining a depreciation fund, a fund for emergencies and a fund for acquisition and development of new water rights and water sources;

(vi) Administrative and overhead expenses; and

(vii) The cost of acquiring, transporting, processing and treating water.

(d) If requested by the party seeking water service who resides outside the public entity's service area and upon approval of the public entity, subsection (c) of this section shall not apply if the ratio of the established rate charged to customers outside the area to the rate within the public entities service area is less than one and one-quarter (1.25) to one (1).

History:

Laws 1974, ch. 21, § 1; W.S. 1957, § 9-18.19; Laws 1976, ch. 28, § 2; W.S. 1977, § 9-1-135; Laws 1982, ch. 62, § 3; 1998, ch. 118, § 1; 1999, ch. 88, § 1; 2001, ch. 136, § 1; 2006, ch. 114, § 1.

The 2006 amendment deleted "and" at the end of (c)(v).

Laws 2006, ch. 114, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 24, 2006.

Editor's notes. — Laws 1999, ch. 88, § 2, provides: "Nothing in this act shall prohibit a municipality, joint powers board or other entity from providing water below cost."

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 16-1-103(a)(ii).

Conflicting legislation. — Laws 2006, ch. 114, § 3, provides: "[A]ny other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

Legislature intended a liberal, not a stingy, interpretation of this chapter. Frank v. Cody, 572 P.2d 1106, 1977 Wyo. LEXIS 304 (Wyo. 1977).

Subsection (a) does not prevent sale of surplus electrical power by joint agency. Frank v. Cody, 572 P.2d 1106, 1977 Wyo. LEXIS 304 (Wyo. 1977).

§ 16-1-109. State loan and investment board loans; amount; interest; security; conditions.

(a) The state loan and investment board may negotiate and make loans to one (1) or more agencies, the University of Wyoming, or joint powers boards presently existing, permitted or

created pursuant to the statutes, from the permanent mineral trust funds and other permanent funds of Wyoming not otherwise obligated, not to exceed sixty million dollars ($60,000,000.00) including all loans previously made and outstanding, and not to exceed a term of forty (40) years for repayment. The board shall set rates of interest on all such loans according to the current rates of interest for similar securities on the commercial market upon a basis which will not be less than the average rate of return realized on all permanent mineral trust fund investments as determined by the state treasurer for the five (5) calendar years immediately preceding the year in which the loan is made. For all loans under this section approved after July 1, 1996, a loan origination fee of one percent (1%) of the loan shall be paid to the state loan and investment board by the borrowing agency, university or joint powers board. The revenue produced by this fee shall be credited to the loss reserve account as provided by W.S. 16-1-110.

(b) In making loans pursuant to this act, the state loan and investment board shall establish requirements and standards which it determines to be necessary and advisable.

(c) Upon approval of a loan, an agency, the university, participating agencies, or a joint powers board shall transfer title or its interest to the property upon which facilities are to be constructed, including later improvements, to the state loan and investment board, or the state loan and investment board may require the security it deems necessary. The recipient of the loan shall make reasonable annual rental charges or loan payments as specified by the state loan and investment board. Upon repayment of the loan, title to or interest in the property and improvements shall be reconveyed to the appropriate agency, university, participating agencies or joint powers board. Where the transfer of title or interest in the property would preclude the obtaining of federal grants or where transfer of title or interest is prohibited by or would be in violation of existing grant-in-aid agreements, the state loan and investment board may waive the requirements of transfer of title or transfer of any interest in the property, and substitute other security of sufficient value as it deems necessary.

(d) Loans under this section shall be made only under the following conditions:

(i) Loans shall be made only for facilities generating user fees only to the extent that the user fees will repay the loan such that the loan can be considered a reasonable and prudent investment of state permanent funds. Any portion of the revenue generating facility unable to be financed by user fees may be financed by a grant under W.S. 9-4-604(g) and (h) to agencies and joint powers boards otherwise authorized to receive grants under those provisions;

(ii) No security other than a lien on the facilities used to generate user fees to repay the loan and pledges of user fees shall be taken to secure the loan except that the entity or joint powers board receiving the loan may also be required to issue revenue bonds to the state to evidence the loan if statutory authority exists for the entity to issue revenue bonds for the facility. No property shall be taken as security unless the property is owned by the entity to which the loan will be made. Upon repayment of the loan, liens against the property and revenue shall be released by the state loan and investment board;

(iii) Loans shall be made to the governmental entity or entities whose inhabitants receive a direct service or benefit from the revenue generating facility;

(iv) The state loan and investment board shall receive annual financial statements from entities receiving loans under this subsection;

(v) No loan shall be made without the written opinion of the attorney general certifying the legality of the transaction and all documents connected therewith.

(e) The board, whenever it deems necessary for the better protection of permanent funds of the state invested in loans under this section, may refinance any delinquent loan and reamortize the loan over not more than thirty (30) years from the date of refinancing. All costs of refinancing the loan shall be paid by the borrowing entity and no loan shall be refinanced where it appears refinancing will jeopardize the collection of the loan. An additional fee of one percent (1%) of the amount of the reamortized loan shall be paid by the borrowing entity to the board to be credited to the loss reserve account created by W.S. 16-1-110 as provided by subsection (a) of this section.

History:

Laws 1974, ch. 21, § 1; W.S. 1957, § 9-18.20; Laws 1975, ch. 178, § 1; 1976, ch. 9, § 1; ch. 21, § 1; W.S. 1977, § 9-1-136; Laws 1979, ch. 118, § 1; ch. 160, § 2; 1981, Sp. Sess., ch. 3, § 1; 1982, ch. 6, § 1; ch. 62, § 3; 1991, ch. 68, § 1; 1996, ch. 98, § 2; 1998, ch. 13, § 1; 1999, ch. 75, § 1; 2000, ch. 65, § 2; 2008, ch. 60, § 1; ch. 113, § 2; 2010, ch. 8, § 1; ch. 69, § 203.

Cross references. — As to creation of the state loan and investment board, see § 11-34-102.

As to other authorized loans by the state loan and

investment board, see § 11-34-103 and §§ 11-34-301 through 11-34-304.

The 2008 amendments. — The first 2008 amendment, by ch. 60, § 1, in (a) added "the University of Wyoming" and substituted "sixty million dollars ($60,000,000)" for "thirty million dollars ($30,000,000)" in the first sentence, substituted "shall set rates of interest on all such loans" for "may set rates of interest on all such loans to joint powers boards" and "the average rate of return realized on all permanent mineral trust fund investments as determined by the state treasurer for the five (5) calendar years immediately preceding the year in which the loan is made" for "six percent (6%) nor more than twelve percent (12%)" in the second sentence, added "university" in the third sentence; (c) added "the university" in the first sentence, added "university" in the third sentence; (d)(i) added "to agencies and joint powers boards otherwise authorized to receive grants under those provisions" at the end.

Laws 2008, ch. 60 § 2, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 7, 2008.

The second 2008 amendment, by ch. 113, § 2, effective July 1, 2008, deleted the former last sentence of (a) which read: "The limitation on legislatively designated investments under W.S. 9-4-712 applies to this investment."

This section is set out as reconciled by the Wyoming legislative service office.

The 2010 amendments. — The first 2010 amendment, by ch. 8, § 1, effective July 1, 2010, added (e).

The second 2010 amendment, by ch. 69, § 203, effective July 1, 2010, in (d), deleted "For all loans made prior to July 1, 1979, all tangible personal and real property pledged for the repayment of loans under this section, excluding pledges of revenue or property generating user fees to repay the loans, is released as security for any loans under this section and the state loan and investment board shall have prepared, execute and have filed all necessary instruments to carry out this provision. Effective July 1, 1979" at the beginning.

While neither amendment gave effect to the other, both have been given effect in this section as set out above.

Liberal construction. — Section 2, ch. 21, Laws 1974, reads: "This act is intended to permit local governmental units to make the most efficient use of their powers enabling them to cooperate with each other on a basis of mutual advantage and to thereby provide services and facilities in a manner and pursuant to forms of governmental organization which will accord best with geographic, economic, population and other factors influencing the needs and development of local communities. To this end this act is to be liberally construed."

Purpose of act. — Section 5, ch. 160, Laws 1979, reads: "The purpose of this act is to restructure and refinance specified state grant and loan programs for counties and cities without increasing or creating new state taxes."

Severability. — Section 3, ch. 21, Laws 1974, reads: "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application. To this end the provisions of this act are severable."

Meaning of "this act." — For the definition of "this act," referred to in subsection (b), see § 16-1-103(a)(ii).

§ 16-1-110. Loss reserve account created; deposits; disposition of funds.

(a) Revenues received by the state loan and investment board for deposit in the loss reserve account pursuant to W.S. 16-1-109(a) shall be transmitted to the state treasurer for deposit to the credit of the loss reserve account. Funds in the account shall be used for the purposes specified in subsection (b) of this section and to pay the administrative and legal expenses of the board in making collections and foreclosing on loans made pursuant to W.S. 16-1-109. If at the end of any fiscal year, the amount in the loss reserve account exceeds five percent (5%) of the total amount of permanent funds invested by the state in loans pursuant to W.S. 16-1-109, the amount in excess of the five percent (5%) shall be transferred and credited to the general fund.

(b) If, as a result of default in the payment of any loan made pursuant to W.S. 16-1-109, there occurs a nonrecoverable loss either to the corpus of, or interest due to, any permanent fund of the state, the state loan and investment board shall restore the loss to the permanent fund account entitled thereto using any funds available in the loss reserve account created by subsection (a) of this section. If the funds in the loss reserve account are insufficient to restore the full amount of the loss, the board shall submit a detailed report of the loss to the legislature and shall request an appropriation to restore the balance of the loss to the permanent fund account entitled thereto.

History:

Laws 1996, ch. 98, § 1; 1998, ch. 13, § 1; 2005, ch. 231, § 1; 2008, ch. 113, § 2.

The 2005 amendment, effective July 1, 2005, deleted "within the earmarked revenue fund" at the end of the first sentence.

The 2008 amendment, effective July 1, 2008, substituted "subsection (b) of this section" for " W.S. 9-4-703(e)" in (a); added (b).

Conflicting legislation. — Laws 2005, ch. 231, § 3, provides: "The provisions of this act shall supersede the provisions of any other bill enacted into law during the 2005 general session which amends or references accounts or funds to the extent any other enactment is inconsistent with the establishment of the funds and accounts created under this act. The state auditor shall account for any fund or account created in any other legislation enacted in the 2005 general session in accordance with generally accepted

accounting principles (GAAP) as promulgated by the governmental accounting standards board (GASB) and in accordance with this act."

ARTICLE 2. STATE REVOLVING ACCOUNT

§ 16-1-201. Definitions.

(a) As used in this article:

(i) "Account" means the state water pollution control revolving loan account created by W.S. 16-1-202;

(ii) "Board" means the state loan and investment board;

(iii) "Capitalization grant" means the federal grant made to Wyoming by the federal environmental protection agency for the purpose of establishing a state water pollution control revolving loan account;

(iv) "Corrective action" means as defined by W.S. 35-11-1415(a)(i);

(v) "Corrective action account" means as defined by W.S. 35-11-1415(a)(ii);

(vi) "Department" means the department of environmental quality;

(vii) "Nonpoint source" means any source of pollution other than a point source as defined by W.S. 35-11-103(a)(x) and includes leaking underground storage tanks and aboveground storage tanks;

(viii) "Title VI" means Title VI of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1381 to 1387 (Cum. Supp. 1989);

(ix) "Underground storage tank" means as defined by W.S. 35-11-1415(a)(ix);

(x) "This article" means W.S. 16-1-201 through 16-1-207;

(xi) "Aboveground storage tank" means as defined by W.S. 35-11-1415(a)(xi).

History:
Laws 1990, ch. 64, § 1; 1994, ch. 32, § 1; 1998, ch. 13, § 1.

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

§ 16-1-202. Account established; state match.

(a) There is established the state water pollution control revolving loan account. All monies received from federal capitalization grants and all state matching funds shall be deposited in the account and shall be used only to provide financial assistance as authorized in this article.

(b) The twenty percent (20%) state matching funds for each federal capitalization grant payment to the account shall be paid from the corrective action account.

(c) Payments of principal and interest on all financial assistance made under this article shall be deposited in the account. All funds in the account may be used for and are continuously appropriated for financial assistance as authorized in this article.

(d) Any unexpended balance in the account shall be invested by the state treasurer and the interest earned shall be credited to the account.

History:
Laws 1990, ch. 64, § 1; 2005, ch. 231, § 1.

The 2005 amendment, effective July 1, 2005, in (a), deleted "within the earmarked revenue fund" at the end of the first sentence.

Conflicting legislation. — Laws 2005, ch. 231, § 3, provides: "The provisions of this act shall supersede the provisions of any other bill enacted into law during the 2005 general session which amends or references accounts or funds to the extent any other enactment is inconsistent with the establishment of the funds and accounts created under this act. The state auditor shall account for any fund or account created in any other legislation enacted in the 2005 general session in accordance with generally accepted accounting principles (GAAP) as promulgated by the governmental accounting standards board (GASB) and in accordance with this act."

§ 16-1-203. Account administration; board powers and duties; department powers and duties; fiscal procedures.

(a) The board shall administer the account including issuing loans and other forms of financial assistance for the purposes authorized in this article. The board shall adopt reasonable rules and

regulations necessary to administer the account within the requirements of this article, Title VI and other federal laws.

(b) The board shall:

(i) Enter an agreement with the federal environmental protection agency regional administrator to receive capitalization grants for the account;

(ii) Receive and review applications for financial assistance from the account from municipalities, counties, joint powers boards, state agencies and other entities constituting a political subdivision under the laws of the state on forms supplied by the board;

(iii) Administer the account including processing and receiving repayments on all financial assistance; and

(iv) Conduct or allow the federal environmental protection agency to conduct an annual audit.

(c) The department shall:

(i) Annually prepare and submit to the federal environmental protection agency and the joint minerals, business and economic development interim committee of the legislature an intended use plan which has been subject to public comment and which identifies the intended uses of monies available to the account;

(ii) Prepare and submit an annual report required by Title VI; and

(iii) Evaluate engineering designs and studies and evaluate technical and administrative management of contracts for all projects in accordance with Title VI.

(d) The board and all recipients of financial assistance from the account shall establish fiscal controls and accounting procedures required by Title VI.

History:
Laws 1990, ch. 64, § 1; 2005, ch. 151, § 1.

The 2005 amendment, effective July 1, 2005, in (b)(ii), inserted "and other entities constituting a political subdivision under the laws of the state," and made a related stylistic change.

Meaning of "Title VI." — For the definition of "Title VI," referred to in this section, see § 16-1-201(a)(viii).

§ 16-1-204. Environmental review process.

(a) Through the department the board shall conduct a review of potential environmental impacts of projects receiving assistance from the account. The environmental review process shall:

(i) Contain mechanisms requiring implementation of mitigation measures to ensure the project is environmentally sound;

(ii) Allow the public an opportunity to challenge environmental review determinations and enforcement actions;

(iii) Include documentation of information, processes and premises that influence decisions;

(iv) Require public notice and participation;

(v) Include evaluation criteria and processes allowing consideration of alternative decisions; and

(vi) Comply with the requirements of Title VI and significant issues pertaining to underground storage tanks as specified in Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991 et seq.

History:
Laws 1990, ch. 64, § 1.

Editor's notes. — There is no subsection (b) in this section as it appears in the 1990 printed act.

Meaning of "Title VI." — For the definition of "Title VI," referred to in subsection (a)(vi), see § 16-1-201(a)(viii).

§ 16-1-205. Authorized projects; authorized financial assistance.

(a) The account may be used for financial assistance for the following types of projects:

(i) Construction of wastewater treatment works as allowed by Title VI; or

(ii) Implementation of nonpoint source pollution control management programs as allowed by Title VI.

(b) Financial assistance for the projects authorized in subsection (a) of this section may take the forms provided in Title VI including:

(i) Loans at or below market interest rates or for zero interest. Loans may be awarded only if:

(A) All principal and interest payments on loans are credited directly to the account;

(B) The annual repayment of principal and payment of interest begins not later than one (1) year after project completion;

(C) The loan is fully amortized not later than twenty (20) years after project completion; and

(D) Each loan recipient establishes a dedicated source of revenue for repayment of the loan.

(ii) Refinancing existing debt obligations of municipalities, counties, joint powers boards and state agencies for wastewater treatment works for which debt was incurred and building began after March 7, 1985;

(iii) Purchasing insurance for or guaranteeing local debt obligations to improve credit market access or reduce interest rates;

(iv) Security or a source of revenue for the payment of principal and interest on revenue or general obligation bonds issued by the state provided that the net proceeds of the sale of such bonds shall be deposited in the account; and

(v) Loan guarantees for similar revolving accounts established by municipalities, counties or joint powers boards.

(c) An amount of up to four percent (4%) of the capitalization grant may be used for costs of administering the account. The monies used to administer the account are not forms of financial assistance which are prioritized under W.S. 16-1-206.

History:
Laws 1990, ch. 64, § 1.

Meaning of "Title VI." — For the definition of "Title VI," referred to in this section, see § 16-1-201(a)(viii).

§ 16-1-206. Financial assistance priorities.

(a) If there are publicly owned wastewater treatment works identified as not being in compliance with the federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., then the monies in the account shall initially be used for such wastewater treatment works.

(b) If there are no publicly owned wastewater treatment works identified as not being in compliance with the Water Pollution Control Act, 33 U.S.C. § 1251 et seq., then the monies in the account shall initially be used for noninterest bearing loans to the department for taking corrective actions at leaking underground and aboveground storage tank sites and solid waste landfill remediation as provided by W.S. 35-11-1424.

(c) Principal payments to the account from loans made for corrective actions at leaking underground and aboveground storage tank sites and remediation at solid waste landfills may be used for any purposes authorized in this article.

History:
Laws 1990, ch. 64, § 1; 1994, ch. 32, § 1; 2015, ch. 46, § 1.

The 2015 amendment, effective July 1, 2015, in (b), added "and solid waste landfill remediation as provided by W.S. 35-11-1424"; and in (c), inserted "and remediation at solid waste landfills."

§ 16-1-207. Department loans; repayment.

Principal payments on loans made to the department for taking corrective actions at leaking underground and aboveground storage tank sites shall be paid from the corrective action account directly to the state water pollution control revolving loan account.

History:
Laws 1990, ch. 64, § 1; 1994, ch. 32, § 1.

ARTICLE 3. STATE DRINKING WATER REVOLVING ACCOUNT

Am. Jur. 2d, ALR and C.J.S. references. — 61C Am. Jur. 2d Pollution Control §§ 782 to 798.

39A C.J.S. Health and Environment §§ 106 to 114, 129, 131.

§ 16-1-301. Definitions.

(a) As used in this article:

(i) "Account" means the state drinking revolving loan account created by W.S. 16-1-302;

(ii) "Administrative account" means the account which may receive up to four percent (4%) of the federal capitalization funds, loan administration and loan application fees which are used to reimburse costs incurred by state agencies in the administration of the program, including but not limited to costs of servicing loans and issuing debt, program start-up costs, financial, management, and legal consulting fees, and costs for support services by state agencies;

(iii) "Board" means the state loan and investment board to include the office of state lands and investments;

(iv) "Capitalization grant" means the federal grant made to Wyoming by the federal environmental protection agency for the purpose of establishing and funding a state drinking water revolving loan account;

(v) "Capacity development" means that a community water system or nontransient noncommunity water system can adequately demonstrate that it has technical, managerial and financial capabilities to ensure current and future operations of the water system in accordance with all drinking water regulations in effect;

(vi) "Commission" means the Wyoming water development commission and includes the water development office;

(vii) "Community water system" means a public water supply which has at least fifteen (15) service connections used year-round by residents, or that regularly provides water to at least twenty-five (25) residents year-round, including, but not limited to, municipalities and water districts;

(viii) "Department" means the department of environmental quality;

(ix) "Noncommunity water system" means a public water supply which is not a community water system, including, but not limited to, public schools, state park recreational areas and state highway public rest areas;

(x) "Nontransient noncommunity water system" means a public water supply which is not a community system and which regularly provides service to at least twenty-five (25) of the same persons for more than six (6) months of the year who are not full-time residents, including, but not limited to, factories, industrial facilities and office buildings;

(xi) "Office of state lands and investments (OSLI)" means the office which provides administrative and operational management of programs of the state loan and investment board;

(xii) "Operator" means the person who is directly responsible and in charge of the operation of a water treatment plant or water distribution system;

(xiii) "Private" means that pertaining to an individual, corporation, partnership, or other legal entity which is not a political subdivision of the state, county or local government;

(xiv) "Program" means the drinking water state revolving fund program pursuant to section 1452 of the Safe Drinking Water Act (42 U.S.C. § 300j-12);

(xv) "Publicly owned water system" means a water system which is owned, operated, managed and maintained by an entity of the state, county, city, township, town, school district, water district, improvement district, joint powers board or any other entity constituting a political subdivision under the laws of this state which provides water for use and consumption of the general public through pipes and other constructed conveyances, and which is not owned, operated, managed or maintained by a private individual, association or corporation;

(xvi) "Safe Drinking Water Act (SDWA)" means the federal Safe Drinking Water Act including the 1996 amendments (Public Law 104-182, 42 U.S.C. § 300f et seq.);

(xvii) "Source water assessment" means the delineation of the boundaries of an area from which one (1) or more public water supplies receive drinking water, identifying the existence of actual and potential contaminants which may present a threat to public health within the delineated area to determine the susceptibility of the public water supply in the delineated area to such contaminants;

(xviii) "Water supply system" means a system from the water source to the consumer premises consisting of pipes, structures and facilities through which water is obtained, treated, stored, distributed or otherwise offered to the public for household use or use by humans and which is part of a community water system or a noncommunity water system;

(xix) "Wyoming water development office (WWDO)" means the office which provides administrative and operational management of the programs administered by the Wyoming water development commission.

History:
Laws 1998, ch. 88, § 1.

Editor's notes. — There is no subsection (b) in this section as it appears on the printed act.

§ 16-1-302. Account established; state match.

(a) There is established the state drinking water revolving loan account. All monies received from the federal capitalization grants, exclusive of the four percent (4%) administration set-aside as authorized under section 1452(a) of the Safe Drinking Water Act (42 U.S.C. § 300j-12), and all state matching funds shall be deposited in the account and shall only be used to provide financial assistance as authorized by this article.

(b) The twenty percent (20%) state matching funds for each federal capitalization grant payment to the account shall be paid fifty percent (50%) out of water development accounts I or II created by W.S. 41-2-124(a) and fifty percent (50%) from the federal mineral royalty capital construction account created by W.S. 9-4-604.

(c) Any unexpended balance in the account shall be invested by the state treasurer and the investment proceeds, including the interest earned, shall be credited to the account.

(d) A separate administrative account shall be established outside of the account for the purpose of paying administrative expenses associated with the program as authorized under the Safe Drinking Water Act. Revenue to this account shall be limited to four percent (4%) of the federal capitalization grant through federal fiscal year 2003 and five hundred thousand dollars ($500,000.00) per biennium thereafter.

History:
Laws 1998, ch. 88, § 1; 2005, ch. 231, § 1.

The 2005 amendment, effective July 1, 2005, in (a), deleted "within the earmarked revenue fund" at the end of the first sentence.

Appropriations. — Laws 2004, ch. 95, § 2, subsection 60, effective July 1, 2004, appropriates $1,944,000 from the general fund to the federal mineral royalty capital construction account created by W.S. 9-4-604 for purposes of funding 50% of the state match for the federal safe drinking water revolving loan fund program pursuant to W.S. 16-1-302(b).

Conflicting legislation. — Laws 2005, ch. 231, § 3, provides: "The provisions of this act shall supersede the provisions of any other bill enacted into law during the 2005 general session which amends or references accounts or funds to the extent any other enactment is inconsistent with the establishment of the funds and accounts created under this act. The state auditor shall account for any fund or account created in any other legislation enacted in the 2005 general session in accordance with generally accepted accounting principles (GAAP) as promulgated by the governmental accounting standards board (GASB) and in accordance with this act."

§ 16-1-303. Account administration; board powers and duties; department powers and duties; water development office powers and duties; fiscal procedures.

(a) The board, the department and commission are designated as the implementing and administrative agencies for the drinking water state revolving account and shall jointly develop a memorandum of understanding describing the duties and responsibilities of each agency.

(b) The board, subject to select water committee review and recommendation of projects, shall administer the account including issuing loans and other forms of financial assistance for purposes authorized in this article on the basis of a priority listing of eligible projects. The board shall adopt reasonable rules and regulations necessary to administer the account within the requirements of this article, the Safe Drinking Water Act and other federal and state laws, including the content of applications, priority listing for use of funds in accordance with requirements established in section 1452(b)(3) of the Safe Drinking Water Act (42 U.S.C. § 300j-12(b)), criteria for awarding, security, and terms and conditions for making loans and providing financial assistance.

(c) The office of state lands and investments shall:

(i) Enter into an agreement with the federal environmental protection agency regional administrator to receive capitalization grants for the account;

(ii) Receive, review and make recommendations to the board and the select water committee for approval of applications for financial assistance from the account in accordance with

requirements established by the board for publicly owned water systems of municipalities, counties, joint powers boards, state agencies, and other entities constituting a political subdivision under the laws of the state on forms supplied by the office of state lands and investments;

(iii) Administer the account and administrative account including processing and receiving capitalization grants, the state match, financial assistance agreements, repayments on all financial assistance and all other account revenues;

(iv) Conduct and allow the federal environmental protection agency to conduct an annual audit;

(v) Ensure that all publicly owned water systems which are recipients of financial assistance from the account demonstrate capacity development capabilities in compliance with section 1420 of the Safe Drinking Water Act (42 U.S.C. § 300g-9). The department and the water development office shall assist the office of state lands and investments by reviewing and making determinations on the adequacy of water system capacity development capabilities; and

(vi) Following public input and recommendations from the water development office and department and upon review and recommendation of the intended use plan and the project priority list by the select water committee, the state loan and investment board shall give final authorization and adoption of the annual intended use plans and the final priority listing of eligible projects.

(d) The board, as a condition to making a loan or other financial assistance, may impose a reasonable administrative fee or application fee that may be paid from the proceeds of the loan or financial assistance or other available funds of the applicant. These fees may be deposited into the administrative account for purposes of payment of administrative costs of the program.

(e) The department shall:

(i) Assist the office of state lands and investment and the commission annually with the preparation and submission to the federal environmental protection agency an intended use plan and the priority listing of projects eligible to receive assistance from the account which have been subject to public comment and which identifies the intended uses of monies available to the account;

(ii) Assist in the preparation and submission of a biennial report required by the Safe Drinking Water Act;

(iii) Assist with the preparation and submission of capitalization grant applications;

(iv) Provide input and assistance in the evaluations on capacity development for water systems in accordance with procedures adopted pursuant to this article;

(v) Provide operator certification and technical competency for water systems in accordance with W.S. 35-11-302(a)(iv) to include all applicants for financial assistance from the program; and

(vi) Ensure that all new or modified community water systems and new or modified nontransient noncommunity water systems commencing operation after October 1, 1999, demonstrate capacity development capabilities and by October 1, 2001, develop a strategy to assist all community and noncommunity water systems in acquiring and maintaining capacity development by adopting procedures governing capacity development in compliance with section 1420 of the Safe Drinking Water Act (42 U.S.C. § 300g-9). The department shall adopt procedures to accomplish this task and shall have the authority to require new systems in noncompliance of capacity development capabilities to take steps to correct inadequacies or cease water system operations. The water development office shall assist the department in the review and adequacy determinations of water system capacity development capabilities.

(f) The commission shall:

(i) Evaluate engineering designs and studies and provide the technical and administrative management of contracts for all projects in accordance with requirements of this article, state program, and the Safe Drinking Water Act;

(ii) Assist the office of state lands and investments and the department annually with the preparation and submission to the federal environmental protection agency an intended use plan and the priority listing of projects eligible to receive assistance from the account which have been subject to public comment and which identifies the intended uses of monies available to the account;

(iii) Provide input and assistance in the evaluations of capacity development for water systems in accordance with procedures developed as authorized by this article; and

(iv) Include in the commission's annual report to the legislature, a report on the status of the drinking water state revolving loan fund.

(g) The office of state lands and investments and all recipients of financial assistance from the account shall establish fiscal controls and accounting procedures in compliance with the Safe Drinking Water Act.

(h) The office of state lands and investments shall require as part of the application and approval process, that all financial assistance applicants obtain or ensure the certification of the operators of the publicly owned water systems in accordance with department rules and regulations prior to obtaining financial assistance approval.

(j) The select water committee shall review and recommend for approval project applications submitted to the committee pursuant to subsection (c)(ii) of this section.

History:
Laws 1998, ch. 88, § 1.

Editor's notes. — There is no subsection (i) in this section as it appears on the printed act.

§ 16-1-304. Environmental review process.

(a) The department shall conduct and make available to the office of state lands and investments a review of potential environmental impacts of projects receiving assistance from the account. The environmental review process shall:

(i) Contain mechanisms requiring implementation of mitigation measures to ensure the project is environmentally sound;

(ii) Allow the public an opportunity to challenge environmental review determinations and enforcement actions;

(iii) Employ an interdisciplinary approach to identify and mitigate adverse environmental effects including all pertinent state and federal authorities;

(iv) Include documentation of information, processes and premises that influence decisions;

(v) Require public notice and participation;

(vi) Include evaluation criteria and a process allowing consideration of alternative decisions; and

(vii) Comply with the requirements of the Safe Drinking Water Act.

History:
Laws 1998, ch. 88, § 1.

Editor's notes. — There is no subsection (b) in this section as it appears on the printed act.

§ 16-1-305. Authorized projects; authorized financial assistance.

(a) Subject to select water committee review and recommendation of projects, the account may be used for financial assistance for the planning, design and construction of projects on eligible publicly owned water systems which may be either community or noncommunity water systems. Eligible projects may be comprised of improvements to all components of a water supply system as appropriate and permitted by the Safe Drinking Water Act.

(b) Financial assistance for the projects authorized in subsection (a) of this section may be in the forms authorized by the Safe Drinking Water Act including:

(i) Loans at or below market interest rates. Loans may be awarded only if:

(A) All principal and interest payments on loans are credited directly to the account;

(B) The annual repayment of principal and payment of interest begins not later than one (1) year after project completion;

(C) The loan is fully amortized not later than twenty (20) years after project completion or not later than thirty (30) years for disadvantaged communities providing the period of the loan does not exceed the design life of the project; and

(D) Each loan recipient establishes a dedicated source of revenue for repayment of the loan.

(ii) Refinancing existing debt obligation of publicly owned water systems for planning, design and construction of water systems for which the initial debt was incurred and construction started after July 1, 1993;

(iii) Purchasing insurance for or guaranteeing local debt obligations to improve credit market access or reduce interest rates.

(c) An amount up to four percent (4%) of the capitalization grant may be used for costs of administering the account and shall be deposited into the administrative account.

(d) Repealed by Laws 2010, ch. 69, § 204.

(e) The board may consider the use of an amount of the allowable percentage of the capitalization grant for all of the established set-asides provided for by the Safe Drinking Water Act.

History:
Laws 1998, ch. 88, § 1; 2010, ch. 69, §§ 203, 204.

The 2010 amendment, effective July 1, 2010, in (e), deleted the former first sentence which read: "Funding set-asides and loan subsidies as allowed by the Safe Drinking Water Act for federal fiscal years 1997, 1998 and 1999 shall be limited to those provided for in subsections (c) and (d) of this section," and deleted "in all following federal fiscal years starting in the year 2000" at the end; and repealed former (d) which read: "An amount up to 10 percent (10%) of the federal fiscal year 1997 capitalization grant may be set-aside and delineated to be used to do statewide source water assessment activities as provided by this article."

§ 16-1-306. Inventory of publicly owned water systems; sanitary surveys.

(a) The department and water development office shall maintain an inventory of publicly owned water systems within the state, which inventory may consist of such information as the department and water development office deem necessary to include information as provided by the environmental protection agency.

(b) The department and water development office shall conduct sanitary surveys of community and nontransient noncommunity water systems within the state. The sanitary surveys shall be conducted no less than every five (5) years and information contained in the surveys shall be used in establishing the priority ranking list for eligible projects as part of this program.

(c) The costs incurred by the department and water development office to maintain the inventory of publicly owned water systems and to conduct sanitary surveys may be reimbursed to the agencies from the administrative account.

History:
Laws 1998, ch. 88, § 1.

§ 16-1-307. Transfer of funds.

The governor may transfer capitalization grant funds from the water pollution control revolving loan account established by W.S. 16-1-202 to the drinking water state revolving fund account created by W.S. 16-1-302 and from the drinking water state revolving fund account to the water pollution control revolving loan account, as authorized by the Safe Drinking Water Act.

History:
Laws 1998, ch. 88, § 1.

§ 16-1-308. Emergency financial assistance.

(a) Notwithstanding any provision of W.S. 16-1-303(b) or (j) or 16-1-305(a), the board may, without further select water committee review and recommendation, authorize loans or other forms of financial assistance from the account for purposes authorized in this article, if the board determines:

(i) An emergency exists which significantly threatens the continued operation of a public water system; and

(ii) There is insufficient time to obtain select water committee review and recommendation of the project in order to effectively address the emergency situation.

History:
Laws 1998, ch. 88, § 1.

Editor's notes. — There is no subsection (b) in this section as it appears on the printed act.

CHAPTER 2

Facsimile Seals and Signatures

Section
16-2-101. Definitions.

For comment, "Competitive Bidding on Public Works in Wyoming: Determination of Responsibility and Preference," see XI Land & Water L. Rev. 243 (1976).

For case note, "Filing of Claims Against the State: Is 'Almost' Good Enough? Rissler & McMurry Co. v. Wyoming Hwy. Dep't, 582 P.2d 583, 1978 Wyo. LEXIS 214 (Wyo. 1978)," see XIV Land & Water L. Rev. 259 (1979).

For case note, " The Scope of Judicial Review of Administrative Actions, Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241, 1978 Wyo. LEXIS 254 (Wyo. 1978)," see XIV Land & Water L. Rev. 607 (1979).

For comment, "Education for Handicapped Children in Wyoming: What Constitutes a Free Appropriate Public Education and Other Administrative Hurdles," see XIX Land & Water L. Rev. 225 (1984).

For comment, "Solar Access Rights in Wyoming," see XIX Land & Water L. Rev. 419 (1984).

For case note, "Administrative Law — Broader Jurisdiction for the Wyoming Oil and Gas Conservation Commission. Gulf Oil Corp. v. Wyoming Oil & Gas Conservation Comm'n, 693 P.2d 227, 1985 Wyo. LEXIS 422 (Wyo. 1985)," see XXI Land & Water L. Rev. 69 (1986).

For article, "A State Central Panel Hearing Officer System for Wyoming," see XXI Land & Water L. Rev. 497 (1986).

For case note, "Contract Law — Employee Handbooks: At-Will or Not At Will? A Question of Form Over Substance. McDonald v. Mobil Coal Producing, Inc., 820 P.2d 986, 1991 Wyo. LEXIS 175 (Wyo. 1991)," see XXVIII Land & Water L. Rev. 289 (1993).

For case note, "An Uncommonly Rare Decision—The Wyoming Supreme Court Orders Agency Rulemaking. In the Matter of Bessemer Mountain, Rissler & McMurray Co. v. Environmental Quality Council (In re Bessemer Mt.), 856 P.2d 450, 1993 Wyo. LEXIS 123 (Wyo. 1993)," see XXIX Land & Water L. Rev. 615 (1994).

For article, "A Guide to Air Quality Operating Permits in Wyoming," see XXXI Land & Water L. Rev. 713 (1996).

For article, "Practitioner's Guide to Valuation and Assessment Appeals of State and Local Assessed Property," see XXXII Land & Water L. Rev. 173 (1997).

Am. Jur. 2d, ALR and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 1 et seq.

Administrative decision by officer not present when evidence was taken, 18 ALR2d 606.

Power of administrative agency, in investigation of nonjudicial nature, to issue subpoenas against persons not subject to the agency's regulatory jurisdiction, 27 ALR2d 1208.

Libel and slander privilege applicable to judicial proceedings as extending to administrative proceedings, 45 ALR2d 1296.

Exclusion or inclusion of terminal Sunday or holiday in computing time for taking or perfecting administrative appeal or review, 61 ALR2d 482.

Weight of evidence of surveys or polls of public or consumer opinion, recognition, preference or the like, 76 ALR2d 619.

Stare decisis doctrine as applicable to decisions of administrative agencies, 79 ALR2d 1126.

Effect of court review of administrative decision, 79 ALR2d 1126.

Right to assistance of counsel in administrative proceedings, 33 ALR3d 229.

Hearsay evidence in proceedings before state administrative agencies, 36 ALR3d 12.

Effectiveness of employer's disclaimer of representations in personnel manual or employee handbook altering at-will employment relationship, 17 ALR5th 1.

Validity, construction and application of statutes making public proceedings open to the public, 38 ALR3d 1070, 34 ALR5th 591.

Applicability of Administrative Procedure Act (5 USC § 551 et seq.) to federal prison disciplinary proceedings, 39 ALR Fed 808.

Compliance with provision of Administrative Procedure Act, 5 USC § 553(d), providing that, with certain exceptions, required publication of a substantive rule must be made at least 30 days before its effective date, 54 ALR Fed 553.

Exhaustion of administrative remedies as prerequisite to judicial action to compel disclosure under Freedom of Information Act (FOIA) (5 U.S.C. § 552), 112 ALR Fed 561.

73 C.J.S. Public Administrative Law and Procedure §§ 71 to 73.

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§ 16-3-101. Short title; definitions.

(a) This act may be cited as the "Wyoming Administrative Procedure Act".

(b) As used in this act:

(i) "Agency" means any authority, bureau, board, commission, department, division, officer or employee of the state, a county, city or town or other political subdivision of the state, except the governing body of a city or town, the state legislature, the University of Wyoming and the judiciary;

(ii) "Contested case" means a proceeding including but not restricted to ratemaking, price fixing and licensing, in which legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing but excludes designations under W.S. 9-2-1022(h)(i);

(iii) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but it does not include a license required solely for revenue purposes;

(iv) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license;

(v) "Local agency" means any agency with responsibilities limited to less than statewide jurisdiction, except the governing body of a city or town;

(vi) "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party;

(vii) "Person" means any individual, partnership, corporation, association, municipality, governmental subdivision or public or private organization of any character other than an agency;

(viii) "Registrar of rules" for state agency rules means the secretary of state. "Registrar of rules" for local agency rules means the county clerk of the county in which the rule is to be effective;

(ix) "Rule" means each agency statement of general applicability that implements, interprets and prescribes law, policy or ordinances of cities and towns, or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(A) Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or

(B) Rulings issued pursuant to W.S. 16-3-106; or

(C) Intraagency memoranda; or

(D) Agency decisions and findings in contested cases; or

(E) Rules concerning the use of public roads or facilities which are indicated to the public by means of signs and signals; or

(F) Ordinances of cities and towns; or

(G) Designations under W.S. 9-2-1022(h)(i); or

(H) A general permit.

(x) "State agency" means any agency with statewide responsibilities;

(xi) "General permit" means a permit issued by the department of environmental quality which authorizes a category or categories of discharges or emissions;

(xii) "Internet" means as defined in W.S. 9-2-1035(a)(iii);

(xiii) "This act" means W.S. 16-3-101 through 16-3-115.

History:

Laws 1965, ch. 108, § 1; W.S. 1957, § 9-276.19; Laws 1977, ch. 107, § 1; W.S. 1977, § 9-4-101; Laws 1979, ch. 154, § 1; 1982, ch. 16, § 1; ch. 62, § 3; 1993, ch. 80, § 1; 1997, ch. 83, § 1; 2004, ch. 130, § 1; 2012, ch. 109, § 1; 2014, ch. 62, § 1.

Cross references. — As to exemption of promulgation of substantive rules and conduct of hearings of state board of parole from this chapter, except for filing of rules and regulations, see § 7-13-402(d).

As to a hearing to contest the issuance of a cease and desist order to a Wyoming financial institution or bank holding company, see § 13-10-208.

As to the authority of the department of transportation to adopt rules and regulations in accordance with the Administrative Procedure Act, see § 37-9-310.

The 2004 amendment, in (b)(ix)(E) and (F), added "or" at the end of each.

Laws 2004, ch. 130, § 4, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 19, 2004.

The 2014 amendment, effective July 1, 2014, added present (b)(xii); and redesignated former (b)(xii) as (b)(xiii).

Conflicting legislation. — Laws 2004, ch. 130, § 3, provides: "Any other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

The 2012 amendment, in (b), added (b)(ix)(H) and made stylistic changes, added (b)(xi), and redesignated former (b)(xi) as (b)(xii).

Laws 2012, ch. 109, § 2, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 23, 2012.

Analysis

I. General Consideration.
II. Contested Cases.
III. Other Definitions.

I. GENERAL CONSIDERATION.

Administrative agencies are competent to pass upon constitutional issues germane to proceedings before them. Alcala v. Wyoming State Bd. of Barber Examiners, 365 F. Supp. 560, 1973 U.S. Dist. LEXIS 11278 (D. Wyo. 1973).

Basic purpose of this chapter is to assure that the controverted issues underlying an administrative proceeding, with the exception of those matters that may be noticed under § 16-3-108(d), will be fully developed and supported on the record by material and substantial evidence and upon which the agency, as the finder of fact, must adjudicate the matter. Glenn v. Board of County Comm'rs, 440 P.2d 1, 1968 Wyo. LEXIS 166 (Wyo. 1968).

County may intervene. — A county is an agency under Wyoming Administrative Procedure Act definitions and may therefore intervene in a contested case

Agency proper party to appeal from agency decision. — Where an appeal from an agency decision is properly pursued under this chapter, the agency whose decision is being reviewed is a proper party to the appeal. Diefenderfer v. Budd, 563 P.2d 1355, 1977 Wyo. LEXIS 238 (Wyo. 1977).

"Person." Broad definition of "person" includes individuals doing business under a trade name, regardless if an objection to a final determination of compensability in a workers' compensation case is made in the individual's name or in the business's name. Heikkila v. Signal Mt. Lodge, 2013 WY 23, 295 P.3d 844, 2013 Wyo. LEXIS 26 (Wyo. 2013).

School districts included in "person." — "Person" includes governmental subdivisions, and school districts are "governmental subdivisions"; thus, school districts are included within the definition of "person." Pritchard v. State, Div. of Vocational Rehabilitation, 540 P.2d 523, 1975 Wyo. LEXIS 161 (Wyo. 1975).

Standing of county assessor. — County assessor lacked standing to appeal decision of State Board of Equalization under the Wyoming Administrative Procedure Act, as definition of "person" under this section excludes agencies, and county assessor is county officer under § 18-3-102. Rule 12 of the Wyoming Rules of Appellate Procedure provides the same rights as the Wyoming Administrative Procedure Act, and therefore cannot be the basis for the county assessor's standing to appeal a decision of the State Board of Equalization. Brandt v. TCI Cablevision, 873 P.2d 595, 1994 Wyo. LEXIS 51 (Wyo. 1994).

Public service commission may use adjudicative proceedings to set and adjust rates. Such proceedings do not constitute the promulgation of "rules." Montana-Dakota Utils. Co. v. Wyoming Pub. Serv. Comm'n, 746 P.2d 1272, 1987 Wyo. LEXIS 559 (Wyo. 1987).

Division of workers' safety and compensation had authority to form internal hearing unit, and division was authorized to promulgate rules and regulations relating to resolution of contested matters not required to be heard by medical commission or office of administrative hearings, including agency review of claimed late filings. Van Gundy v. Wyoming Workers' Safety & Comp. Div., 964 P.2d 1268, 1998 Wyo. LEXIS 147 (Wyo. 1998).

§ 16-3-102. General rulemaking requirements; assistance and authority of attorney general.

(a) In addition to other rulemaking requirements imposed by law, each agency shall:

(i) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available in connection with contested cases;

(ii) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted or used by the agency in the discharge of its functions;

(iii) Make available for public inspection all final orders, decisions and opinions.

(b) No agency rule, order or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been filed with the registrar of rules and made available for public inspection as required by this act. This subsection does not apply to orders or decisions in favor of any person or party with actual knowledge of the rule, order or decision.

(c) In formulating rules of practice as required by this section, each agency may request the assistance of the attorney general and upon request the attorney general shall assist the agency or agencies in the preparation of rules of practice.

(d) The office of administrative hearings shall adopt uniform rules for the use of state agencies setting forth the nature and requirements of all formal and informal procedures available in connection with contested cases.

(e) The attorney general may repeal administrative rules of a state agency in accordance with this act if the rules have become obsolete and no other existing agency has authority to repeal the rules.

History:

Laws 1965, ch. 108, § 2; W.S. 1957, § 9-276.20; Laws 1977, ch. 190, § 2; W.S. 1977, § 9-4-102; Laws 1982, ch. 16, § 1; ch. 62, § 3; 2014, ch. 109, § 1.

The 2014 amendment, effective July 1, 2014, added (d) and (e).

Editor's notes. — Laws 1997, ch. 31, § 5, provides: "The legislative service office shall annually provide each member of the legislature with a list of the reports submitted to the legislature by state agencies identifying which committees of the legislature received each report."

Meaning of "this act." — For the definition of "this act," referred to in the first sentence in subsection (b), see § 16-3-101(b)(xi).

Wyoming tax commission is required to adopt rules of practice for the conduct of contested cases before it and the absence of such may be prejudicially fatal. Yeik v. Department of Revenue & Taxation, 595 P.2d 965, 1979 Wyo. LEXIS 427 (Wyo. 1979).

Properly promulgated rules have force and effect of law. — Rules and regulations adopted pursuant to statutory authority and properly promulgated have the force and effect of law. Distad v. Cubin, 633 P.2d 167, 1981 Wyo. LEXIS 370 (Wyo. 1981).

Internal Hearing Unit properly formed. — The Division of Workers Safety and Compensation was authorized to promulgate rules and regulations relating to the resolution of contested matters that are not required to be heard by the Medical Commission or the Office of Administrative Hearings, including

agency review of claimed late filings, and had ample authority to form the Internal Hearing Unit. Internal Hearing Unit. Sheneman v. Division of Workers' Safety & Comp. Internal Hearing Unit, 956 P.2d 344, 1998 Wyo. LEXIS 50 (Wyo. 1998).

And prejudice may result from failure to adopt and file rules. — A school board which terminates the employment of a continuing contract teacher may fail to show that the teacher is not prejudiced by the school district's failure to adopt rules of practice and file them as required by this section and § 16-3-104. Monahan v. Board of Trustees, 486 P.2d 235, 1971 Wyo. LEXIS 226 (Wyo. 1971).

Civil rule superseded by regulations. — The applicable statutes and regulations relating to actions against the department of employment supersede Rule 6(d), W.R.C.P. (additional time after service by mail). Fullmer v. Wyoming Employment Sec. Comm'n, 858 P.2d 1122, 1993 Wyo. LEXIS 141 (Wyo. 1993).

County department of public assistance not bound by interpretative guideline in state manual. — A county department of public assistance is not bound by an interpretative rule or guideline in the state social services manual, since such a guideline is not the equivalent of a duly promulgated rule or regulation having the force of law, and the failure of the department to follow the manual's review procedures does not deprive a party of his constitutional rights to due process and equal protection. In re Matter of GP, 679 P.2d 976, 1984 Wyo. LEXIS 269 (Wyo. 1984).

Breathalyzer test results not invalidated because of absence of rules governing chemical testing. — Where the department of health and social services, under § 31-6-105(a), approved the method of testing for chemical sobriety, its failure to promulgate rules governing chemical testing results pursuant to the Administrative Procedure Act did not invalidate the breathalyzer test results of the defendant, arrested for driving under the influence. Wheeler v. State, 705 P.2d 861, 1985 Wyo. LEXIS 557 (Wyo. 1985).

Change in tax valuation method not "rule." — Letters issued by the department of revenue and taxation to announce a change in the valuation method for calculating the severance tax on uranium ore did not constitute "rules" and therefore did not require adoption pursuant to this chapter. Pathfinder Mines Corp. v. State Bd. of Equalization, 766 P.2d 531, 1988 Wyo. LEXIS 171 (Wyo. 1988).

Authority For Internal Hearing Unit. — This section and § 16-3-112, along with § 27-14-802 vested the Division of Workers' Safety and Compensation with authority to form the Internal Hearing Unit comprised of members of the agency. Poll v. State ex rel. Dep't of Emp., 963 P.2d 977, 1998 Wyo. LEXIS 99 (Wyo. 1998).

Applied in Yeik v. Department of Revenue & Taxation, 595 P.2d 965, 1979 Wyo. LEXIS 427 (Wyo. 1979); First Nat'l Bank v. Bonham, 559 P.2d 42, 1977 Wyo. LEXIS 225 (Wyo. 1977); Langdon v. Aetna Life Ins. Co., 640 P.2d 1092, 1982 Wyo. LEXIS 299 (Wyo. 1982); Hupp v. Employment Sec. Comm'n, 715 P.2d 223, 1986 Wyo. LEXIS 500 (Wyo. 1986).

Cited in Glenn v. Board of County Comm'rs, 440 P.2d 1, 1968 Wyo. LEXIS 166 (Wyo. 1968); Rosenberger v. City of Casper Bd. of Adjustment, 765 P.2d 367, 1988 Wyo. LEXIS 176 (Wyo. 1988).

Law reviews. — For comment, "Competitive Bidding on Public Works in Wyoming: Determination of Responsibility and Preference," see XI Land & Water L. Rev. 243 (1976).

For comment, "Wyoming's Administrative Regulation Review Act," see XIV Land & Water L. Rev. 189 (1979).

For article, "Administrative Regulation Review — Act II," see XV Land & Water L. Rev. 207 (1980).

For article, "A State Central Panel Hearing Officer System for Wyoming," see XXI Land & Water L. Rev. 497 (1986).

Am. Jur. 2d, ALR and C.J.S. references. — Compliance with provision of Administrative Procedure Act, 5 USC § 553(d), providing that, with certain exceptions, required publication of a substantive rule must be made at least 30 days before its effective date, 54 ALR Fed 553.

What rules, statements and interpretations adopted by federal agencies must be published, 77 ALR Fed 572.

§ 16-3-103. Adoption, amendment and repeal of rules; notice; hearing; emergency rules; proceedings to contest; review and approval by governor.

(a) Prior to an agency's adoption, amendment or repeal of all rules other than interpretative rules or statements of general policy, the agency shall:

(i) Give at least forty-five (45) days notice of its intended action. Notice shall be mailed to all persons making timely requests of the agency for advanced notice of its rulemaking proceedings and to the attorney general, the secretary of state's office as registrar of rules, and the legislative service office if a state agency. The agency shall submit a copy of the proposed rules, in a format conforming to any requirements prescribed pursuant to subsection (f) of this section, with the notice given to the legislative service office. The notice shall include:

(A) The time when, the place where and the manner in which interested persons may present their views on the intended action;

(B) A statement of the terms and substance of the proposed rule or a description of the subjects and issues involved;

(C) If an amendment or a repeal, the citation to the agency rule to be amended or repealed;

(D) If new rules, a statement that they are new rules and a citation of the statute which authorizes adoption of the rules;

(E) The place where an interested person may obtain a copy of the proposed rules in a format conforming to any requirements prescribed pursuant to subsection (f) of this section;

(F) If the agency asserts that all or a portion of a rule is proposed to be adopted, amended or repealed in order for the state to comply with federal law or regulatory requirements:

(I) A statement that the adoption, amendment or repeal of the rule is required by federal law or regulation together with citations to the applicable federal law or regulation; and

(II) A statement whether the proposed rule change meets minimum federal requirements or whether the proposed rule change exceeds minimum federal requirements.

(G) A statement whether the proposed rule change meets minimum substantive state statutory requirements or whether the proposed rule change exceeds minimum substantive state statutory requirements. If the rule change exceeds minimum substantive state statutory requirements, the agency shall include a statement explaining the reason why the rule exceeds minimum substantive statutory requirements;

(H) A statement that the agency has complied with the requirements of W.S. 9-5-304 and the location where an interested person may obtain a copy of the assessment used to evaluate the proposed rule pursuant to W.S. 9-5-304;

(J) A concise statement of the principal reasons for adoption of the rule. In compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), the statement shall include a brief explanation of the substance or terms of the rule and the basis and purpose of the rule;

(K) If a state agency is proposing a rule that differs from the uniform rules listed in subsection (j) of this section, a statement of the reasons for varying from the uniform rules.

(ii) Afford all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing, provided this period shall consist of at least forty-five (45) days from the later of the dates specified under subparagraph (A) of this paragraph, and provided:

(A) In the case of substantive rules, opportunity for oral hearing shall be granted if requested by twenty-five (25) persons, or by a governmental subdivision, or by an association having not less than twenty-five (25) members. No hearing under this subparagraph shall be conducted until at least forty-five (45) days after the later of:

(I) The date notice of intended action is given under paragraph (i) of this subsection; or

(II) The date notice is published if publication is required by subsection (e) of this section.

(B) The agency shall consider fully all written and oral submissions respecting the proposed rule;

(C) If prior to final adoption any person objects to the accuracy of a statement made by the agency pursuant to W.S. 16-3-103(a)(i)(F)(I) or (II), the agency shall:

(I) Provide the objecting person with a written response explaining and substantiating the agency's position by reference to federal law or regulations; and

(II) Include with the final rules submitted for review to the governor and legislative service office a concise statement of the objection and the agency's response.

(D) Upon adoption of the rule, the agency, if requested to do so by an interested person, either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for overruling the consideration urged against its adoption.

(iii) Comply with the requirements of W.S. 9-5-304.

(b) When an agency finds that an emergency requires the agency to proceed without notice or opportunity for hearing required by subsection (a) of this section, it may adopt emergency rules. An emergency rule is effective when filed. A state agency emergency rule shall bear the endorsement of the governor's concurrence on the finding of emergency before the registrar of rules accepts the rule for filing. The rule so adopted shall be effective for no longer than one hundred twenty (120) days but the adoption of an identical rule under W.S. 16-3-103(a) or of an emergency rule under this subsection is not precluded. In no case shall identical or substantially similar emergency rules be effective for a total period of more than two hundred forty (240) days. A local agency may proceed with the emergency rule when notice of the emergency is filed with the local registrar of rules.

(c) No rule is valid unless submitted, filed and adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within two (2) years from the effective date of the rule.

(d) No state agency rule or any amendment, repeal, modification or revision of the rule may be filed with the registrar of rules unless the rule has been submitted to the governor for review and the governor has approved and signed the rule. Except in the case of emergency rules and rules adopted by the game and fish commission fixing general hunting or fishing regulations, season or bag limits or establishing hunting areas, the governor shall not approve any rule until the date of receipt of the legislative management council's recommendation under W.S. 28-9-106(a) or until forty (40) days after the rule is filed with the legislative service office pursuant to W.S. 28-9-103(b), whichever is sooner. During the process of approving rules, the governor may disapprove any portion of a rule not conforming to paragraphs (d)(i), (ii) or (iii) of this section by clearly indicating the portion of the rule disapproved and the basis for the disapproval. Only those portions of a rule approved by the governor shall be filed with the registrar of rules as provided by W.S. 16-3-104(a). Any portion of a rule disapproved by the governor shall be returned to the agency and shall be null and void and shall not be filed, implemented or enforced. The governor shall report his disapproval of any rule or portion thereof to the management council within fifteen (15) days. The governor shall not approve any rule or any amendment, repeal, modification or revision of the rule unless it:

(i) Is within the scope of the statutory authority delegated to the adopting agency;

(ii) Appears to be within the scope of the legislative purpose of the statutory authority; and

(iii) Has been adopted in compliance with the procedural requirements of this act. For the purposes of this subsection, an "agency" means any authority, bureau, board, commission, department, division, officer or employee of the state, excluding the state legislature and the judiciary.

(e) If a state agency created as a licensing or regulatory board or commission for any profession or occupation regulated under title 33 regularly publishes a newsletter, memorandum or other written or electronic communication which serves as a medium to provide information to members of the regulated profession or occupation, then in addition to the notice requirements of subsection (a) of this section, the agency shall publish within that medium the proposed rules in a format conforming to any requirements prescribed pursuant to subsection (f) of this section. If the agency determines publication in such manner is not practicable, it shall publish within the chosen medium at least once prior to taking final action to adopt, amend or repeal any rule notice of its intended rulemaking proceedings and make available the full text of all proposed changes in the format conforming to any requirements prescribed pursuant to subsection (f) of this section. This subsection shall not apply to emergency rules adopted pursuant to subsection (b) of this section.

(f) The state registrar of rules shall prescribe a format for state agencies to follow in preparing proposed amendments to existing rules which shall ensure that additions to and deletions from existing language are clearly indicated.

(g) Upon receipt of a notice of intended action from a state agency under paragraph (a)(i) of this section, the secretary of state's office shall maintain a file of these notices and make them available for public inspection during regular business hours. A notice shall remain in the file until the rules are adopted or until the agency determines not to take action to adopt the proposed rules. To the extent that resources enable the office to do so, the secretary of state's office shall make these notices available to the public electronically. The secretary of state may promulgate rules specifying the format of notices submitted by state agencies under this subsection. Compliance with this subsection shall not affect the validity of rules promulgated by state agencies.

(h) An agency may incorporate, by reference in its rules and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation that has been adopted by an agency of the United States or of this state, another state or by a nationally recognized organization or association, provided:

(i) The agency determines that incorporation of the full text in agency rules would be cumbersome or inefficient given the length or nature of the rules;

(ii) The reference in the rules of the incorporating agency fully identifies the incorporated matter by location, date and otherwise, and states that the rule does not include any later amendments or editions of the incorporated matter;

(iii) The agency, organization or association originally issuing the incorporated matter makes copies of it readily available to the public;

(iv) The incorporating agency maintains and makes available for public inspection a copy of the incorporated matter at cost from the agency and the rules of the incorporating agency state where the incorporated matter is available on the internet as defined in W.S. 9-2-1035(a)(iii); and

(v) The incorporating agency otherwise complies with all procedural requirements under this act and the rules of the registrar of state agency rules governing the promulgation and filing of agency rules.

(j) Each state agency shall adopt as much of the uniform rules promulgated pursuant to the following provisions as is consistent with the specific and distinct requirements of the agency and state or federal law governing or applicable to the agency:

(i) W.S. 16-3-102(d);

(ii) W.S. 16-4-204(e) .

History:

Laws 1965, ch. 108, § 3; W.S. 1957, § 9-276.21; Laws 1977, ch. 190, § 2; W.S. 1977, § 9-4-103; Laws 1982, ch. 16, § 1; ch. 62, § 3; 1985, ch. 57, § 1; 1991, ch. 81, § 1; 1995, ch. 84, § 1; ch. 168, § 1; 1997, ch. 62, § 1; ch. 85, § 1; 2001, ch. 175, § 1; 2003, ch. 139, § 1; 2004, ch. 75, § 1; 2006, ch. 114, § 1; 2007, ch. 215, § 1; 2013, ch. 161, § 1; 2014, ch. 109, § 1; 2015, ch. 131, § 1.

The 2004 amendment, in (a)(ii), added "this period shall consist of at least forty-five (45) days from the latter of the dates specified under subparagraph (A) of this paragraph, and provided" at the end of the paragraph; and in (b) substituted "subsection (a)" for "paragraph (a)(i)," " W.S. 16-3-103(a)" for " W.S. 16-3-103(a)(i)," and inserted "or of an emergency rule under this subsection" following "identical rule under W.S. 16-3-103(a)," and the next-to-last sentence.

Laws 2004, ch. 46, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, 8, Wyo. Const. Approved March 5, 2004.

The 2006 amendment, deleted "and" at the end of (a)(i)(E).

Laws 2006, ch. 114, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 24, 2006.

The 2007 amendment, effective July 1, 2007, substituted "later" for "latter" in (a)(ii).

Laws 2007, ch. 215, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved July 1, 2007.

The 2013 amendment, effective July 1, 2013, added (a)(i)(H) and (a)(iii).

The 2014 amendment, effective July 1, 2014, added (a)(i)(J) and (a)(i)(K); in (h)(i), added "The agency determines that" at the beginning, substituted "cumbersome or inefficient given the length or nature of the rules" for "unduly cumbersome or expensive"; in (h)(iii), deleted "and the rules of the incorporating agency state where such copies are available" at the end; in (h)(iv), inserted "at cost from the agency," deleted "copies of" preceding "the incorporated", substituted "is available on the internet as defined in W.S. 9-2-1035(a)(iii)" for "are available at cost are available from the incorporating agency"; and added (j).

The 2015 amendment, in (j)(ii), substituted "16-4-204(e)" for "16-3-204(e)."

Laws 2015, ch. 131, § 3, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 4, 2015.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 16-3-101(b)(xi).

Conflicting legislation. — Laws 2006, ch. 114, § 3, provides: "[A]ny other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

Laws 2007, ch. 215, § 4, provides: "Any other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

Laws 2007, ch. 215, § 4, provides: "Any other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

Due process rights not infringed by prohibition of water variances. — Given the various means by which a corporation could present its views as to a water turbidity standard, including the opportunity to participate in the promulgation process and to assure that there is procedural compliance, the opportunity to obtain judicial review, if it is affected in fact by the rule adopted, and the opportunity to seek the amendment or repeal of the rule, the corporation's rights to procedural due process are not infringed by the prohibition of water variances under § 35-11-601(o). United States Steel Corp. v. Wyoming Envtl. Quality Council, 575 P.2d 749, 1978 Wyo. LEXIS 270 (Wyo. 1978).

Section provides minimum requirements of public rulemaking procedure with which agencies must comply. Tri-State Generation & Transmission Ass'n v. Environmental Quality Council, 590 P.2d 1324, 1979 Wyo. LEXIS 369 (Wyo. 1979).

In order to initiate rulemaking proceedings, there must be compliance with this section, which, among other things, requires 20 days' (now 30 days') notice of an agency's intended action prior to its adoption, amendment or repeal of all rules. United States Steel Corp. v. Wyoming Envtl. Quality Council, 575 P.2d 749, 1978 Wyo. LEXIS 270 (Wyo. 1978).

Board of equalization subject to Act. — Board of equalization was required to follow procedures in the Administrative Procedure Act when prescribing rules and regulations, and did not have authority to hold a "fact-finding proceeding" or submit an "investigative report" to department of revenue concerning the department's appraisal methods. Basin Elec. Power Coop. v. Department of Revenue, 970 P.2d 841, 1998 Wyo. LEXIS 191 (Wyo. 1998), reh'g denied, 970 P.2d 841, 1999 Wyo. LEXIS 7 (Wyo. 1999).

Hearing merely informational where no indication of "intended action." — Where a corporation files a petition to amend or repeal a water turbidity standard and the public notice given by the environmental quality council of a hearing to be held on the petition merely states that there is to be the

§ 16-3-104. Filing of copies of rules; permanent register; effective dates; manner of preparation; advice and assistance of attorney general.

(a) Each agency shall file in the office of the registrar of rules a certified copy of each rule adopted by it as approved by the governor. State agencies shall file each rule within seventy-five (75) days of the date of agency action adopting the rule or it is not effective. There shall be noted upon the rule a citation of the authority by which it or any part of it was adopted. The registrar of rules shall keep a permanent register of the rules open to public inspection. Not more than ten (10) days after a state agency files a copy of a rule in the office of the registrar of rules, the agency shall mail a notice that the rule has been filed to each person who was sent a notice under W.S. 16-3-103(a)(i). The notice shall contain a citation to the rule and the date it was filed. Failure to send the notice required under this subsection does not affect the effectiveness of the rule.

(b) Each rule and any amendment or repeal adopted after June 1, 1982 is effective after filing in accordance with subsection (a) of this section and W.S. 28-9-108 except:

(i) If a later date is required by statute or specified in the rule, the later date is the effective date;

(ii) Where the agency finds that an emergency exists and the finding is concurred in by the governor, a rule or amendment or repeal may be effective immediately upon filing with the registrar of rules and if a state agency, also with the legislative service office. Existing rules remain in effect unless amended or repealed, subject to this section or W.S. 28-9-105 or 28-9-106.

(c) Rules shall be prepared in the manner and form prescribed by the state registrar of rules. The registrar of rules may refuse to accept for filing any rule that does not conform to the prescribed form.

(d) The attorney general shall furnish advice and assistance to all state agencies in the preparation of their regulations, and in revising, codifying and editing existing or new regulations.

History:

Laws 1965, ch. 108, § 4; W.S. 1957, § 9-276.22; Laws 1977, ch. 190, § 2; W.S. 1977, § 9-4-104; Laws 1982, ch. 16, § 1; ch. 62, § 3; 1985, ch. 57, § 1; 1997, ch. 85, § 1; 2003, ch. 139, § 1; 2004, ch. 75, § 1.

Cross references. — As to exemption of promulgation of substantive rules and conduct of hearings of state board of parole from this chapter, except for filing of rules and regulations, see § 7-13-402(d).

The 2004 amendment, in (a), substituted "seventy-five (75) days" for "sixty (60) days," and deleted the third sentence, which read "Except for emergency rules and rules adopted by the game and fish commission fixing general hunting or fishing regulations, season or bag limits or establishing hunting areas, no state agency shall file a rule in the office of the registrar of rules sooner than forty (40) days after filing the rule with the legislative service office pursuant to W.S. 28-9-103(b)."

Laws 2004, ch. 46, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, 8, Wyo. Const. Approved March 5, 2004.

Prejudice may result from failure to adopt and file rules. — A school board which terminates the employment of a continuing contract teacher may fail to show that the teacher is not prejudiced by the school district's failure to adopt rules of practice and file them as required by § 16-3-102 and this section. Monahan v. Board of Trustees, 486 P.2d 235, 1971 Wyo. LEXIS 226 (Wyo. 1971).

Stated in Board of Trustees v. Spiegel, 549 P.2d 1161, 1976 Wyo. LEXIS 191 (Wyo. 1976).

Law reviews. — For comment, "Wyoming's Administrative Regulation Review Act," see XIV Land & Water L. Rev. 189 (1979).

For comment, "Wyoming's Governmental Claims Act: Sovereign Immunity with Exceptions — A Statutory Analysis," see XV Land & Water L. Rev. 619 (1980).

For article, "Administrative Law, Wyoming Style," see XVIII Land & Water L. Rev. 223 (1983).

For article, "A State Central Panel Hearing Officer System for Wyoming," see XXI Land & Water L. Rev. 497 (1986).

For case note, "EDUCATIONAL LAW — Wyoming Refuses to Recognize Compensatory Education as a Remedy Under the Education for All Handicapped Children Act of 1975. Natrona County School Dist. No. 1 v. McKnight, 764 P.2d 1039, 1988 Wyo. LEXIS 152 (Wyo. 1988)," see XXIV Land & Water L. Rev. 529 (1989).

§ 16-3-105. Compilation and indexing of administrative code; charges for copies; authentication by registrar.

(a) The registrar of state agency rules shall compile, index and publish a Wyoming administrative code. The code shall:

(i) Contain each rule adopted by a state agency, but shall not contain emergency rules;

(ii) Be compiled, numbered and indexed in a unified manner that permits the code to be easily amended and affords ease of use and accessibility to the public, including strong and effective word search capabilities;

(iii) Be available to the public at no charge through the Internet;

(iv) Be updated on the Internet as soon as practicable after the effective date of newly filed or amended rules.

(b) The registrar of state agency rules may make a reasonable charge for any rules published except those furnished to state officers, agencies, members of the legislature or the legislative service office and others in the employment of the state and its political subdivisions requiring the rules in the performance of their duties. The registrar of local agency rules may make a reasonable charge for copies of any rule on file.

(c) The registrar's authenticated file stamp on a rule or publication of a rule shall raise a rebuttable presumption that the rule was adopted and filed in compliance with all requirements necessary to make it effective.

(d) The registrar of state agency rules shall maintain and publish a current index of all state agency rules filed with the registrar. The index shall list the effective date of each set of rules or the effective date of each set of amendments to an agency's rules. Copies of the index shall be distributed as provided by W.S. 16-3-105(b).

History:

Laws 1965, ch. 108, § 5; W.S. 1957, § 9-276.23; Laws 1977, ch. 190, § 2; W.S. 1977, § 9-4-105; Laws 1982, ch. 16, § 1; ch. 62, § 3; 1983, ch. 17, § 1; 2014, ch. 62, § 1.

The 2014 amendment, effective July 1, 2014, in the introductory paragraph of (a), substituted "a Wyoming administrative code. The code shall" for "the rules adopted by each agency and remaining in effect," and deleted the last sentence which read: "The compilation shall be supplemented or revised at least once every two (2) years"; added (a)(i) through (a)(iv); in the first sentence of (d), substituted "maintain and publish a current" for "annually compile and public an," and deleted "as of December 31 of each year" at the end.

Supreme court takes judicial notice of state tax regulations. — Where the rules and regulations of the state tax commission are not made a part of the record by the parties, the supreme court shall take judicial notice of them by obtaining certified copies from the secretary of state. Yeik v. Department of Revenue & Taxation, 595 P.2d 965, 1979 Wyo. LEXIS 427 (Wyo. 1979).

Am. Jur. 2d, ALR and C.J.S. references. — What rules, statements and interpretations adopted by federal agencies must be published, 77 ALR Fed 572.

§ 16-3-106. Petition for promulgation, amendment or repeal of rules.

Any interested person may petition an agency requesting the promulgation, amendment or repeal of any rule and may accompany his petition with relevant data, views and arguments. Each agency may prescribe by rule the form of the petition and the procedure for its submission, consideration and disposition. Upon submission of a petition, the agency as soon as practicable either shall deny the petition in writing (stating its reasons for the denials) or initiate rulemaking proceedings in accordance with W.S. 16-3-103. The action of the agency in denying a petition is final and not subject to review.

History:

Laws 1965, ch. 108, § 6; W.S. 1957, § 9-276.24; W.S. 1977, § 9-4-106; Laws 1982, ch. 62, § 3.

Due process rights not infringed by prohibition of water variances. — Given the various means by which a corporation could present its views as to a water turbidity standard, including the opportunity to participate in the promulgation process and to assure that there is procedural compliance, the opportunity to obtain judicial review, if it is affected in fact by the rule adopted, and the opportunity to seek the amendment or repeal of the rule, the corporation's rights to procedural due process are not infringed by the prohibition of water variances under § 35-11-601(o). United States Steel Corp. v. Wyoming Envtl. Quality Council, 575 P.2d 749, 1978 Wyo. LEXIS 270 (Wyo. 1978).

Legislative intent to restrict judicial review is clear and convincing in this section. Tri-State Generation & Transmission Ass'n v. Environmental Quality Council, 590 P.2d 1324, 1979 Wyo. LEXIS 369 (Wyo. 1979).

Right of judicial review of administrative decisions is entirely statutory. United States Steel Corp. v. Wyoming Envtl. Quality Council, 575 P.2d 749, 1978 Wyo. LEXIS 270 (Wyo. 1978).

Challenges to state, federal rules determined under this section, not judicial review provision. — Where a mother claiming Aid-to-Dependent-Children (AFCD) benefits contended that unless afforded a fair hearing she would have no forum in which to present challenges to the standard of need established by the department of health and social services; to the adoption of federal regulations in applying the Wyoming AFDC program without following the requirements for promulgation of the rules under the Wyoming statutes; and to the provisions in certain rules which she contended deny her an impartial decision maker, the district court correctly referred to this section, not § 16-3-114, as the appropriate statutory procedure to treat with such issues. A fair hearing such as that which the mother sought is not the appropriate forum for resolving these questions. Walker v. Karpan, 726 P.2d 82, 1986 Wyo. LEXIS 615 (Wyo. 1986).

"Rare or uncommon" lands classified by regulation. — The Environmental Quality Council (EQC) cannot, pursuant to § 35-11-112(a)(v), classify lands within the state as "very rare or uncommon" without adopting by regulation the criteria or factors that will establish a standard for such a classification. Such standards must be adopted pursuant to a regular rulemaking proceeding conducted in accordance with the Wyoming Administrative Procedure Act. Rissler & McMurray Co. v. Environmental Quality Council (In re Bessemer Mt.), 856 P.2d 450, 1993 Wyo. LEXIS 123 (Wyo. 1993).

Denial of petition to amend or repeal water standard not reviewable. — The denial of a corporation's petition to amend or repeal a water turbidity standard after an informational hearing is not subject to judicial review. United States Steel Corp. v. Wyoming Envtl. Quality Council, 575 P.2d 749, 1978 Wyo. LEXIS 270 (Wyo. 1978).

Exhaustion of remedies. — In property owners' dispute with respect to the State Engineer's and Board of Control's administration of permits in conjunction with the production of coal bed methane the property owners' could have sought relief through agency rulemaking before bringing a declaratory judgment action. William F. West Ranch, LLC v. Tyrrell, 2009 WY 62, 206 P.3d 722, 2009 Wyo. LEXIS 65 (Wyo. 2009).

Quoted in Goedert ex rel. Wolfe v. State ex rel. Wyoming Workers' Safety & Comp. Div., 991 P.2d 1225, 1999 Wyo. LEXIS 175 (Wyo. 1999).

Law reviews. — For article, "Fieldwide Unitization in Wyoming," see VII Land & Water L. Rev. 433 (1972).

For article, "Administrative Law, Wyoming Style," see XVIII Land & Water L. Rev. 223 (1983).

§ 16-3-107. Contested cases; general procedure.

(a) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice served personally or by mail. Where the indispensable and necessary parties are composed of a large class, the notice shall be served upon a reasonable number thereof as representatives of the class or by giving notice by publication in the manner specified by the rules or an order of the agency.

(b) The notice shall include a statement of:

(i) The time, place and nature of the hearing;

(ii) The legal authority and jurisdiction under which the hearing is to be held;

(iii) The particular sections of the statutes and rules involved;

(iv) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a more definite and detailed statement shall be furnished.

(c) In all contested cases, depositions and discovery relating thereto, agencies shall have the authority to administer oaths and affirmations, subpoena witnesses and require the production of any books, papers or other documents relevant or material to the inquiry. In case of refusal to obey a subpoena issued by the agency in a contested case, deposition or discovery relating thereto, to any person, the district court for the district in which the hearing or deposition or other proceeding is being conducted, or for the district where the person may be served, may upon application by the agency issue to the person refusing to obey the subpoena an order requiring the person to show cause for the refusal or to appear before the agency or other person designated by it there to produce documentary evidence if so ordered or there to give evidence touching the matter in question. Any failure to show cause or obey the order of court may be punished by the court as a contempt thereof.

(d) In all contested cases the agency shall as part of its rules of practice provide that the agency or one (1) of its presiding officers designated by it upon application of any party shall issue a subpoena requiring the appearance of witnesses for the purpose of taking evidence or requiring the production of any books, papers or other documents relevant or material to the inquiry.

(e) The agency upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable and oppressive, or in the event issued pursuant to subsection (g) of this section may condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents or tangible things.

(f) If a subpoena issued pursuant to this section is disobeyed and if the agency fails to apply pursuant to subsection (c) of this section for enforcement any party may apply to the district court for the district having venue under subsection (c) of this section for enforcement pursuant to subsection (c) of this section.

(g) In all contested cases the taking of depositions and discovery shall be available to the parties in accordance with the provisions of Rules 26, 28 through 37 (excepting Rule 37(b)(1) and

37(b)(2)(D) therefrom) of the Wyoming Rules of Civil Procedure in effect on the date of the enactment of this act and any subsequent rule amendments thereto. All references therein to the "court" shall be deemed to refer to the appropriate "agency"; all references to the use of the subpoena power shall be references to subsection (c) of this section; all references to "trial" shall be deemed references to "hearing"; all references to "plaintiff" shall be deemed references to "a party". If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the agency in which the action is pending, the refusal to obey the agency order shall be enforced in the same manner as is provided in subsection (c) of this section.

(h) Any agency which is a party to the contested case is subject to the discovery provisions of this section but neither the agency, nor any member, officer or employee shall be required to disclose information which is confidential or privileged under the law and no member of the presiding agency shall be compelled to testify or give a deposition in a contested case. Discovery sought from the agency initially shall be by written application. If the agency refuses to allow discovery in whole or in part the aggrieved party may apply to the presiding officer for an order compelling discovery. If the presiding officer fails or refuses to compel discovery, the aggrieved party may apply to the district court for the district in which the hearing, deposition or other proceeding is being or is to be conducted for an order directed to the agency compelling discovery. The presiding officer or district court shall enter such order as may be appropriate.

(j) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented and advised by counsel or, if permitted by the agency, by other qualified representative.

(k) Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding in accordance with such rules as the agency prescribes and the pertinent rules of the supreme court of Wyoming. So far as the orderly conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment or determination of any issue, request or controversy in any proceeding (interlocutory, summary or otherwise) or in connection with any agency function. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives. Any person representing an agency at a hearing in a contested case in which the agency is a party shall not in the same case serve as presiding officer or provide ex parte advice regarding the case to the presiding officer or to the body or any member of the body comprising the decision makers.

(m) No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made or enforced in any manner or for any purpose except as authorized by law. Every person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy of a transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(n) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

(o) The record in a contested case must include:

(i) All formal or informal notices, pleadings, motions and intermediate rulings;

(ii) Evidence received or considered including matters officially noticed;

(iii) Questions and offers of proof, objections and rulings thereon;

(iv) Any proposed findings and exceptions thereto;

(v) Any opinion, findings, decision or order of the agency and any report by the officer presiding at the hearing.

(p) In all contested cases the proceeding including all testimony shall be reported verbatim stenographically or by any other appropriate means determined by the agency or the officer presiding at the hearing.

(q) Oral proceedings or any part thereof shall be transcribed on request of any party upon payment of the cost thereof.

(r) Findings of fact shall be based exclusively on the evidence and matters officially noticed.

Ann. § 16-3-107(j) in limiting an employee's testimony to matters not discussed in a discovery deposition taken by the Wyoming Workers' Safety and Compensation Division; by failing to object, however, the employee waived the right to appeal the issue. Morris v. State Ex Rel. Wyo. Workers' Safety & Comp. Div., 2012 WY 71, 276 P.3d 399, 2012 Wyo. LEXIS 74 (May 22, 2012).

Mayor authorized to summarily discharge police chief. — The mayor of Newcastle had the authority under the law to discharge the chief of police without council approval and without a hearing. Carlson v. Bratton, 681 P.2d 1333, 1984 Wyo. LEXIS 291 (Wyo. 1984).

Substantial evidence to support termination. — There was substantial evidence to support the personnel commission's decision that an employee was not wrongfully terminated and was not deprived of due process, as he obviously had notice that the city was referring to personal e-mails the employee sent to his wife when it referred, in its notice of termination, to non-work related activities being performed during work hours. Davis v. City of Cheyenne, 2004 WY 43, 88 P.3d 481, 2004 Wyo. LEXIS 51 (Wyo. 2004), reh'g denied, 2004 Wyo. LEXIS 67 (Wyo. May 18, 2004).

Notice and hearing afforded. — Licensee afforded notice and an opportunity to be heard. Roush v. Pari-Mutuel Comm'n, 917 P.2d 1133, 1996 Wyo. LEXIS 80, 59 A.L.R.5th 803 (Wyo. 1996).

Court review of disciplinary suspension. — The district court has jurisdiction to review the disciplinary suspension of a police officer where the rules and regulations of the police department's civil service commission provide that an officer may petition the commission for a hearing upon discharge, or reduction of classification or compensation, the commission grants a hearing to the officer as though he has been reduced in compensation, and the rules then provide that the contested-case proceedings of the Wyoming Administrative Procedure Act must be following. Keslar v. Police Civil Serv. Comm'n, 665 P.2d 937, 1983 Wyo. LEXIS 342 (Wyo. 1983).

Applied in C F & I Steel Corp. v. State Bd. of Equalization, 492 P.2d 529, 1972 Wyo. LEXIS 215 (Wyo. 1972); Powell v. Board of Trustees, 550 P.2d 1112, 1976 Wyo. LEXIS 198 (Wyo. 1976); Board of County Comm'rs v. Teton County Youth Servs., Inc., 652 P.2d 400, 1982 Wyo. LEXIS 393 (Wyo. 1982); Gold v. Board of County Comm'rs, 658 P.2d 690, 1983 Wyo. LEXIS 279 (Wyo. 1983); Lentsch v. Marshall, 741 F.2d 301, 1984 U.S. App. LEXIS 19631 (10th Cir. 1984); Employment Sec. Comm'n v. Bryant, 704 P.2d 1311, 1985 Wyo. LEXIS 546 (Wyo. 1985); Foster's Inc. v. City of Laramie, 718 P.2d 868, 1986 Wyo. LEXIS 541 (Wyo. 1986); Hooten v. State, Dep't of Revenue & Taxation, 751 P.2d 1323, 1988 Wyo. LEXIS 34 (Wyo. 1988); Montana Dakota Utils. Co. v. Public Serv. Comm'n, 847 P.2d 978, 1993 Wyo. LEXIS 30 (Wyo. 1993); Wesaw v. Quality Maintenance, 2001 WY 17, 19 P.3d 500, 2001 Wyo. LEXIS 19 (Wyo. 2001).

Quoted in Ririe v. Board of Trustees, 674 P.2d 214, 1983 Wyo. LEXIS 391 (Wyo. 1983); Campbell County v. Wyoming Community College Comm'n, 731 P.2d 1174, 1987 Wyo. LEXIS 388 (Wyo. 1987); Teton Valley Ranch v. State Bd. of Equalization, 735 P.2d 107, 1987 Wyo. LEXIS 429 (Wyo. 1987); Lucero v. Mathews, 901 P.2d 1115, 1995 Wyo. LEXIS 156 (Wyo. 1995); Weaver v. Cost Cutters, 953 P.2d 851, 1998 Wyo. LEXIS 18 (Wyo. 1998).

Stated in In re Application for Certificate of Need by HCA Health Serv., 689 P.2d 108, 1984 Wyo. LEXIS 340 (Wyo. 1984).

Cited in Wheatland Irrigation Dist. v. Pioneer Canal Co., 464 P.2d 533, 1970 Wyo. LEXIS 150 (Wyo. 1970); Shenefield v. Sheridan County Sch. Dist., 544 P.2d 870, 1976 Wyo. LEXIS 160 (Wyo. 1976); Ebzery v. City of Sheridan, 982 P.2d 1251, 1999 Wyo. LEXIS 107 (Wyo. 1999); Ireland v. State ex rel. Wyoming Workers' Comp. Div., 998 P.2d 398, 2000 Wyo. LEXIS 43 (Wyo. 2000); RT Communs., Inc. v. PSC, 2003 WY 145, 79 P.3d 36, 2003 Wyo. LEXIS 175 (Wyo. 2003); Laughter v. Bd. of County Comm'rs for Sweetwater County, 2005 WY 54, 2005 Wyo. LEXIS 60, 110 P.3d 875 (2005); Wyo. Dep't of Revenue v. Guthrie, 2005 WY 79, 115 P.3d 1086, 2005 Wyo. LEXIS 93 (2005); Tarraferro v. State ex rel. Wyo. Med. Comm'n., 2005 WY 155, 123 P.3d 912, 2005 Wyo. LEXIS 182 (2005); Decker v. State ex rel. Wyo. Med. Comm'n, 2005 WY 160, 124 P.3d 686, 2005 Wyo. LEXIS 189 (2005); Bd. of Trs. Fremont County Sch. Dist. #25 v. BM, 2006 WY 23, 129 P.3d 317, 2006 Wyo. LEXIS 26 (Wyo. Mar. 7, 2006).

Law reviews. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see XI Land & Water L. Rev. 27 (1976).

For comment on Board of Trustees v. Spiegel, 549 P.2d 1161, 1976 Wyo. LEXIS 191 (Wyo. 1976), see XII Land & Water L. Rev. 327 (1977).

For article, "Administrative Law, Wyoming Style," see XVIII Land & Water L. Rev. 223 (1983).

For comment, "Education for Handicapped Children in Wyoming: What Constitutes a Free Appropriate Public Education and Other Administrative Hurdles," see XIX Land & Water L. Rev. 225 (1984).

For article, "A State Central Panel Hearing Officer System for Wyoming," see XXI Land & Water L. Rev. 497 (1986).

For article, "A Critical Look at Wyoming Water Law," see XXIV Land & Water L. Rev. 307 (1989).

Am. Jur. 2d, ALR and C.J.S. references. — Privilege as to communications between lay representative in judicial or administrative proceedings and client, 31 ALR4th 1226.

Right to statement of reasons, under Administrative Procedure Act (5 USC § 555(e)), for denial of written application, petition, or other request of interested person made in connection with agency proceeding, 57 ALR Fed 765.

Authority of federal agency to spend public funds to reimburse expenses of qualified participants in its proceedings, 62 ALR Fed 849.

§ 16-3-108. Contested cases; admissible evidence; cross-examination; judicial notice.

(a) In contested cases irrelevant, immaterial or unduly repetitious evidence shall be excluded and no sanction shall be imposed or order issued except upon consideration of the whole record or such portion thereof as may be cited by any party and unless supported by the type of evidence commonly relied upon by reasonably prudent men in the conduct of their serious affairs. Agencies

shall give effect to the rules of privilege recognized by law. Subject to these requirements and agency rule if the interests of the parties will not be prejudiced substantially testimony may be received in written form subject to the right of cross-examination as provided in subsection (c) of this section.

(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given opportunity to compare the copy with the original.

(c) A party may conduct cross-examinations required for a full and true disclosure of the facts and a party is entitled to confront all opposing witnesses.

(d) Notice may be taken of judicially cognizable facts. In addition notice may be taken of technical or scientific facts within the agency's specialized knowledge or of information, data and material included within the agency's files. The parties shall be notified either before or during the hearing or after the hearing but before the agency decision of material facts noticed, and they shall be afforded an opportunity to contest the facts noticed.

History:

Laws 1965, ch. 108, § 8; W.S. 1957, § 9-276.26; W.S. 1977, § 9-4-108; Laws 1982, ch. 62, § 3.

Work history admissible. — Wyoming Workers' Safety and Compensation Division properly admitted two exhibits related to the claimant's work history as the evidence was relevant in determining what caused his knee problems and whether they were work related. Johnson v. State ex rel. Wyo. Workers' Safety & Comp. Div., 2014 WY 33, 321 P.3d 318, 2014 Wyo. LEXIS 33 (Wyo. 2014).

Anonymous letter not admissible. — Wyoming Workers' Safety and Compensation Division erred in admitting an anonymous letter stating that the claimant was taking advantage of the workers' compensation system where the only rationale for admitting the letter was that it was in the Division's file. Johnson v. State ex rel. Wyo. Workers' Safety & Comp. Div., 2014 WY 33, 321 P.3d 318, 2014 Wyo. LEXIS 33 (Wyo. 2014).

Admission of inadmissible evidence not reversible. — Wyoming Workers' Safety and Compensation Division's error in admitting an anonymous letter was not reversible where the Division had not relied upon it in denying the claim. Johnson v. State ex rel. Wyo. Workers' Safety & Comp. Div., 2014 WY 33, 321 P.3d 318, 2014 Wyo. LEXIS 33 (Wyo. 2014).

Rules of evidence. — A hearing examiner in a worker's compensation hearing is not bound by the Wyoming Rules of Evidence, and the decision regarding admissibility of evidence is committed to the sound discretion of the hearing examiner who abuses that discretion when his decision shocks the conscience of the court. Everheart v. S & L Indus. (In re Everheart), 957 P.2d 847, 1998 Wyo. LEXIS 64 (Wyo. 1998).

Hearsay admissible. — Hearsay that is otherwise admissible under subsection (a), and that is probative, trustworthy and credible may be received in evidence at an agency hearing. Story v. Wyoming State Bd. of Medical Exmrs., 721 P.2d 1013, 1986 Wyo. LEXIS 573, 59 A.L.R.4th 1089 (Wyo. 1986).

Hearsay evidence is admissible in an administrative proceeding if it satisfies the requirements of this section and is probative, trustworthy and credible. State ex rel. Wyoming Workers' Compensation Div. v. Rivera, 796 P.2d 447, 1990 Wyo. LEXIS 87 (Wyo. 1990); Goddard v. Colonel Bozeman's Restaurant, 914 P.2d 1233, 1996 Wyo. LEXIS 63 (Wyo. 1996); Clark v. State ex rel. Wyoming Workers' Safety & Compensation Div., 968 P.2d 436, 1998 Wyo. LEXIS 165 (Wyo. 1998).

Although a broad range of informal evidence, including hearsay, is admissible in a worker's compensation hearing, any offered evidence must be probative, trustworthy, and credible. Lunde v. State ex rel. Wyoming Workers' Compensation Div., 6 P.3d 1256, 2000 Wyo. LEXIS 135 (Wyo. 2000).

The Wyoming office of administrative hearings is entitled to consider the type of evidence commonly relied upon by reasonably prudent men in the conduct of their serious affairs pursuant to Wyo. Stat. Ann. § 16-3-108(a); while it may be proper to consider statements from an anonymous source, that evidence alone can not serve as the basis for a reasonable decision. Gray v. State ex rel. Wyo. Workers' Safety & Comp. Div., 2008 WY 115, 193 P.3d 246, 2008 Wyo. LEXIS 120 (Oct. 3, 2008).

Excluding hearsay testimony not abuse of discretion. — Hearing examiner in workers' compensation proceeding did not abuse her discretion by excluding hearsay testimony where former manager's statements to employee about employer's policy on work-related injuries were irrelevant and immaterial, and where employee testified she was aware that she could apply for workers' compensation benefits and no one told her not to file a workers' compensation claim, and therefore there was no basis to estop the workers' safety and compensation division from denying employee's claim. Clark v. State ex rel. Wyoming Workers' Safety & Compensation Div., 968 P.2d 436, 1998 Wyo. LEXIS 165 (Wyo. 1998).

Hearing examiner properly excluded the workers' compensation claimant's proposed testimony regarding statements alleged to have been made by one of his doctors because the testimony was not helpful or trustworthy. Trump v. State, 2013 WY 140, 312 P.3d 802, 2013 Wyo. LEXIS 146 (Wyo. 2013).

Expert testimony not required in tax cases. — Expert testimony is not required in tax cases; substantial evidence supports agencies' findings when proper and sufficient testimony has been presented through qualified employees. Thunder Basin Coal Co. v. Wyoming State Bd. of Equalization, 896 P.2d 1336, 1995 Wyo. LEXIS 96 (Wyo. 1995), reh'g denied, 1995 Wyo. LEXIS 113 (Wyo. June 29, 1995).

Party-opponent's admission admissible. — Deputy clerk's testimony, which was not hearsay because it was an admission by a party-opponent, was admissible, where there was no showing that the testimony was irrelevant, immaterial or unduly rep-

Relevant evidence admissible. — Evidence as to a sediment retention pond on a storm-water collection facility's property and the facility's building a road for the landowners' use to access their property over the facility's property was admissible because it did not violate any portion of the appellate court's prior mandate in the case and was relevant to issues that a board of county commissioners had to resolve to rationally and justly decide the case. Zowada v. Mullinax Concrete Serv. Co., 2014 WY 121, 335 P.3d 455, 2014 Wyo. LEXIS 137 (Wyo. 2014).

Law reviews. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see XI Land & Water L. Rev. 27 (1976).

For article, "A State Central Panel Hearing Officer System for Wyoming," see XXI Land & Water L. Rev. 497 (1986).

Am. Jur. 2d, ALR and C.J.S. references. — What constitutes "adjudicative facts" within meaning of Rule 201 of Federal Rules of Evidence concerning judicial notice of adjudicative facts, 150 ALR Fed 543.

§ 16-3-109. Contested cases; consideration of record; exceptions to decision; briefs and oral argument.

The agency shall consider the whole record or any portion stipulated to by the parties. In the event a recommended decision is rendered all parties shall be afforded a reasonable opportunity to file exceptions thereto which shall be deemed a part of the record. All parties as a matter of right shall be permitted to file a brief with the agency and oral argument shall be allowed in the discretion of the agency.

History:

Laws 1965, ch. 108, § 9; W.S. 1957, § 9-276.27; W.S. 1977, § 9-4-109; Laws 1982, ch. 62, § 3.

School board's review of the whole record. — Although a school board's decision terminating a teacher was required to be based on consideration of the entire record received by a hearing officer, pursuant to Wyo. Stat. Ann. § 16-3-109 and Wyo. Stat. Ann. § 21-7-110, there was no statutory or due process requirement that the school board personally and independently review the evidentiary record. Wadsworth v. Bd. of Trs. Sch. Dist. No. Two, 2014 WY 7, 316 P.3d 541, 2014 Wyo. LEXIS 6 (Wyo. 2014).

Applied in Employment Sec. Comm'n v. Bryant, 704 P.2d 1311, 1985 Wyo. LEXIS 546 (Wyo. 1985).

Law reviews. — For article, "A State Central Panel Hearing Officer System for Wyoming," see XXI Land & Water L. Rev. 497 (1986).

§ 16-3-110. Contested cases; final decision; contents; notification.

A final decision or order adverse to a party in a contested case shall be in writing or dictated into the record. The final decision shall include findings of fact and conclusions of law separately stated. Findings of fact if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by mail of any decision or order. A copy of the decision and order shall be delivered or mailed forthwith to each party or to his attorney of record.

History:

Laws 1965, ch. 108, § 10; W.S. 1957, § 9-276.28; W.S. 1977, § 9-4-110; Laws 1982, ch. 62, § 3.

There must be some finality in administrative proceedings, as in judicial proceedings. Wyoming Bancorporation v. Bonham, 527 P.2d 432, 1974 Wyo. LEXIS 240 (Wyo. 1974).

Administrative agencies must make sufficiently detailed findings to support their finding of ultimate facts or conclusions; failure to do so subjects the finding to attack as being arbitrary, capricious and contrary to law. Mountain Fuel Supply Co. v. Public Serv. Comm'n, 662 P.2d 878, 1983 Wyo. LEXIS 312 (Wyo. 1983).

In discharging its duty under this section, the agency must make findings of basic facts upon all of the material issues in the proceeding and upon which its ultimate findings of fact or conclusions are based. Mayland v. Flitner, 2001 WY 69, 28 P.3d 838, 2001 Wyo. LEXIS 84 (Wyo. 2001).

Duty of agency to make findings of fact and conclusions of law separately stated. — To aid a reviewing court in the performance of the limited functions assigned to it by § 16-3-114(c), and particularly with reference to technical factual issues which must be resolved, this section wisely requires an agency in a contested case to include in its final decision findings of fact and conclusions of law separately stated. Such a requirement imposes upon an agency the duty to make findings of basic facts upon all of the material issues in the proceeding and upon which its ultimate findings of fact or conclusions are based. Unless that is done, there is no rational basis for judicial review. Pan Am. Petroleum Corp. v. Wyoming Oil & Gas Conservation Comm'n, 446 P.2d 550, 1968 Wyo. LEXIS 209 (Wyo. 1968); Powell v. Board of Trustees, 550 P.2d 1112, 1976 Wyo. LEXIS 198 (Wyo. 1976); Larsen v. Oil & Gas Conservation Comm'n, 569 P.2d 87, 1977 Wyo. LEXIS 316 (Wyo. 1977); Foremost Life Ins. Co. v. Langdon, 633 P.2d 938, 1981 Wyo. LEXIS 371 (Wyo. 1981).

The basic findings of fact must be made on all material issues and ultimate facts. Campbell County v. Wyoming Community College Comm'n, 731 P.2d 1174, 1987 Wyo. LEXIS 388 (Wyo. 1987).

This section requires findings of basic facts upon all of the material issues in the proceeding and upon which the ultimate findings of fact or conclusions are based. Each ultimate fact or conclusion is to be thor-

WY 32, 297 P.3d 782, 2013 Wyo. LEXIS 36 (Wyo. 2013).

Remand not appropriate. — Court rejected the taxpayer's claim that the County Board of Equalization's decision was inadequate and did not comply with statutory requirements provided in this section that an agency make findings of basic facts upon all of the material issues due to the Board's failure to address the issue of economic obsolescence in the taxpayer's appeal of the ad valorem personal property tax assessments at its coal mines that were recently purchased in 1998 because the taxpayer's expert did not directly contest the assessor's position that reliance on reasonably current, arms length 1998 sales values was an appropriate basis upon which to conclude no further economic obsolescence calculations were necessary. It would do little good to remand the matter in order for the County Board to state the obvious, that it found the 1998 allocated value, derived from an arms length transaction and provided by the taxpayer, fairly included economic obsolescence in 2001. Thunder Basin Coal Co. v. Campbell County, 2006 WY 44, 132 P.3d 801, 2006 Wyo. LEXIS 47 (Wyo. 2006).

Applied in In re Assessment of State Bd. of Equalization, 457 P.2d 963, 1969 Wyo. LEXIS 152 (Wyo. 1969); Wyoming. Geraud v. Schrader, 531 P.2d 872, 1975 Wyo. LEXIS 128 (Wyo. 1975); Westates Constr. Co. v. Sheridan County Sch. Dist., 719 P.2d 1366, 1986 Wyo. LEXIS 559 (Wyo. 1986); Harris v. Sinclair Trucking, 900 P.2d 1163, 1995 Wyo. LEXIS 147 (Wyo. 1995).

Quoted in Sellers v. Employment Sec. Comm'n, 760 P.2d 394, 1988 Wyo. LEXIS 111 (Wyo. 1988); Cook v. Zoning Bd. of Adjustment, 776 P.2d 181, 1989 Wyo. LEXIS 148 (Wyo. 1989); Department of Emp. v. Roberts Constr. Co., 841 P.2d 854, 1992 Wyo. LEXIS 166 (Wyo. 1992); State ex rel. Workers' Safety & Compensation Div. v. Gerrard, 2001 WY 7, 17 P.3d 20, 2001 Wyo. LEXIS 12 (Wyo. 2001).

Cited in Monahan v. Board of Trustees, 486 P.2d 235, 1971 Wyo. LEXIS 226 (Wyo. 1971); Schulthess v. Carollo, 832 P.2d 552, 1992 Wyo. LEXIS 63 (Wyo. 1992); Naibauer v. Board of Platte County Comm'rs, 895 P.2d 445, 1995 Wyo. LEXIS 75 (Wyo. 1995); Ebzery v. City of Sheridan, 982 P.2d 1251, 1999 Wyo. LEXIS 107 (Wyo. 1999); Williston Basin Interstate Pipeline Co. v. Wyoming PSC, 996 P.2d 663, 2000 Wyo. LEXIS 18 (Wyo. 2000); State ex rel. Wyo. Workers' Safety & Comp. Div. v. Jensen, 2001 WY 51, 24 P.3d 1133, 2001 Wyo. LEXIS 66 (Wyo. 2001).

Law reviews. — For comment, "The Doctrine of Sovereign Immunity in Wyoming: Current Status of the Doctrine and Arguments for Abrogation," see XX Land & Water L. Rev. 221 (1985).

For article, "A State Central Panel Hearing Officer System for Wyoming," see XXI Land & Water L. Rev. 497 (1986).

§ 16-3-111. Contested cases; limitations on consultations and participations.

Unless required for the disposition of ex parte matters authorized by law, members of the agency, employees presiding at a hearing in a contested case and employees assisting the foregoing persons in compiling, evaluating and analyzing the record in a contested case or in writing a decision in a contested case shall not directly or indirectly in connection with any issue in the case consult with any person other than an agency member, officer, contract consultant or employee or other state or federal employee, any party other than the agency or with any agency employee, contract consultant or other state or federal employee who was engaged in the investigation, preparation, presentation or prosecution of the case except upon notice and opportunity for all parties to participate. Nothing herein contained precludes any agency member from consulting with other members of the agency. No officer, employee, contract consultant, federal employee or agent who has participated in the investigation, preparation, presentation or prosecution of a contested case shall be in that or a factually related case participate or advise in the decision, recommended decision or agency review of the decision, or be consulted in connection therewith except as witness or counsel in public proceedings. A staff member is not disqualified from participating or advising in the decision, recommended decision or agency review because he has participated in the presentation of the case in the event the staff member does not assert or have an adversary position.

History:

Laws 1965, ch. 108, § 11; W.S. 1957, § 9-276.29; W.S. 1977, § 9-4-111; Laws 1982, ch. 62, § 3.

Fair hearing requires impartial tribunal. — Embraced by the employee's constitutional and statutory guarantee to a fair hearing in the administrative process is his right to be heard before an unbiased, fair and impartial tribunal. Board of Trustees v. Spiegel, 549 P.2d 1161, 1976 Wyo. LEXIS 191 (Wyo. 1976).

And voir dire inquiry of administrative tribunal permitted. — Within adequate guidelines, voir dire inquiry should be permitted of an administrative tribunal to ascertain the absence or presence of bias or prejudice of the members. Board of Trustees v. Spiegel, 549 P.2d 1161, 1976 Wyo. LEXIS 191 (Wyo. 1976).

It is the plaintiff's burden to establish any impropriety on the part of any member of the administrative board. Board of Trustees v. Spiegel, 549 P.2d 1161, 1976 Wyo. LEXIS 191 (Wyo. 1976).

Presence of school board counsel at deliberative session did not violate this section, where the attorney did not participate or advise and his presence did not influence the decisions of the individual members. Westates Constr. Co. v. Sheridan County Sch. Dist., 719 P.2d 1366, 1986 Wyo. LEXIS 559 (Wyo. 1986).

Invited error. — Worker could not claim on appeal that a Medical Commission panel improperly relied

on the panel's own observations of the worker in determining the worker's eligibility for benefits because the worker asked the panel's members to engage in the contested observations. In re Worker's Comp. Claim of McIntosh v. State ex rel. Wyo. Workers' Safety & Comp. Div., 2013 WY 135, 311 P.3d 608, 2013 Wyo. LEXIS 140 (Wyo. 2013).

Quoted in Denius v. T R Twelve, Inc., 589 P.2d 374, 1979 Wyo. LEXIS 345 (Wyo. 1979).

Cited in Elementary Sch. Dist. v. District Boundary Bd., 454 P.2d 237, 1969 Wyo. LEXIS 134 (Wyo. 1969); State Transp. Comm'n v. Ford, 844 P.2d 496, 1992 Wyo. LEXIS 208 (Wyo. 1992); Basin Elec. Power Coop. v. Department of Revenue, 970 P.2d 841, 1998 Wyo. LEXIS 191 (Wyo. 1998).

Law reviews. — For article, "A State Central Panel Hearing Officer System for Wyoming," see XXI Land & Water L. Rev. 497 (1986).

Am. Jur. 2d, ALR and C.J.S. references. — Propriety of ex parte communication made in connection with administrative proceeding by interested party or by member or employee of agency (5 USC § 557(d)(1)), 58 ALR Fed 834.

§ 16-3-112. Contested cases; presiding officers; qualifications; powers; outside personnel; hearing officers.

(a) If not otherwise authorized by law there shall preside at the taking of evidence in all contested cases the statutory agency, one (1) or more members of the body which comprises the agency, or an employee of the agency or an employee of another agency designated by the agency to act as presiding officer. The functions of all those presiding in contested cases shall be conducted in an impartial manner. Any officer shall at any time withdraw if he deems himself disqualified provided there are other qualified presiding officers available to act.

(b) Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its power to:

(i) Administer oaths and affirmations;

(ii) Issue subpoenas;

(iii) Rule upon offers of proof and receive relevant evidence;

(iv) Take or cause depositions to be taken in accordance with the provisions of this act and the rules of the agency;

(v) Regulate the course of the hearing;

(vi) Hold conferences for the settlement or simplification of the issues;

(vii) Dispose of procedural requests or similar matters;

(viii) Make recommended decisions when directed to do so by the agency; and

(ix) Take any other action authorized by agency rules consistent with this act.

(c) In all contested cases to the extent that it is necessary in order to obtain compliance with W.S. 16-3-111 the agency (excepting county and municipal agencies and political subdivisions on the county and local level) may request the office of the attorney general to furnish to the agency such personnel as may be necessary in order for the agency to properly investigate, prepare, present and prosecute the contested case before the agency. The attorney general upon the receipt of the request shall promptly comply with same with no charge being made against the requesting agency's appropriation other than for travel and per diem expenses.

(d) To the extent an agency utilizes an employee of another agency (other than the staff of the attorney general) to preside at a hearing or otherwise the salary of the employee during the period of the employment and the expenses incurred by the employee shall be charged against the appropriation of the using agency.

(e) When required by law an agency shall adopt rules and regulations providing a procedure for the use and the selection of an administrative hearing officer. An agency shall not delegate the authority to make final decisions to an independent administrative hearing officer unless required by law.

History:

Laws 1965, ch. 108, § 12; W.S. 1957, § 9-276.30; W.S. 1977, § 9-4-112; Laws 1981, ch. 10, § 1; 1982, ch. 62, § 3.

Meaning of "this act." — For the definition of "this act," see § 16-3-101(b)(xi).

Fair and impartial hearing. — In a case seeking the establishment of a private road, a hearing officer did not violate this section by offering advice in response to questions and attempting to clarify issues for the consideration of a county board of commissioners; the hearing officer emphasized that the ultimate decision was for the board alone to make. There was no indication of a bias or prejudice that permeated the hearing; moreover, the hearing officer was balanced in his rulings during the evidentiary hearings and admitted all exhibits on both sides. Price Family Trust v. Hutchinson, 2014 WY 162, 340 P.3d 1002, 2014 Wyo. LEXIS 185 (Wyo. 2014).

Embraced by the employee's constitutional and statutory guarantee to a fair hearing in the administrative process is his right to be heard before an unbiased, fair and impartial tribunal. Board of Trust-

ees v. Spiegel, 549 P.2d 1161, 1976 Wyo. LEXIS 191 (Wyo. 1976); Ririe v. Board of Trustees, 674 P.2d 214, 1983 Wyo. LEXIS 391 (Wyo. 1983).

Suspension of accountant's certificate to practice was proper where substantial evidence showed that accountant participated in audit prior to having approval to do so, and thus he violated a settlement agreement from a prior disciplinary action and engaged in dishonesty in violation of Wyo. Stat. Ann. § 33-3-121(a)(ii) when he attempted to legitimize his activity by using other accountants as the signing auditors. Also the accountant's rights to due process and a fair trial under Wyo. Stat. Ann. § 16-3-112(a) of the Wyoming Administrative Procedure Act were not violated because the accountant failed to overcome the presumption of impartiality of the Board members, or to explain how the hearing examiner's efforts failed to cure any prejudice he suffered as a result of the committee's delay in producing the documents. Dorr v. Wyoming Bd., 2006 WY 144, 146 P.3d 943, 2006 Wyo. LEXIS 154 (2006).

Internal Hearing Unit properly formed. — The Division of Workers Safety and Compensation was authorized to promulgate rules and regulations relating to the resolution of contested matters that are not required to be heard by the Medical Commission or the Office of Administrative Hearings, including agency review of claimed late filings, and had ample authority to form the Internal Hearing Unit. Internal Hearing Unit. Sheneman v. Division of Workers' Safety & Comp. Internal Hearing Unit, 956 P.2d 344, 1998 Wyo. LEXIS 50 (Wyo. 1998).

And voir dire inquiry of administrative tribunal permitted. — Within adequate guidelines, voir dire inquiry should be permitted of an administrative tribunal to ascertain the absence or presence of bias or prejudice of the members. Board of Trustees v. Spiegel, 549 P.2d 1161, 1976 Wyo. LEXIS 191 (Wyo. 1976); Ririe v. Board of Trustees, 674 P.2d 214, 1983 Wyo. LEXIS 391 (Wyo. 1983).

Interested, nonvoting, commission member may sign determination. — Where there were three members of the oil and gas conservation commission, other than a member with a financial interest, present at all hearings, which satisfied § 30-5-103(c), and during the session that person never cast a vote, the due process guarantee of impartiality by fact-finding was satisfied. Admittedly, the interested member signed the final determination, but that fact in itself carried no legal consequence, as it occurred as a ministerial act for the entry of the decision made by the actual participants. ANR Prod. Co. v. Wyoming Oil & Gas Conservation Comm'n, 800 P.2d 492, 1990 Wyo. LEXIS 128 (Wyo. 1990).

Fair and impartial hearing. — Pursuant to review under Wyo. R. App. P. 12.09(a) and Wyo. Stat. Ann. § 16-3-114(c), there was substantial evidence supported a claimant's award of unemployment insurance benefits because irrelevant evidence of an alleged conspiracy was properly excluded under Wyo. Stat. Ann. § 16-3-108(a) and claimant's conduct was determined to be ordinary negligence in an isolated instance and not misconduct under Wyo. Stat. Ann. § 27-3-311(f). Further, the hearing officer complied with Wyo. Stat. Ann. § 16-3-112(a) to provide the claimant's former employer with a fair and impartial hearing. Aspen Ridge Law Offices, P.C. v. Wyo. Dep't of Empl., 2006 WY 129, 143 P.3d 911, 2006 Wyo. LEXIS 142 (Wyo. 2006).

Authority For Internal Hearing Unit. — Section 13-3-102 and this section, along with § 27-14-802 vested the Division of Workers' Safety and Compensation with authority to form the Internal Hearing Unit comprised of members of the agency. Poll v. State ex rel. Dep't of Emp., 963 P.2d 977, 1998 Wyo. LEXIS 99 (Wyo. 1998).

Applied in Wyoming State Dep't of Educ. v. Barber, 649 P.2d 681, 1982 Wyo. LEXIS 374 (Wyo. 1982).

Cited in State Transp. Comm'n v. Ford, 844 P.2d 496, 1992 Wyo. LEXIS 208 (Wyo. 1992); RM v. Department of Family Servs., 953 P.2d 477, 1998 Wyo. LEXIS 16 (Wyo. 1998); Dorr v. State Bd. of CPAs, 2001 WY 37, 21 P.3d 735, 2001 Wyo. LEXIS 46 (Wyo. 2001).

Law reviews. — For comment on Board of Trustees v. Spiegel, 549 P.2d 1161, 1976 Wyo. LEXIS 191 (Wyo. 1976), see XII Land & Water L. Rev. 327 (1977).

For article, "Administrative Law, Wyoming Style," see XVIII Land & Water L. Rev. 223 (1983).

For article, "A State Central Panel Hearing Officer System for Wyoming," see XXI Land & Water L. Rev. 497 (1986).

§ 16-3-113. License hearings.

(a) When the grant, denial, suspension or renewal of a license is required by law to be preceded by notice and an opportunity for hearing the provisions of this act concerning contested cases apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. A cancellation of a driver's license pursuant to W.S. 31-7-121(c) [repealed] shall not be valid until the department of transportation gives notice by mail to the licensee of the facts which warrant the intended action and provides the licensee with an opportunity to provide additional evidence or information with respect to the condition at issue

within fifteen (15) days of the mailing of the notice. These proceedings shall be promptly instituted and determined.

History:

Laws 1965, ch. 108, § 13; W.S. 1957, § 9-276.31; W.S. 1977, § 9-4-113; Laws 1982, ch. 62, § 3; 1993, ch. 46, § 1.

Meaning of "this act." — For the definition of "this act," referred to in subsection (a), see § 16-3-101(b)(xi).

Scope of subsection (a). — Subsection (a) deals with licensing matters where action is required by law to be preceded by notice and an opportunity for a hearing (as in a contested case). Thornley v. Wyoming Hwy. Dep't, 478 P.2d 600, 1971 Wyo. LEXIS 189 (Wyo. 1971).

Driver's license suspension proceedings were "instituted" when the department of revenue forwarded a motorist's request for a hearing to a independent hearing examiner, and not when the officer who arrested her for driving under the influence furnished her with a notice of suspension and a temporary driver's license. Gerstell v. State, 769 P.2d 389, 1989 Wyo. LEXIS 54 (Wyo. 1989).

Procedures for approving new health-care institutions. — Notice and public meeting requirements of the certificate-of-need review process under the New Institutional Health Services Act comprise a "contested case" within the meaning of this chapter. In re Application for Certificate of Need by HCA Health Serv., 689 P.2d 108, 1984 Wyo. LEXIS 340 (Wyo. 1984).

Notice and hearing afforded. — Licensee afforded notice and an opportunity to be heard. Roush v. Pari-Mutuel Comm'n, 917 P.2d 1133, 1996 Wyo. LEXIS 80, 59 A.L.R.5th 803 (Wyo. 1996).

Burden of proof. — Once professional guide established the qualifications for licensure, the burden of proof should have shifted to the board of outfitters and professional guides (board), to go forward with its evidence justifying the denial of guide's license, though the guide had the burden of persuading the board that its grounds for denial were insufficient under the governing statutes and regulations. State Bd. of Outfitters & Prof'l Guides v. Clark, 2001 WY 78, 30 P.3d 36, 2001 Wyo. LEXIS 98 (Wyo. 2001).

Applied in Naibauer v. Board of Platte County Comm'rs, 895 P.2d 445, 1995 Wyo. LEXIS 75 (Wyo. 1995).

Cited in Department of Revenue & Taxation v. Shipley, 579 P.2d 415, 1978 Wyo. LEXIS 294 (Wyo. 1978); Ballard v. Wyoming Pari-Mutuel Comm'n, 750 P.2d 286, 1988 Wyo. LEXIS 14 (Wyo. 1988).

Law reviews. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see XI Land & Water L. Rev. 27 (1976).

For article, "Administrative Law, Wyoming Style," see XVIII Land & Water L. Rev. 223 (1983).

§ 16-3-114. Judicial review of agency actions; district courts.

(a) Subject to the requirement that administrative remedies be exhausted and in the absence of any statutory or common-law provision precluding or limiting judicial review, any person aggrieved or adversely affected in fact by a final decision of an agency in a contested case, or by other agency action or inaction, or any person affected in fact by a rule adopted by an agency, is entitled to judicial review in the district court for the county in which the administrative action or inaction was taken, or in which any real property affected by the administrative action or inaction is located, or if no real property is involved, in the district court for the county in which the party aggrieved or adversely affected by the administrative action or inaction resides or has its principal place of business. The procedure to be followed in the proceeding before the district court shall be in accordance with rules heretofore or hereinafter adopted by the Wyoming supreme court.

(b) The supreme court's authority to adopt rules governing review from agencies to the district courts shall include authority to determine the content of the record upon review, the pleadings to be filed, the time and manner for filing the pleadings, records and other documents and the extent to which supplemental testimony and evidence may be taken or considered by the district court. The rules adopted by the supreme court under this provision may supersede existing statutory provisions.

(c) To the extent necessary to make a decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. In making the following determinations, the court shall review the whole record or those parts of it cited by a party and due account shall be taken of the rule of prejudicial error. The reviewing court shall:

(i) Compel agency action unlawfully withheld or unreasonably delayed; and

(ii) Hold unlawful and set aside agency action, findings and conclusions found to be:

(A) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;

(B) Contrary to constitutional right, power, privilege or immunity;

(C) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;

(D) Without observance of procedure required by law; or

(E) Unsupported by substantial evidence in a case reviewed on the record of an agency hearing provided by statute.

History:

Laws 1965, ch. 108, § 14; W. S. 1957, § 9-276.32; Laws 1973, ch. 24, § 1; W.S. 1977, § 9-4-114; Laws 1979, ch. 58, § 1; 1982, ch. 62, § 3.

Cross references. — For rule governing judicial review of administrative actions, see Rule 12, W.R.A.P.

Analysis

I. General Consideration.
II. Rules of Appellate Procedure.
III. Availability of Review.
A. Persons.
B. Issues.
IV. Scope of Review.
A. In General.
B. Substantial Evidence.
C. Illustrative Cases.

I. GENERAL CONSIDERATION.

Due process rights not infringed by prohibition of water variances. — Given the various means by which a corporation could present its views as to a water turbidity standard, including the opportunity to participate in the promulgation process and to assure that there is procedural compliance, the opportunity to obtain judicial review, if it is affected in fact by the rule adopted, and the opportunity to seek the amendment or repeal of the rule, the corporation's rights to procedural due process are not infringed by the prohibition of water variances under § 35-11-601(o). United States Steel Corp. v. Wyoming Envtl. Quality Council, 575 P.2d 749, 1978 Wyo. LEXIS 270 (Wyo. 1978).

New jurisdiction not conferred upon courts. — Insofar as this chapter grants the right of appeal and judicial review, it does not confer any new jurisdiction upon the courts. Tri-County Elec. Ass'n v. City of Gillette, 525 P.2d 3, 1974 Wyo. LEXIS 226 (Wyo. 1974).

Jurisdiction. — The constitution specifically recognizes and allows that jurisdiction may be vested in entities other than the district courts; therefore the district court's jurisdiction was not unconstitutionally limited where the legislature placed jurisdiction over state personnel matters with the Department of Administration and Information. Glover v. State, 860 P.2d 1169, 1993 Wyo. LEXIS 162 (Wyo. 1993).

The legislature has charged the environmental quality council with the responsibility for approving or denying applications for mining permits and until its determination has been rendered, the courts do not have jurisdiction under 35-11-1001(b) to make a decision on a compensatory taking action or entertain an appeal from the denial of an application for a permit under this section and W.R.A.P. 12. Rissler & McMurry Co. v. State, 917 P.2d 1157, 1996 Wyo. LEXIS 87 (Wyo. 1996), reh'g denied, 1996 Wyo. LEXIS 109 (Wyo. July 16, 1996), cert. denied, 519 U.S. 1091, 117 S. Ct. 765, 136 L. Ed. 2d 712, 1997 U.S. LEXIS 532 (U.S. 1997).

Authority of administrative agencies. — Administrative agencies have no authority to determine the constitutionality of a statute; rather, the right to pursue the constitutionality of the statute under which the agency acted is preserved in W.R.A.P. 12.12, via a declaratory judgment action and thus a declaratory judgment was the proper course of action for the employee, an illegal alien who was denied benefits and who challenged the constitutionality of Wyo. Stat. Ann. § 27-14-102(a)(vii) to proceed. Torres v. State ex rel. Wyo. Workers' Safety & Comp. Div., 2004 WY 92, 95 P.3d 794, 2004 Wyo. LEXIS 119 (Wyo. 2004).

Tax appeals. — The specific provision of § 39-11-109(b)(ii), which addresses tax appeals from the board of equalization, controls over the general administrative appeals provision of § 16-3-114(a) and, therefore, proper filing of appeals from the board of equalization should be made to the district court of the county in which the property, or some part thereof, is located; there is no need for duplicative filings when property is located in multiple jurisdictions, and one jurisdiction will provide adequate access for judicial review. State v. Buggy Bath Unlimited, Inc., 2001 WY 27, 18 P.3d 1182, 2001 Wyo. LEXIS 33 (Wyo. 2001).

Worker's compensation. — A claimant for worker's compensation benefits has the burden of proving all the essential elements of the claim by a preponderance of the evidence in the contested case hearing. When an agency decides that the party charged with the burden of proof has failed to meet that burden, the case is reviewed under the "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law" language of subparagraph (c)(ii)(A). Bucklin v. State ex rel. Wyo. Workers' Safety & Comp. Div., 2001 WY 101, 33 P.3d 440, 2001 Wyo. LEXIS 121 (Wyo. 2001).

Workers' compensation claimant was properly denied extended temporary total disability (TTD) benefits under this section because the fact that a claimant's benefits were disputed or the subject of a contested case was not a circumstance the Wyoming Workers' Compensation Division had established as a basis for extended TTD benefits. Dorman v. State Ex Rel. Wyo. Workers' Safety & Comp. Div., 2012 WY 94, 2012 Wyo. LEXIS 99 (July 3, 2012).

Purpose of this chapter is to provide uniform procedures to be followed in the adoption of agency rules and in conducting contested hearings, and to set out the means by which a final agency determination may be appealed to the courts. Sage Club, Inc. v. Employment Sec. Comm'n, 601 P.2d 1306, 1979 Wyo. LEXIS 479 (Wyo. 1979).

The hearing was not held contrary to law where the issues were not limited, the Department assumed the burden of proof, and the preponderance of the evidence standard was applied. RM v. Department of Family Servs., 953 P.2d 477, 1998 Wyo. LEXIS 16 (Wyo. 1998).

Due process violation for inadequate notice to doctor. — In a proceeding to suspend his license to practice medicine, a doctor was deprived of his constitutional right to due process by the state medical board of examiner's failure to provide the requisite notice under this section. Devous v. Wyoming State Bd. of Medical Examiners, 845 P.2d 408, 1993 Wyo. LEXIS 13 (Wyo. 1993).

Burden of proving arbitrary, illegal or fraudulent administrative action is on the complain-

road; (2) the driver walked with a staggered gait, his speech was slurred, and his breath smelled of alcohol; (3) the driver admitted to having consumed several shots of whisky and some beer, the last of which he consumed only 15 minutes before the deputy arrived; (4) the driver was able to successfully perform only one of five field sobriety tests; and (5) the driver refused to submit to chemical testing. Bradshaw v. Wyo. DOT Drivers' License Div., 2006 WY 70, 135 P.3d 612, 2006 Wyo. LEXIS 75 (Wyo. 2006).

Substantial evidence supported the Office of Administrative Hearings' (OAH) decision to uphold the suspension of the driver's license for failing to submit to chemical testing pursuant to Wyo. Stat. Ann. § 31-6-102 because: (1) the trooper stated that he saw the driver's vehicle cross over the center line and the fog line more than once; and (2) the OAH reviewed the DVD of the incident, which showed the vehicle drifting from one side of lane to the other more than once and therefore corroborated the trooper's statements, even though it did not depict clearly whether the vehicle crossed over the lines due to its poor quality and limited duration. Taken together, the trooper's report and the DVD constituted relevant evidence from which a reasonable mind could conclude that the trooper had probable cause to stop the vehicle for a traffic violation, namely driving under the influence or failing to drive within the lanes. Tiernan v. State, DOT, 2011 WY 143, 262 P.3d 561, 2011 Wyo. LEXIS 147 (Wyo. 2011).

License suspension documents need not be returned. — There is nothing in the relevant statutes or agency regulations or rules that requires the department of revenue and taxation to honor a prosecutor's request for return of implied consent license suspension documents. Drake v. State, 751 P.2d 1319, 1988 Wyo. LEXIS 35 (Wyo. 1988).

Court may modify amount awarded to attorney. — The district court could hear an appeal from a hearing examiner's order reducing the compensation of an attorney for a worker's compensation claimant, and could modify the order, where the court found the amount awarded was unreasonable and the hearing examiner provided no factual or legal basis to justify the fee reduction. State ex rel. Wyoming Workers' Compensation Div. v. Brown, 805 P.2d 830, 1991 Wyo. LEXIS 15 (Wyo. 1991).

Order set forth sufficient findings of fact to establish that probable cause existed. — Suspension of a driver's license for failing to submit to a breath test was affirmed where the Office of Administrative Hearings' order set forth findings of fact sufficient to establish that probable cause existed; the signed statement of a deputy who had arrested the driver set forth his observations of the driver, including: (1) the driver's pickup truck appeared to have run off the road; (2) the driver walked with a staggered gait, his speech was slurred, and his breath smelled of alcohol; (3) the driver admitted to having consumed several shots of whisky and some beer, the last of which he consumed only 15 minutes before the deputy arrived; (4) the driver was able to successfully perform only one of five field sobriety tests; and (5) the driver refused to submit to chemical testing. Bradshaw v. Wyo. DOT Drivers' License Div., 2006 WY 70, 135 P.3d 612, 2006 Wyo. LEXIS 75 (Wyo. 2006).

Order denying part of requested attorney fees. — Where administrative hearing officer failed to include findings of fact and conclusions of law in his order denying attorney part of her requested fees in contested case relating to employee's application for disability benefits, supreme court could not accomplish meaningful review, requiring reversal and remand for hearing and development of adequate record. Cargile v. State ex rel. Wyoming Workers' Safety & Comp. Div., 965 P.2d 666, 1998 Wyo. LEXIS 135 (Wyo. 1998).

Revocation of dealer's license unsupported. — Agency order revoking an automobile dealer's license did not contain sufficient factual findings, as required by this section, for the court to understand the basis for the conclusion that the dealer's violations warranted revocation of its license, rather than a suspension or some other lesser punishment; the matter was thus remanded. State ex rel. DOT v. Legarda, 2003 WY 130, 77 P.3d 708, 2003 Wyo. LEXIS 159 (Wyo. 2003).

Applied in Rogers v. State ex rel. Wyo. Workers' Safety & Comp. Div., 2012 WY 117, 2012 Wyo. LEXIS 124 (Sept 7, 2012).

§ 16-3-115. Judicial review of agency actions; supreme court.

An aggrieved party may obtain a review of any final judgment of the district court under this act by appeal to the supreme court. The appeal shall be taken as in other civil cases.

History:

Laws 1965, ch. 108, § 15; W.S. 1957, § 9-276.33; W.S. 1977, § 9-4-115; Laws 1982, ch. 62, § 3.

Cross references. — For rule governing judicial review of administrative actions, see Rule 12, W.R.A.P.

Meaning of "this act." — For the definition of "this act," referred to in the first sentence, see § 16-3-101(b)(xi).

Repealing and savings clauses. — Section 17, ch. 108, Laws 1965, reads: "All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed, but this repeal does not affect pending proceedings. Provided, however, to the extent not inconsistent herewith existing procedures provided for by statute shall be deemed preserved and the procedures provided for by this act shall be in addition and supplementary thereto."

Severability. — Section 16, ch. 108, Laws 1965, reads: "If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and for this purpose the provisions of this act are severable."

Agency adversely affected by the decision of a district court is "aggrieved" and is entitled to appeal to the supreme court. Safety Medical Servs., Inc. v. Employment Sec. Comm'n, 724 P.2d 468, 1986 Wyo. LEXIS 609 (Wyo. 1986).

Issues not raised at the hearing before the agency will not be considered for the first time on appeal. In re State Bank Charter Application of Sec.

ARTICLE 2. PUBLIC RECORDS

Cross references. — As to filing of documents, see art. 3 of this chapter.

As to stealing or altering public records, see § 6-3-604.

As to public records in regard to state library and state archives, museums and historical department, see §§ 9-2-405 through 9-2-413 and 9-2-419.

Cited in Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241, 1978 Wyo. LEXIS 254 (Wyo. 1978).

Law reviews. — For case note, "Constitutional Law — A Constitutional Right of Access to State-Held Information. Sheridan Newspapers, Inc. v. City of Sheridan, 660 P.2d 785, 1983 Wyo. LEXIS 289 (Wyo. 1983)," see XIX Land & Water L. Rev. 719 (1984).

Am. Jur. 2d, ALR and C.J.S. references. — Validity, construction, and application of statutory provisions relating to public access to police records, 82 ALR3d 19.

Power of court under 5 USC § 552(a)(4)(B) to examine agency records in camera to determine propriety of withholding records, 60 ALR Fed 416.

What are administrative staff manuals and instructions to staff that affect members of public that must be disclosed under the Freedom of Information Act (FOIA) (5 USCS § 552(a)(2)(C)), 139 ALR Fed 299.

§ 16-4-201. Definitions.

(a) As used in this act:

(i) "Custodian" means the official custodian or any authorized person having personal custody and control of the public records in question;

(ii) "Official custodian" means any officer or employee of the state or any agency, institution or political subdivision thereof, who is responsible for the maintenance, care and keeping of public records, regardless of whether the records are in his actual personal custody and control;

(iii) "Person in interest" means the person who is the subject of a record or any representative designated by the person, except if the subject of the record is under legal disability or is the dependent high school student of his parents, "person in interest" means the parent or duly appointed legal representative;

(iv) "Political subdivision" means every county, city and county, city, incorporated and unincorporated town, school district and special district within the state;

(v) "Public records" when not otherwise specified includes any information in a physical form created, accepted, or obtained by the state or any agency, institution or political subdivision of the state in furtherance of its official function and transaction of public business which is not privileged or confidential by law. Without limiting the foregoing, the term "public records" includes any written communication or other information, whether in paper, electronic, or other physical form, received by the state or any agency, institution or political subdivision of the state in furtherance of the transaction of public business of the state or agency, institution or political subdivision of the state, whether at a meeting or outside a meeting;

(vi) Public records shall be classified as follows:

(A) "Official public records" includes all original vouchers, receipts and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which the state or any agency or subdivision thereof is a party; all fidelity, surety and performance bonds; all claims filed against the state or any agency or subdivision thereof; all records or documents required by law to be filed with or kept by any agency or the state of Wyoming; and all other documents or records determined by the records committee to be official public records;

(B) "Office files and memoranda" includes all records, correspondence, exhibits, books, booklets, drawings, maps, blank forms, or documents not defined and classified in subparagraph (A) of this subsection as official public records; all duplicate copies of official public records filed with any agency of the state or subdivision thereof; all documents and reports made for the internal administration of the office to which they pertain but not required by law to be filed or kept with the office; and all other documents or records, determined by the records committee to be office files and memoranda.

(vii) Repealed by Laws 2012, ch. 74, § 2.

(viii) "This act" means W.S. 16-4-201 through 16-4-205;

(ix) "Application" means a written request for a public record. However, a custodian may in his discretion deem a verbal request to be an application;

(x) "Information" means opinions, facts, or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic or other physical form.

History:

Laws 1969, ch. 145, § 1; W.S. 1957, § 9-692.1; W.S. 1977, § 9-9-101; Laws 1982, ch. 62, § 3; 2001, ch. 37, § 1; 2012, ch. 74, §§ 1, 2.

Cross references. — Property and Casualty Actuarial Opinions, see § 26-6-401 et seq.

The 2012 amendment, effective July 1, 2012, in (a)(v), substituted "any information in a physical form created, accepted, or obtained by the state or any agency, institution or political subdivision of the state in furtherance of its official function and transaction of public business which is not privileged or confidential by law" for "the original and copies of any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map drawing or other document, regardless of physical form or characteristics that have been made by the state of Wyoming and any counties, municipalities and political subdivisions thereof and by any agencies of the state, counties, municipalities and political subdivisions thereof, or received by them in connection with the transaction of public business, except those privileged or confidential by law" and added the last sentence; repealed former (a)(vii), which read: "'Writings' means all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials, regardless of physical form or characteristics"; and added (a)(ix) and (a)(x).

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

Public records. — It was error for the director of the Wyoming Division of Criminal Investigation to be ordered to provide a newspaper editor with a list of people possessing a permit or license to carry a concealed weapon in the county, since the records were not public. Pagel v. Franscell, 2002 WY 169, 57 P.3d 1226, 2002 Wyo. LEXIS 190 (Wyo. 2002).

Public inspection of names and salaries of school district employees. — In granting summary judgment in favor of a newspaper, the district court properly ruled as a matter of law that the newspaper was entitled to information concerning the names and salaries of individual employees of a school district. Laramie County Sch. Dist. No. One v. Cheyenne Newspapers, 2011 WY 55, 250 P.3d 522, 2011 Wyo. LEXIS 58 (Wyo. 2011).

Tape of university committee meeting was a public record. — Tape of a meeting of a committee regarding the misconduct of a university's former manager of transportation services should have been considered a public record because the university took possession of the tape in connection with an internal personnel investigation, which was subject to inspection by any member of the public absent the application of any statutory exemption. Sheaffer v. State ex rel. Univ. of Wyo., 2006 WY 99, 139 P.3d 468, 2006 Wyo. LEXIS 103 (Wyo. 2006).

Quoted in Laramie River Conservation Council v. Dinger, 567 P.2d 731, 1977 Wyo. LEXIS 276 (Wyo. 1977); Allsop v. Cheyenne Newspapers, Inc., 2002 WY 22, 39 P.3d 1092, 2002 Wyo. LEXIS 21 (Wyo. 2002).

Cited in Houghton v. Franscell, 870 P.2d 1050, 1994 Wyo. LEXIS 30 (Wyo. 1994).

Law reviews. — For case note, "Constitutional Law — A Constitutional Right of Access to State-Held Information. Sheridan Newspapers, Inc. v. City of Sheridan, 660 P.2d 785, 1983 Wyo. LEXIS 289 (Wyo. 1983)," see XIX Land & Water L. Rev. 719 (1984).

Am. Jur. 2d, ALR and C.J.S. references. — Accused's right to discovery or inspection of "rap sheets" or similar police records about prosecution witnesses, 10 Cal. 3d 812, 518 P.2d 1353, 1974 Cal. LEXIS 364, 112 Cal. Rptr. 257, ALR3d 820.

What constitutes a public record or document within statute making falsification, forgery, mutilation, removal or other misuse thereof an offense, 75 ALR4th 1067.

What constitutes "final opinion" or "order" of federal administrative agency required to be made available for public inspection and copying within meaning of 5 U.S.C. § 552(a)(2)(A), 114 ALR Fed 287.

What are "records" of agency which must be made available under Freedom of Information Act (5 USC § 552(a)(3)) 153 ALR Fed 571.

What constitutes "agency" for purposes of Freedom of Information Act (5 U.S.C. § 552), 165 ALR Fed 591.

Actions brought under Freedom of Information Act, 5 U.S.C. §§ 522 et seq. — Supreme Court cases, 167 ALR Fed 545.

§ 16-4-202. Right of inspection; rules and regulations; unavailability.

(a) All public records shall be open for inspection by any person at reasonable times, during business hours of the state entity or political subdivision, except as provided in this act or as otherwise provided by law, but the official custodian of any public records may make rules and regulations with reference to the inspection of the records as is reasonably necessary for the protection of the records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(b) If the public records requested are not in the custody or control of the person to whom application is made, the custodian or authorized person having personal custody and control of the public records shall notify the applicant within seven (7) business days from the date of acknowledged receipt of the request of the unavailability of the records sought, unless good cause exists preventing a response within such time period. In the event the applicant is not satisfied that

good cause exists, the applicant may petition the district court for a determination as to whether the custodian has demonstrated good cause existed.

(c) If the public records requested are in the custody and control of the person to whom application is made but are in active use or in storage, and therefore not available at the time an applicant asks to examine them, the custodian or authorized person having personal custody and control of the public records shall notify the applicant of this situation within seven (7) business days from the date of acknowledged receipt of the request, unless good cause exists preventing a response within such time period. In the event the applicant is not satisfied that good cause exists, the applicant may petition the district court for a determination as to whether the custodian has demonstrated good cause existed. If a public record is readily available, it shall be released immediately to the applicant so long as the release does not impair or impede the agency's ability to discharge its other duties.

(d) If a public record exists primarily or solely in an electronic format, the custodian of the record shall so inform the requester. Electronic record inspection and copying shall be subject to the following:

(i) The reasonable costs of producing a copy of the public record shall be borne by the party making the request. The costs may include the cost of producing a copy of the public record and the cost of constructing the record, including the cost of programming and computer services;

(ii) An agency shall provide an electronic record in alternative formats unless doing so is impractical or impossible;

(iii) An agency shall not be required to compile data, extract data or create a new document to comply with an electronic record request if doing so would impair the agency's ability to discharge its duties;

(iv) An agency shall not be required to allow inspection or copying of a record in its electronic format if doing so would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained;

(v) Nothing in this section shall prohibit the director of the office of homeland security from enacting any rules pursuant to his authority under W.S. 19-13-104(d)(v).

History:

Laws 1969, ch. 145, § 2; W.S. 1957, § 9-692.2; W.S. 1977, § 9-9-102; Laws 1982, ch. 62, § 3; 2002 Sp. Sess., ch. 53, § 1; 2005, ch. 174, § 2; 2012, ch. 30, § 3; ch. 74, § 1.

Cross references. — As to examination of books of state, county and municipal institutions, see § 9-1-507.

As to county records open to public inspection, see § 18-3-103.

The 2005 amendment, effective July 1, 2005, in (d)(v), substituted "state chief information officer" for "on-line government commission," and "his" for "its."

The 2012 amendments. — The first 2012 amendment, by ch. 30, § 3, in (d)(v), substituted "director of the office of homeland security" for "state chief information officer"; and substituted " W.S. 19-13-104(d)(v)" for " W.S. 9-2-2501."

Laws 2012, ch. 30, § 6, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 8, 2012.

The second 2012 amendment, by ch. 74 § 1, effective July 1, 2012, inserted "during business hours of the state entity or political subdivision" in (a); rewrote (b), which read: "If the public records requested are not in the custody or control of the person to whom application is made, the person shall forthwith notify the applicant of this fact"; and in (c), inserted "or authorized person having personal custody and control of the public records," and added "within seven (7) business days from the date of acknowledged receipt of the request, unless good cause exists preventing a response within such time period" and the last two sentences.

While neither amendment gave effect to the other, both have been given effect in this section as set out above.

Meaning of "this act." — For the definition of "this act," referred to in subsection (a), see § 16-4-201(a)(viii).

Federal law. — The Wyoming Public Records Act, § 16-4-201 et seq., and the Federal Freedom of Information Act have a common objective, which is that disclosure, not secrecy, should prevail. Sublette County Rural Health Care Dist. v. Miley, 942 P.2d 1101, 1997 Wyo. LEXIS 99 (Wyo. 1997).

Provisions construed favoring disclosure. — The Wyoming Public Records Act, §§ 16-4-201 through 16-4-205, will receive a liberal construction in favor of disclosure and against withholding, and exemptions will be construed narrowly. Sheridan Newspapers, Inc. v. City of Sheridan, 660 P.2d 785, 1983 Wyo. LEXIS 289 (Wyo. 1983); Sublette County Rural Health Care Dist. v. Miley, 942 P.2d 1101, 1997 Wyo. LEXIS 99 (Wyo. 1997).

Exemptions to public disclosure are to be construed narrowly. Laramie River Conservation Council v. Dinger, 567 P.2d 731, 1977 Wyo. LEXIS 276 (Wyo. 1977).

Blanket withdrawal of police logs and reports forbidden. — The blanket withdrawal of the police rolling log and case reports from public inspection is violative of statutory and constitutional rights. Sheridan Newspapers, Inc. v. City of Sheridan, 660 P.2d 785, 1983 Wyo. LEXIS 289 (Wyo. 1983).

Tape of university committee meeting was a public record. — Tape of a meeting of a committee

regarding the misconduct of a university's former manager of transportation services should have been considered a public record because the university took possession of the tape in connection with an internal personnel investigation, which was subject to inspection by any member of the public absent the application of any statutory exemption. Sheaffer v. State ex rel. Univ. of Wyo., 2006 WY 99, 139 P.3d 468, 2006 Wyo. LEXIS 103 (Wyo. 2006).

Stated in Houghton v. Franscell, 870 P.2d 1050, 1994 Wyo. LEXIS 30 (Wyo. 1994).

Cited in Laramie County Sch. Dist. No. One v. Cheyenne Newspapers, 2011 WY 55, 250 P.3d 522, 2011 Wyo. LEXIS 58 (Mar. 29, 2011).

Am. Jur. 2d, ALR and C.J.S. references. — Restricting public access to judicial records of state courts, 84 ALR3d 598.

Accused's right to discovery or inspection of "rap sheets" or similar police records about prosecution witnesses, 10 Cal. 3d 812, 518 P.2d 1353, 1974 Cal. LEXIS 364, 112 Cal. Rptr. 257, 95 ALR3d 820.

What are "records" of agency which must be made available under state freedom of information act, 27 ALR4th 680.

What constitutes an agency subject to application of state freedom of information act, 27 ALR4th 742.

State Freedom of Information Act requests: right to receive information in particular medium or format, 86 ALR4th 786.

Exhaustion of administrative remedies as prerequisite to judicial action to compel disclosure under state freedom of information acts, 114 ALR5th 283.

Construction and application of state freedom of information act provisions concerning award of attorney's fees and other litigation costs, 118 ALR 5th 1.

Use of Freedom of Information Act (5 USC § 552) as substitute for, or as means of, supplementing discovery procedures available to litigants in federal civil, criminal, or administrative proceedings, 57 ALR Fed 903.

Power of court under 5 USC § 552(a)(4)(B) to examine agency records in camera to determine propriety of withholding records, 60 ALR Fed 416.

Waiver by federal government agency as affecting agency's right to claim exemption from disclosure requirements, under the Freedom of Information Act (5 USC § 552(b)), 67 ALR Fed 595.

What constitutes "final opinion" or "order" of federal administrative agency required to be made available for public inspection and copying within meaning of 5 U.S.C. § 552(a)(2)(A), 114 ALR Fed 287.

What is agency subject to Privacy Act provisions (5 U.S.C. § 552a), 150 ALR Fed 521.

What are "records" of agency which must be made available under Freedom of Information Act (5 USC § 552(a)(3)) 153 ALR Fed 571.

§ 16-4-203. Right of inspection; grounds for denial; access of news media; order permitting or restricting disclosure; exceptions.

(a) The custodian of any public records shall allow any person the right of inspection of the records or any portion thereof except on one (1) or more of the following grounds or as provided in subsection (b) or (d) of this section:

(i) The inspection would be contrary to any state statute;

(ii) The inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law; or

(iii) The inspection is prohibited by rules promulgated by the supreme court or by the order of any court of record.

(b) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

(i) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, the attorney general, the state auditor, police department or any investigatory files compiled for any other law enforcement or prosecution purposes;

(ii) Test questions, scoring keys and other examination data pertaining to administration of a licensing examination and examination for employment or academic examination. Written promotional examinations and the scores or results thereof shall be available for inspection, but not copying or reproduction, by the person in interest after the examination has been conducted and graded;

(iii) The specific details of bona fide research projects being conducted by a state institution;

(iv) Except as otherwise provided by Wyoming statutes or for the owner of the property, the contents of real estate appraisals made for the state or a political subdivision thereof, relative to the acquisition of property or any interest in property for public use, until such time as title of the property or property interest has passed to the state or political subdivision. The contents of the appraisal shall be available to the owner of the property or property interest at any time;

(v) Interagency or intraagency memoranda or letters which would not be available by law to a private party in litigation with the agency;

(vi) To the extent that the inspection would jeopardize the security of any structure owned, leased or operated by the state or any of its political subdivisions, facilitate the planning of a terrorist attack or endanger the life or physical safety of an individual, including:

(A) Vulnerability assessments, specific tactics, emergency procedures or security procedures contained in plans or procedures designed to prevent or respond to terrorist attacks or other security threats;

(B) Building plans, blueprints, schematic drawings, diagrams, operational manuals or other records that reveal the building's or structure's internal layout, specific location, life and safety and support systems, structural elements, surveillance techniques, alarms, security systems or technologies, operational and transportation plans or protocols, personnel deployments for airports and other mass transit facilities, bridges, tunnels, emergency response facilities or structures, buildings where hazardous materials are stored, arenas, stadiums and waste and water systems;

(C) Records of any other building or structure owned, leased or operated by the state or any of its political subdivisions that reveal the building's or structure's life and safety systems, surveillance techniques, alarm or security systems or technologies, operational and evacuation plans or protocols or personnel deployments; and

(D) Records prepared to prevent or respond to terrorist attacks or other security threats identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities or laboratories established, maintained, or regulated by the state or any of its political subdivisions.

(vii) An application for the position of president of an institution of higher education, letters of recommendation or references concerning the applicant and records or information relating to the process of searching for and selecting the president of an institution of higher education, if the records or information could be used to identify a candidate for the position. As used in this paragraph "institution of higher education" means the University of Wyoming and any community college in this state.

(c) If the right of inspection of any record falling within any of the classifications listed in this section is allowed to any officer or employee of any newspaper, radio station, television station or other person or agency in the business of public dissemination of news or current events, it may be allowed to all news media.

(d) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law:

(i) Medical, psychological and sociological data on individual persons, exclusive of coroners' verdicts and written dockets as provided in W.S. 7-4-105(a);

(ii) Adoption records or welfare records on individual persons;

(iii) Personnel files except those files shall be available to the duly elected and appointed officials who supervise the work of the person in interest. Applications, performance ratings and scholastic achievement data shall be available only to the person in interest and to the duly elected and appointed officials who supervise his work. Employment contracts, working agreements or other documents setting forth the terms and conditions of employment of public officials and employees are not considered part of a personnel file and shall be available for public inspection;

(iv) Letters of reference;

(v) Trade secrets, privileged information and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person;

(vi) Library, archives and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of the contributions;

(vii) Hospital records relating to medical administration, medical staff, personnel, medical care and other medical information, whether on individual persons or groups, or whether of a general or specific classification;

(viii) School district records containing information relating to the biography, family, physiology, religion, academic achievement and physical or mental ability of any student except to the person in interest or to the officials duly elected and appointed to supervise him;

(ix) Library patron transaction and registration records except as required for administration of the library or except as requested by a custodial parent or guardian to inspect the records of his minor child;

(x) Information obtained through a 911 emergency telephone system or through a verification system for motor vehicle insurance or bond as provided under W.S. 31-4-103(e) except to law

enforcement personnel or public agencies for the purpose of conducting official business, to the person in interest, or pursuant to a court order;

(xi) Records or information compiled solely for purposes of investigating violations of, and enforcing, internal personnel rules or personnel policies the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(xii) Information regarding the design, elements and components, and location of state information technology security systems and physical security systems;

(xiii) Records or information relating to individual diagnoses of contagious, infectious, communicable, toxic and genetic diseases maintained or collected by the Wyoming state veterinary laboratory as provided in W.S. 21-17-308(e);

(xiv) Information concerning an agricultural operation, farming or conservation practice, or the land itself, if the information was provided by an agricultural producer or owner of agricultural land in order to participate in a program of the state or any agency, institution or political subdivision of the state. The custodian shall also deny the right of inspection to geospatial information maintained about the agricultural land or operations. Provided, however, that if otherwise permitted by law, the inspection of the information described in this paragraph shall be allowed in accordance with the following:

(A) The custodian may allow the right of inspection when responding to a disease or pest threat to agricultural operations, if the custodian determines that a threat to agricultural operations exists and the disclosure of information is necessary to assist in responding to the disease or pest threat as authorized by law;

(B) The custodian shall allow the right of inspection of payment information under a program of the state or of any agency, institution or political subdivision of the state, including the names and addresses of recipients of payments;

(C) The custodian shall allow the right of inspection if the information has been transformed into a statistical or aggregate form without naming:

(I) Any individual owner, operator or producer; or

(II) A specific data gathering site.

(D) The custodian shall allow the right of inspection if the disclosure of information is pursuant to the consent of the agricultural producer or owner of the agricultural land;

(E) As used in this paragraph:

(I) "Agricultural operation" means the production and marketing of agricultural products or livestock;

(II) "Agricultural producer" means any producer of livestock, crops or dairy products from an agricultural operation.

(xv) Within any record held by an agency, any income tax return or any individual information derived by the agency from an income tax return, however information derived from these documents may be released if sufficiently aggregated or redacted so that the persons or entities involved cannot be identified individually;

(xvi) Except as required in a contested case hearing, any individual records involved in any workers' compensation claim, however information derived from these documents may be released if sufficiently aggregated or redacted so that the persons or entities involved cannot be identified individually.

(e) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial. The statement shall cite the law or regulation under which access is denied and shall be furnished to the applicant.

(f) Any person denied the right to inspect any record covered by this act may apply to the district court of the district wherein the record is found for an order directing the custodian of the record to show cause why he should not permit the inspection of the record.

(g) If, in the opinion of the official custodian of any public record, disclosure of the contents of the record would do substantial injury to the public interest, notwithstanding the fact that the record might otherwise be available to public inspection, he may apply to the district court of the district in which the record is located for an order permitting him to restrict disclosure. After hearing, the court may issue an order upon a finding that disclosure would cause substantial injury to the public interest. The person seeking permission to examine the record shall have notice of the hearing served upon him in the manner provided for service of process by the Wyoming Rules of Civil Procedure and has the right to appear and be heard.

(h) Notwithstanding any other provision of this section, the following applies to the Wyoming natural diversity database located at the University of Wyoming and any report prepared by the custodian from that database:

(i) The custodian may charge a reasonable fee for searching the database and preparing a report from that database information. The interpretation of the database in a report shall not contain recommendations for restrictions on any public or private land use;

(ii) The custodian shall allow the inspection of all records in the database at a level of spatial precision equal to the township, but at no more precise level;

(iii) Research reports prepared by the custodian funded completely from nonstate sources are subject to paragraph (b) (iii) of this section;

(iv) Any record contained in the database pertaining to private land shall not be released by the University of Wyoming without the prior written consent of the landowner. Nothing in this paragraph prohibits the release of any information which would otherwise be available from any other information source available to the public if the original source is cited.

History:

Laws 1969, ch. 145, § 3; W.S. 1957, § 9-692.3; W.S. 1977, § 9-9-103; Laws 1981, Sp. Sess., ch. 22, § 1; 1982, ch. 62, § 3; 1987, ch. 62, § 1; 1989, ch. 10, § 1; 1990, ch. 73, § 2; 1991, ch. 123, § 1; 2001, ch. 109, § 1; 2002 Sp. Sess., ch. 53, § 1; 2003, ch. 64, § 1; 2005, ch. 49, § 1; 2006, ch. 54, § 1; ch. 114, § 1; 2011, ch. 144, § 2; 2012, ch. 74, § 1; 2013, ch. 2, § 1; 2015, ch. 131, § 1.

The 2005 amendments. — The first 2005 amendment, by ch. 49, § 1, effective July 1, 2005, added (d)(xiii).

The second 2005 amendment, by ch. 210, § 2, effective July 1, 2005, in (d)(ix), substituted "patron transaction" for "circulation."

While neither amendment gave effect to the other, both have been given effect in this section as set out above.

The 2006 amendments. — The first 2006 amendment, by ch. 54, § 1, effective July 1, 2006, inserted "or through a verification system for motor vehicle insurance or bond as provided under W.S. 31-4-103(e)" in (d)(x).

The second 2006 amendment, by ch. 114, § 1, added "and" at the end of (d)(xii) and made a related change.

Laws 2006, ch. 114, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 24, 2006.

Pursuant to the conflicting legislation note in ch. 114, both have been given effect as set out above.

The 2011 amendment, effective July 1, 2011, in (d)(i), substituted "verdicts and written dockets as provided in W.S. 7-4-105(a)" for "autopsy reports."

The 2012 amendment, effective July 1, 2012, added (d)(xiv) through (d)(xvi) and made related changes.

The 2013 amendment, added (b)(viii).

Laws 2013, ch 2, §1, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 8, 2013.

The 2015 amendment, in (f), substituted "an order directing the custodian" for "an order directing the custodian."

Laws 2015, ch. 131, § 3, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 4, 2015.

Applicability. — Laws 2013, ch. 2, § 2, provides: "This act shall apply to all records or information as stated in this act relating to the search and selection process for which a board of trustees of an institution of higher education or its agent is considering applications on or after the effective date of this act, and shall include all such records or information whether developed or submitted prior to or after the effective date of this act."

Meaning of "this act." — For the definition of "this act," referred to in subsection (f), see § 16-4-201(a)(viii).

Conflicting legislation. — Laws 2006, ch. 114, § 3, provides: "[A]ny other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

Exemptions to public disclosure are to be construed narrowly. Laramie River Conservation Council v. Dinger, 567 P.2d 731, 1977 Wyo. LEXIS 276 (Wyo. 1977).

Redaction and disclosure appropriate. — A district court may use redaction as one of the remedies to vindicate the public's interests in access to public records. Redaction is an appropriate tool to be used in circumstances concerning disclosure of public records, and is well established in case law, as well as in statutes. Allsop v. Cheyenne Newspapers, Inc., 2002 WY 22, 39 P.3d 1092, 2002 Wyo. LEXIS 21 (Wyo. 2002).

Where expert issued a report to sheriff on measures required to prevent increased rate of attempted suicides at correctional facility the district court properly concluded that only a portion of the report fit within the statutory exemption to public disclosure under the Wyoming Public Records Act. Allsop v. Cheyenne Newspapers, Inc., 2002 WY 22, 39 P.3d 1092, 2002 Wyo. LEXIS 21 (Wyo. 2002).

Prison officials, in complying with an order to produce information concerning their remedial plan to address shortcomings in the prison's internal investigation process, could not redact from investigative reports the non-confidential information concerning the conditions of confinement but were allowed to redact and not publish to the public or inmates confidential materials relating to medical, personnel, and criminal history records, and information which, under a reasonable person standard, was necessary to protect the safety of inmates cooperating in the investigation process. Skinner v. Uphoff, 2005 U.S. Dist. LEXIS 31945 (D. Wyo. Sept. 27, 2005), aff'd, 175 Fed. Appx. 255, 2006 U.S. App. LEXIS 9237 (10th Cir. Wyo. 2006).

2014 WY 83, 327 P.3d 752, 2014 Wyo. LEXIS 89 (Wyo. 2014).

Reasons to be given for withdrawal of records. — When a custodian withdraws records, reasons therefor must be given so that these reasons may provide grounds for review should court action result. If the custodian gives either no reasons or inadequate reasons for withdrawal, appropriate legal action is available to force an automatic disclosure of the records. Sheridan Newspapers, Inc. v. City of Sheridan, 660 P.2d 785, 1983 Wyo. LEXIS 289 (Wyo. 1983).

Factors to be considered in nondisclosure decision. — See Sheridan Newspapers, Inc. v. City of Sheridan, 660 P.2d 785, 1983 Wyo. LEXIS 289 (Wyo. 1983).

Interagency memoranda provision similar to federal provision. — With respect to interagency memoranda, the Wyoming provision is similar to the federal Freedom of Information Act. Laramie River Conservation Council v. Dinger, 567 P.2d 731, 1977 Wyo. LEXIS 276 (Wyo. 1977).

And transcript of industrial siting council hearing not "memoranda." — The recording of a hearing by the Wyoming industrial siting council to consider the granting of a permit authorizing an electrical power cooperative to build certain units of a power plant, in the absence of any other verbatim report, is required by law to be made and kept on file by the agency. That requirement alone takes the transcript outside of the scope of the public records law classification of "memoranda." Laramie River Conservation Council v. Dinger, 567 P.2d 731, 1977 Wyo. LEXIS 276 (Wyo. 1977).

Tape of university committee meeting was a public record. — Tape of a meeting of a committee regarding the misconduct of a university's former manager of transportation services should have been considered a public record because the university took possession of the tape in connection with an internal personnel investigation, which was subject to inspection by any member of the public absent the application of any statutory exemption. Sheaffer v. State ex rel. Univ. of Wyo., 2006 WY 99, 139 P.3d 468, 2006 Wyo. LEXIS 103 (Wyo. 2006).

Cited in Laramie County Sch. Dist. No. One v. Cheyenne Newspapers, 2011 WY 55, 250 P.3d 522, 2011 Wyo. LEXIS 58 (Mar. 29, 2011).

Law reviews. — For case note, "Constitutional Law — A Constitutional Right of Access to State-Held Information. Sheridan Newspapers, Inc. v. City of Sheridan, 660 P.2d 785, 1983 Wyo. LEXIS 289 (Wyo. 1983)," see XIX Land & Water L. Rev. 719 (1984).

Am. Jur. 2d, ALR and C.J.S. references. — Restricting public access to judicial records of state courts, 84 ALR3d 598.

What constitutes preliminary drafts or notes provided by or for state or local governmental agency, or intra-agency memorandums, exempt from disclosure or inspection under state freedom of information acts, 26 ALR4th 639.

What constitutes personal matters exempt from disclosure by invasion of privacy exemption under state freedom of information act, 26 ALR4th 666.

Patient's right to disclosure of his or her own medical records under state freedom of information act, 26 ALR4th 701.

What constitutes "trade secrets" exempt from disclosure under state freedom of information act, 27 ALR4th 773.

Propriety of publishing identity of sexual assault victim, 40 ALR5th 787.

Power of court under 5 USC § 552(a)(4)(B) to examine agency records in camera to determine propriety of withholding records, 60 ALR Fed 416.

Waiver by federal government agency as affecting agency's right to claim exemption from disclosure requirements, under the Freedom of Information Act (5 USC § 552(b)), 67 ALR Fed 595.

What constitutes "Trade Secrets and Commercial or Financial Information Obtained From Person and Privileged or Confidential," exempt from disclosure under Freedom of Information Act (5 USC § 552(b)(4)) (FOIA), 139 ALR Fed 225.

What is agency subject to Privacy Act provisions (5 U.S.C. § 552a), 150 ALR Fed 521.

What are "records" of agency which must be made available under Freedom of Information Act (5 USC § 552(a)(3)) 153 ALR Fed 571.

What are interagency or intra-agency memorandums or letters exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)), 168 ALR Fed 143.

What matters are exempt from disclosure under Freedom of Information Act (5 U.S.C. § 552(b)) as "specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy," 169 ALR Fed 495.

What constitutes "confidential source" within Freedom of Information Act exemption permitting nondisclosure of confidential source and, in some instances, of information furnished by confidential source (5 U.S.C. § 552(b)), 171 ALR Fed 193.

Construction and application of FOIA exemption 7(f), 5 U.S.C.A. § 552(b)(7)(F), which permits withholding of information compiled for law enforcement purposes if disclosure could reasonably be expected to endanger life or physical safety, 184 ALR Fed 435.

Use of affidavits to substantiate federal agency's claim of exemption from request for documents under Freedom of Information Act (5 U.S.C.A. § 552), 187 ALR Fed 1.

When are government records reasonably "expected to interfere with enforcement proceedings" so as to be exempt from disclosure under Freedom of Information Act provision (5 U.S.C.A. § 552(b)(7)(a)) exempting any information "compiled for law enforcement purposes" whenever it "could reasonably be expected to interfere with enforcement proceedings," 189 ALR Fed 1.

§ 16-4-204. Right of inspection; copies, printouts or photographs; fees.

(a) In all cases in which a person has the right to inspect and copy any public records he may request that he be furnished copies, printouts or photographs for a reasonable fee to be set by the official custodian. Where fees for certified copies or other copies, printouts or photographs of the record are specifically prescribed by law, the specific fees shall apply. Nothing in this section shall

be construed as authorizing a fee to be charged as a condition of making a public record available for inspection.

(b) If the custodian does not have the facilities for making copies, printouts or photographs of records which the applicant has the right to inspect, then the applicant shall be granted access to the records for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the records are in the possession, custody and control of the custodian thereof and are subject to the supervision of the custodian. When practical the copy work shall be made in the place where the records are kept, but if it is impractical to do so, the custodian may allow arrangements to be made for this purpose. If other facilities are necessary the cost of providing them shall be paid by the person desiring a copy, printout or photograph of the records. The official custodian may establish a reasonable schedule of time for making copies, printouts or photographs and may charge a reasonable fee for the services rendered by him or his deputy in supervising the copying, printing out or photographing as he may charge for furnishing copies under this section.

(c) After July 1, 2003, any fees or charges assessed by a custodian of a public record shall first be authorized by duly enacted or adopted statute, rule, resolution, ordinance, executive order or other like authority.

(d) All state agencies may adopt rules and regulations pursuant to the Wyoming Administrative Procedure Act establishing reasonable fees and charges that may be assessed for the costs and services set forth in this section.

(e) The department of administration and information shall adopt uniform rules for the use of state agencies establishing procedures, fees, costs and charges for inspection, copies and production of public records under W.S. 16-4-202(d)(i), 16-4-203(h)(i) and 16-4-204.

History:

Laws 1969, ch. 145, § 4; W.S. 1957, § 9-692.4; W.S. 1977, § 9-9-104; Laws 1982, ch. 62, § 3; 2002 Sp. Sess., ch. 53, § 1; 2014, ch. 109, § 1.

Cross references. — As to reproduction of public records of political subdivisions generally, see § 9-2-413.

As to duty of county clerk as to reproduction of records, see § 18-3-402.

The 2014 amendment, effective July 1, 2014, added (e).

Wyoming Administrative Procedure Act. — See § 16-3-101(a), (b)(xi).

"Hospital records" does not include financial agreements. — Disclosure of financial agreements between a county and a physician is not an unwarranted invasion of privacy, and such financial agreements are not the type of record the legislature sought to shield from inspection when it exempted hospital records from disclosure. Houghton v. Franscell, 870 P.2d 1050, 1994 Wyo. LEXIS 30 (Wyo. 1994).

§ 16-4-205. Civil penalty.

Any person who knowingly or intentionally violates the provisions of this act is liable for a penalty not to exceed seven hundred fifty dollars ($750.00). The penalty may be recovered in a civil action and damages shall be assessed by the court. Any action pursuant to this section shall be initiated by the attorney general or the appropriate county attorney.

History:

Laws 1969, ch. 145, § 5; W.S. 1957, § 9-692.5; W.S. 1977, § 9-9-105; Laws 1982, ch. 62, § 3; 1995, ch. 110, § 1; 2012, ch. 74, § 1.

The 2012 amendment, effective July 1, 2012, substituted the first sentence for the former section which read: "Any person who willfully and knowingly violates the provisions of this act is guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not to exceed seven hundred fifty dollars ($750.00)" and added the second and third sentences.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 16-4-201(a)(viii).

Am. Jur. 2d, ALR and C.J.S. references. — Construction and application of state freedom of information act provisions concerning award of attorney's fees and other litigation costs, 118 ALR 5th 1.

ARTICLE 3. FILING OF DOCUMENTS

Cross references. — As to public records, see article 2 of this chapter.

Am. Jur. 2d, ALR and C.J.S. references. — 66 Am. Jur. 2d Records and Recording Law § 4.

WYOMING STATUTES ANNOTATED

2015 Edition

Volume 9

Title 35. Public Health and Safety
Title 36. State Lands
Title 37. Public Utilities
Title 38. Sureties

(Includes legislation through the 2015 regular session.)

The Wyoming Statutes Annotated is prepared by LexisNexis® under the supervision of the Wyoming Legislative Service Office.



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4985120

ISBN 978-1-63283-065-4 (set)
ISBN 978-1-63283-173-6

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(Pub. 49806)

and travel expenses incurred in the performance of their duties, as provided in W.S. 28 5 101.

"(c) The school of energy resources may contract with consultants as necessary to facilitate the western states energy and environment symposium and its purposes.

"(d) The western states energy and environment symposium may be held within Wyoming or in any other state that may be participating in the symposium."

Law reviews. — For article, "Wyoming's Groundwater Laws: Quantity and Quality Regulation," see XXIV Land & Water L. Rev. 39 (1989).

For article, "Cooperative Ecosystem Management: Can an Ecosystem Approach Succeed in Wyoming?" see XXXII Land & Water L. Rev. 629 (1997).

Library References. — American Law of Mining, 2nd Edition § 172.03 (Matthew Bender).

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§ 35-11-101. Short title.

This act shall be known and may be cited as the "Wyoming Environmental Quality Act".

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.1.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Applied in Powder River Basin Res. Council v. Wyo. Dep't of Envtl. Quality, 2010 WY 25, 226 P.3d 809, 2010 Wyo. LEXIS 27 (Mar. 5, 2010).

Cited in Board of Trustees v. Spiegel, 549 P.2d 1161, 1976 Wyo. LEXIS 191 (Wyo. 1976).

Law reviews. — For comment on the Wyoming Environmental Quality Act of 1973, see IX Land & Water L. Rev. 65 (1974).

See article, "Federal Mineral Reservations," X Land & Water L. Rev. 1 (1975).

For article, "Accommodation or Preemption? State and Federal Control of Private Coal Lands in Wyoming," see XII Land & Water L. Rev. 73 (1977).

For article, "The Emerging Federal Law of Mine Waste: Administrative, Judicial and Legislative Developments," see XXVI Land & Water L. Rev. 461 (1991).

For case note, "Waiver of Sovereign Immunity—Did Congress Intend to Exempt Federal Facilities From Civil Penalties Under the Clean Water Act? DOE v. Ohio, 503 U.S. 607, 112 S. Ct. 1627, 118 L. Ed. 2d 255, 1992 U.S. LEXIS 2547 (1992)," see XXVIII Land & Water L. Rev. 267 (1993).

For article, "Protecting Wetlands and Reasonable Investment-Backed Expectations in the Wake of Lucas v. South Carolina Coastal Council," see XXVIII Land & Water L. Rev. 425 (1993).

Am. Jur. 2d, ALR and C.J.S. references. — Common-law strict liability in tort of prior landowner or lessee to subsequent owner for contamination of land with hazardous waste resulting from prior owner's or lessee's abnormally dangerous or ultrahazardous activity, 13 ALR5th 600.

Propriety of negotiated settlements in government cleanup actions under federal hazardous waste statutes, 114 ALR Fed 1.

Federal requirements for public participation in adoption, submission, and approval of state implementation plans and revisions pursuant to § 110 of Clean Air Act (42 USC § 7410) 151 ALR Fed 445.

Decisions of Environmental Protection Agency (EPA) approving or disapproving state implementation plans as interfering with primary role of states to determine how national ambient air quality standards should be met under Clean Air Act (42 USC §§ 7401 et seq.) 151 ALR Fed 495.

Supreme Court's views as to validity, construction and application of Comprehensive Environmental Response, Compensation, and Liability Act ((CERCLA) (42 U.S.C. §§ 9601 et seq.)), 157 ALR Fed 291.

Requirement that there be continuing violation to maintain citizen suit under federal environmental protection statutes — post-Gwaltney cases, 158 ALR Fed 519.

What are "navigable waters" subject to Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), 160 ALR Fed 585.

Amount and characteristics of wastes as equitable factors in allocation of response costs pursuant to § 113(f)(1) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9613(f)(1): multiple waste streams, 162 ALR Fed 371.

§ 35-11-102. Policy and purpose.

Whereas pollution of the air, water and land of this state will imperil public health and welfare, create public or private nuisances, be harmful to wildlife, fish and aquatic life, and impair domestic, agricultural, industrial, recreational and other beneficial uses; it is hereby declared to be the policy and purpose of this act to enable the state to prevent, reduce and eliminate pollution; to preserve, and enhance the air, water and reclaim the land of Wyoming; to plan the development, use, reclamation, preservation and enhancement of the air, land and water resources of the state; to preserve and exercise the primary responsibilities and rights of the state of Wyoming; to retain for the state the control over its air, land and water and to secure cooperation between agencies of the state, agencies of other states, interstate agencies, and the federal government in carrying out these objectives.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.2; Laws 1977, ch. 132, § 1.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

State land preservation and enhancement account. — Laws 2005, ch. 85, § 1, creates account for state land preservation and enhancement. The act appropriates $750,000 from the school foundation program account to the office of state lands and investments to be deposited in the new account. Funds in the state land preservation and enhancement account are to be used by the office of state lands and investments to fund projects that preserve and enhance the asset value of all surface and mineral lands held in trust by the state. The director of the office of state lands and investments is to report on the use and expenditure of the fund not later than October 1 of each year to the joint agriculture, public lands and water resources, joint education and the joint appropriations interim committees.

Laws 2005, ch. 85, § 2, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 24, 2005.

Task force. — Laws 2005, ch. 125, § 1, directs the state health officer and the department of health in collaboration with the Wyoming department of agriculture and the Wyoming department of environmental quality to convene a multi-disciplinary task force to conduct a study of environmental health issues currently identified, the state and federal agencies to whom those issues are currently assigned and those environmental health threats identified but not clearly assigned to a particular state agency. The study is to examine overlapping governmental jurisdiction and jurisdictional gaps in environmental health matters and, to the extent needed, recommend solutions to these problems. The department is to produce and submit a comprehensive plan to coordinate and clarify agency responsibility for environmental health issues, together with recommendations for any initial legislation, to the joint labor, health and social services interim committee by November 15, 2005. The act appropriates $50,000 from the general fund to the department of health to implement the purposes of this act and further provides that the department of health may use existing resources and apply for any federal or private grants that may be available to augment funding for the required study and plan.

Laws 2005, ch. 125, § 2, makes the act effective immediately upon completion of all acts necessary for a bill to become law as required by art. 4, § 8, Wyo. Const. Approved February 25, 2005.

Environmental protection statutes are entitled to liberal construction since their goal is public protection. People v. Platte Pipe Line Co., 649 P.2d 208, 1982 Wyo. LEXIS 368 (Wyo. 1982).

Legal obligation of environmental quality council. — The legal obligation imposed on the council by the legislature is to promulgate rules and regulations necessary to prevent, reduce and eliminate pollution. Tri-State Generation & Transmission Ass'n v. Environmental Quality Council, 590 P.2d 1324, 1979 Wyo. LEXIS 369 (Wyo. 1979).

Application to preexisting operations. — The reclamation requirements of this chapter apply to preexisting operations which were not completed or substantially completed prior to this chapter's enactment. Universal Equip. Co. v. State, 839 P.2d 967, 1992 Wyo. LEXIS 152 (Wyo. 1992).

Quoted in Rocky Mt. Oil & Gas Ass'n v. State, 645 P.2d 1163, 1982 Wyo. LEXIS 345 (Wyo. 1982).

Law reviews. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see XI Land & Water L. Rev. 27 (1976).

For case note, "Environmental Law — Strict Liability for Oil Spills in Wyoming. People v. Platte Pipe Line Company, 649 P.2d 208, 1982 Wyo. LEXIS 368 (Wyo. 1982)," see XVIII Land & Water L. Rev. 805 (1983).

For comment, "Hazardous Waste Cleanup in Wyoming: Legal Tools Available to the Private Citizen," see XIX Land & Water L. Rev. 395 (1984).

For case note, "Administrative Law— Broader Jurisdiction for the Wyoming Oil and Gas Conservation Commission. Gulf Oil Corp. v. Wyoming Oil & Gas Conservation Comm'n, 693 P.2d 227, 1985 Wyo. LEXIS 422 (Wyo. 1985)," see XXI Land & Water L. Rev. 69 (1986).

For comment, "State Participation in Federal Policy Making for the Yellowstone Ecosystem: A Meaningful Solution or Business as Usual?" see XXI Land & Water L. Rev. 397 (1986).

For case note, "Mining Law — Are Surface Lessees 'Surface Owners' Entitled to Protection of Consent and Bonding Provisions of Wyoming's Environmental Quality Act? Belle Fourche Pipeline Co. v. State, 766 P.2d 537, 1988 Wyo. LEXIS 175 (Wyo. 1988)," see XXV Land & Water L. Rev. 447 (1990).

§ 35-11-103. Definitions.

(a) For the purpose of this act, unless the context otherwise requires:

(i) "Department" means the department of environmental quality established by this act;

(ii) "Council" means the environmental quality council established by this act;

(iii) "Director" means the director of the department of environmental quality;

(iv) "Board" means one (1) or more of the advisory boards in each division of air, land, or water quality;

(v) "Administrator" means the administrator of each division of the department;

(vi) "Person" means an individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, municipality or any other political subdivision of the state, or any interstate body or any other legal entity;

(vii) "Aggrieved party" means any person named or admitted as a party or properly seeking or

entitled as of right to be admitted as a party to any proceeding under this act because of damages that person may sustain or be claiming because of his unique position in any proceeding held under this act;

(viii) "Interstate agency" means an agency of two (2) or more states established by or pursuant to an agreement or compact approved by the United States Congress or any other agency of two (2) or more states, having substantial powers or duties pertaining to the control of air, land or water pollution;

(ix) "Municipality" means a city, town, county, district, association or other public body;

(x) "Nonpoint source" means any source of pollution other than a point source. For purposes of W.S. 16-1-201 through 16-1-207 only, nonpoint source includes leaking underground storage tanks as defined by W.S. 35-11-1415(a)(ix) and aboveground storage tanks as defined by W.S. 35-11-1415(a)(xi);

(xi) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged;

(xii) The singular includes the plural, the plural the singular, and the masculine and feminine or neuter, when consistent with the intent of this act and necessary to effect its purpose;

(xiii) "This act" means W.S. 35-11-101 through 35-11-403, 35-11-405, 35-11-406, 35-11-408 through 35-11-1106, 35-11-1414 through 35-11-1428, 35-11-1601 through 35-11-1613, 35-11-1701 and 35-11-1801 through 35-11-1803.

(b) Specific definitions applying to air quality:

(i) "Air contaminant" means 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;

(ii) "Air pollution" means the presence in the outdoor atmosphere of one (1) or more air contaminants in such quantities and duration which may be injurious to human health or welfare, animal or plant life, or property, or unreasonably interferes with the enjoyment of life or property;

(iii) "Clean Air Act" means the federal Clean Air Act of 1977, as amended by P.L. 101-549;

(iv) "Emission" means a release into the outdoor atmosphere of air contaminants;

(v) "Operating permit program" means the permitting program authorized by W.S. 35-11-203 through 35-11-212 implementing a state plan pursuant to the 1990 amendments to the Clean Air Act;

(vi) "Stationary source" means any building, structure, facility or installation which emits or may emit any air contaminant.

(c) Specific definitions applying to water quality:

(i) "Pollution" means contamination or other alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity or odor of the waters or any discharge of any acid or toxic material, chemical or chemical compound, whether it be liquid, gaseous, solid, radioactive or other substance, including wastes, into any waters of the state which creates a nuisance or renders any waters harmful, detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses, or to livestock, wildlife or aquatic life, or which degrades the water for its intended use, or adversely affects the environment. This term does not mean water, gas or other material which is injected into a well to facilitate production of oil, or gas or water, derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state, and if the state determines that such injection or disposal well will not result in the degradation of ground or surface or water resources;

(ii) "Wastes" means sewage, industrial waste and all other liquid, gaseous, solid, radioactive, or other substances which may pollute any waters of the state;

(iii) "Sewerage system" means pipelines, conduits, storm sewers, pumping stations, force mains, and all other constructions, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

(iv) "Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes;

(v) "Disposal system" means a system for disposing of wastes, either by surface or underground methods, including sewerage systems, treatment works, disposal wells, and absorption fields;

(vi) "Waters of the state" means all surface and groundwater, including waters associated with wetlands, within Wyoming;

(vii) "Discharge" means any addition of any pollution or wastes to any waters of the state;

(viii) "Public water supply" means a system for the provision to the public of water for human consumption through pipes or constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals. Public water supply shall include:

(A) Any collection, treatment, storage and distribution facility under control of the operator of the facility and used primarily in connection with the system; and

(B) Any collection or pretreatment storage facilities not under the control of the operator which are used primarily in connection with the system.

(ix) "Small wastewater system" means any sewerage system, disposal system or treatment works having simple hydrologic and engineering needs which is intended for wastes originating from a single residential unit serving no more than four (4) families or which distributes two thousand (2,000) gallons or less of domestic sewage per day;

(x) "Wetlands" means those areas in Wyoming having all three (3) essential characteristics:

(A) Hydrophytic vegetation;

(B) Hydric soils; and

(C) Wetland hydrology.

(xi) "Compensatory mitigation" means replacement, substitution or enhancement of ecological functions and wetland values to offset anticipated losses of those values caused by filling, draining or otherwise damaging a wetland;

(xii) "Ecological function" means the ability of an area to support vegetation and fish and wildlife populations, recharge aquifers, stabilize base flows, attenuate flooding, trap sediment and remove or transform nutrients and other pollutants;

(xiii) "Mitigation" means all actions to avoid, minimize, restore and compensate for ecological functions or wetland values lost;

(xiv) "Natural wetlands" means those wetlands that occur independently of human manipulation of the landscape;

(xv) "Man-made wetlands" means those wetlands that are created intentionally or occur incidental to human activities, and includes any enhancement made to an existing wetland which increases its function or value;

(xvi) "Wetland value" means those socially significant attributes of wetlands such as uniqueness, heritage, recreation, aesthetics and a variety of economic values;

(xvii) "Community water system" means a public water supply that has at least fifteen (15) service connections used year-round by residents or that regularly provides water to at least twenty-five (25) residents year-round, including, but not limited to, municipalities and water districts;

(xviii) "Nontransient noncommunity water system" means a public water supply which is not a community water system and which regularly provides service to at least twenty-five (25) of the same persons for more than six (6) months of the year where those persons are not full-time residents, including, but not limited to, schools, factories and office buildings;

(xix) "Credible data" means scientifically valid chemical, physical and biological monitoring data collected under an accepted sampling and analysis plan, including quality control, quality assurance procedures and available historical data;

(xx) "Geologic sequestration" means the injection of carbon dioxide and associated constituents into subsurface geologic formations intended to prevent its release into the atmosphere;

(xxi) "Geologic sequestration site" means the underground geologic formations where the carbon dioxide is intended to be stored;

(xxii) "Geologic sequestration facilities" means the surface equipment used for transport, storage and injection of carbon dioxide.

(d) Specific definitions applying to solid waste management:

(i) "Solid waste" means garbage, and other discarded solid materials, materials, including solid waste materials resulting from industrial, commercial, and agricultural operations, and

from community activities, but, unless disposed of at a solid waste management facility, does not include:

(A) Solids or dissolved material in domestic sewerage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants;

(B) Liquids, solids, sludges or dissolved constituents which are collected or separated in process units for recycling, recovery or reuse including the recovery of energy, within a continuous or batch manufacturing or refining process; or

(C) Agricultural materials which are recycled in the production of agricultural commodities.

(ii) "Solid waste management facility" means any facility for the transfer, treatment, processing, storage or disposal of solid waste, but does not include:

(A) Lands or facilities subject to the permitting requirements of article 3 of this act;

(B) Facilities which would have been subject to the permitting requirements of article 3 of this act if constructed after July 1, 1973;

(C) Any facility described under W.S. 30-5-104(d)(vi)(A) or (B);

(D) Lands and facilities subject to the permitting requirements of article 2, 3 or 4 of this act used solely for the management of wastes generated within the boundary of the permitted facility or mine operation by the facility or mine owner or operator or from a mine mouth electric power plant or coal drier;

(E) Lands and facilities owned by a person engaged in farming or ranching and used to dispose of solid waste generated incidental to his farming and ranching operations; or

(F) Transport vehicles, storage containers and treatment of the waste in containers.

(iii) "Cost effective" means the selection of alternative responses taking into account total short-term and long-term costs of those responses including the costs of operation and maintenance for the entire activity, the presence of naturally occurring hazardous or toxic substances, current or potential uses of the natural resources impacted;

(iv) "Commercial solid waste management facility" means any facility receiving a monthly average greater than five hundred (500) short tons per day of unprocessed household refuse or mixed household and industrial refuse for management or disposal;

(v) "Commercial radioactive waste management facility" means any facility used or intended to be used to receive for disposal, storage, reprocessing or treatment, any amount of radioactive wastes which are generated by any person other than the facility owner or operator, or which are generated at a location other than the location of the facility, but does not include:

(A) Uranium mill tailings facilities licensed by the United States Nuclear Regulatory Commission which receive in situ leaching uranium mining by-product materials or are specifically authorized by the department on a limited basis to receive small quantities of wastes defined in section 11e(2) of the Atomic Energy Act of 1954 (42 U.S.C. § 2014(e)(2)) which were generated by persons other than the facility owner or operator or which were generated at a location other than the location of the facility, or both; and

(B) Facilities used for the temporary storage of radioactive wastes generated by the facility owner or operator, including facilities for the temporary storage of naturally occurring radioactive materials generated during the course of oil or natural gas exploration or production, provided the storage of radioactive wastes is in compliance with applicable state and federal law; and

(C) Permitted solid waste disposal facilities which are authorized by the director to receive small quantities of radioactive wastes containing only naturally occurring radioactive materials, or which receive radioactive materials that have been exempted from regulation under section 10 of the Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. § 2021j, or both if found by the department not to threaten human health and the environment; and

(D) Federally owned facilities used exclusively for the storage, reprocessing or treatment of spent reactor fuel;

(E) Facilities licensed by the United States nuclear regulatory commission whose sole purpose is to receive in situ leaching uranium mining by-product materials as defined in section 11(e)(2) of the Atomic Energy Act of 1954 (42 U.S.C. § 2014(e)(2)).

(vi) "Long term remediation and monitoring trust" means a trust account established to provide funding for perpetual monitoring, maintenance and remediation of any commercial

radioactive waste management facility. The adequacy of the initial and subsequent funding, including the quality of any bond or letter of credit, shall be determined jointly by the director, the insurance commissioner and the attorney general. Expenditures from the trust shall be only for commercial radioactive waste regulation, monitoring and remediation;

(vii) "Hazardous waste" means any liquid, solid, semisolid or contained gaseous waste or combination of those wastes which because of quantity, concentration or physical, chemical or infectious characteristics may cause or significantly contribute to detrimental human health effects, or pose a substantial present or potential hazard to human health or the environment. Only those materials listed as hazardous wastes by the United States environmental protection agency's hazardous waste management regulations or which exhibit a hazardous waste characteristic specified by the environmental protection agency shall be considered hazardous wastes. Hazardous waste does not include those hazardous wastes exempted under the Resource Conservation and Recovery Act, P.L. 94-580 [42 U.S.C. § 6901 et seq.], or under the United States environmental protection agency's hazardous waste management regulations for the period that they remain exempted by congressional or administrative action;

(viii) "Composite liner" means a system consisting of two (2) components; the upper component must consist of a minimum thirty (30) mil flexible membrane liner (FML) and the lower component shall consist of at least a two (2) foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} centimeters per second. A flexible membrane liner components consisting of high density polyethylene (HDPE) shall be at least sixty (60) mil thick. The flexible membrane liner component shall be installed in direct and uniform contact with the compacted soil component;

(ix) "Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such wastes;

(x) "Statistical power" means the probability of detecting change given that a change has truly occurred;

(xi) "Eligible leaking municipal solid waste landfill" means the landfills identified by the department under the priority list for municipal solid waste landfills that need remediation created pursuant to W.S. 35-11-524(b).

(e) Specific definitions for land quality:

(i) "Reclamation" means the process of reclaiming an area of land affected by mining to use for grazing, agricultural, recreational, wildlife purposes, or any other purpose of equal or greater value. The process may require contouring, terracing, grading, resoiling, revegetation, compaction and stabilization, settling ponds, water impoundments, diversion ditches, and other water treatment facilities in order to eliminate water diminution to the extent that existing water sources are adversely affected, pollution, soil and wind erosion, or flooding resulting from mining or any other activity to accomplish the reclamation of the land affected to a useful purpose;

(ii) "Minerals" means coal, clay, stone, sand, gravel, bentonite, scoria, rock, pumice, limestone, ballast rock, uranium, gypsum, feldspar, copper ore, iron ore, oil shale, trona, and any other material removed from the earth for reuse or further processing;

(iii) "Contouring" means grading or backfilling and grading the land affected and reclaiming it to the proposed future use with adequate provisions for drainage. Depressions to accumulate water are not allowed except if approved as part of the reclamation plan;

(iv) "Overburden" means all of the earth and other materials which lie above the mineral deposit and also means such earth and other materials disturbed from their natural state in the process of mining, or mining from exposed natural deposits;

(v) "Underground mining" means the mining of minerals by man-made excavation underneath the surface of the earth;

(vi) "Pit" means a tract of land from which overburden has been or is being removed for the purpose of surface mining or mining from an exposed natural deposit;

(vii) "Adjacent lands" means all lands within one-half mile of the proposed permit area;

(viii) "Operation" means all of the activities, equipment, premises, facilities, structures, roads, rights-of-way, waste and refuse areas excluding uranium mill tailings and mill facilities, within the Nuclear Regulatory Commission license area, storage and processing areas, and shipping areas used in the process of excavating or removing overburden and minerals from the affected land or for removing overburden for the purpose of determining the location, quality or quantity of a natural mineral deposit or for the reclamation of affected lands;

(ix) "Operator" means any person, as defined in this act, engaged in mining, either as a principal who is or becomes the owner of minerals as a result of mining, or who acts as an agent or independent contractor on behalf of such principal in the conduct of mining operations;

(x) "Surface mining" means the mining of minerals by removing the overburden lying above natural deposits thereof and mining directly from the natural deposits thereby exposed, including strip, open pit, dredging, quarrying, surface leaching, and related activities;

(xi) "Mining permit" means certification by the director that the affected land described may be mined for minerals by a licensed operator in compliance with an approved mining plan and reclamation plan. No mining may be commenced or conducted on land for which there is not in effect a valid mining permit. A mining permit shall remain valid and in force from the date of its issuance until the termination of all mining and reclamation operations, except as otherwise provided in this act;

(xii) "Spoil pile" means the overburden or any reject minerals as piled or deposited by surface or underground mining;

(xiii) "A license to mine for minerals" means the certification from the administrator that the licensee has the right to conduct mining operations on the subject lands in compliance with this act; for which a valid permit exists; that he has deposited a bond conditioned on his faithful fulfillment of the requirements thereof; and that upon investigation the administrator has determined that the licensed mining operation is within the purposes of this act;

(xiv) "Topsoil" means soil on the surface prior to mining that will support plant life;

(xv) "Exploration by dozing" means the removal of overburden by trenching with a bulldozer or other earth moving equipment to expose possible indications of mineralization;

(xvi) "Affected land" means the area of land from which overburden is removed, or upon which overburden, development waste rock or refuse is deposited, or both, including access roads, haul roads, mineral stockpiles, mill tailings excluding uranium mill tailings, and mill facilities, within the Nuclear Regulatory Commission license area, impoundment basins excluding uranium mill tailings impoundments, and all other lands whose natural state has been or will be disturbed as a result of the operations;

(xvii) "Refuse" means all waste material directly connected with mining including overburden, reject mineral or mill tailings excluding uranium mill tailings, which have passed through a processing plant prior to deposition on affected land;

(xviii) "Alluvial valley floors" means the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits;

(xix) "Prime farmland" shall have the same meaning as that previously prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding and erosion characteristics, and which historically have been used for intensive agricultural purposes, and as published in the federal register;

(xx) "Surface coal mining operation" means:

(A) Activities conducted on the surface of lands in connection with a surface coal mine or with the surface impacts incident to an underground coal mine as provided in Section 516 of P.L. 95-87 [30 U.S.C. § 1266]. These activities include excavation for the purpose of obtaining coal including common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating or other processing or preparation, and the loading of coal; and

(B) The areas upon which these activities occur or where these activities disturb the land surface. These areas shall also include any adjacent land the use of which is incidental to any of these activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of these activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entry ways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited

structures, facilities or other property or materials on the surface, resulting from or incident to these activities.

(xxi) "Steep slope surface coal mining operation" means a surface coal mining operation where mining occurs along the contour of a steep slope generally exceeding twenty (20) degrees and which, because of the steepness of the terrain, requires special spoil handling procedures;

(xxii) "Complete application" under W.S. 35-11-406(e) means that the application contains all the essential and necessary elements and is acceptable for further review for substance and compliance with the provisions of this chapter;

(xxiii) "Interim mine stabilization" means a temporary cessation of mining operation within the terms of a valid permit to mine;

(xxiv) "Deficiency" means an omission or lack of sufficient information serious enough to preclude correction or compliance by stipulation in the approved permit to be issued by the director;

(xxv) "Imminent or continuous threat" means, with respect to the coal mine subsidence mitigation program, physical data which shows an immediate significant threat of damage from mine subsidence or insurance claim records which support progressive and continuous mine subsidence loss damage to structure;

(xxvi) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife;

(xxvii) "Grazingland" includes rangelands and forestlands where the indigenous native vegetation is actively managed for grazing, browsing, occasional hay production, and occasional use by wildlife;

(xxviii) through (xxx) Repealed by Laws 1994, ch. 87, § 2.

(f) Specific definitions applying to in situ mining are:

(i) "Best practicable technology" means a technology based process justifiable in terms of existing performance and achievability in relation to health and safety which minimizes, to the extent safe and practicable, disturbances and adverse impacts of the operation on human or animal life, fish, wildlife, plant life and related environmental values;

(ii) "Excursion" means any unwanted and unauthorized movement of recovery fluid out of the production zone as a result of in situ mining activities;

(iii) "Groundwater restoration" means the condition achieved when the quality of all groundwater affected by the injection of recovery fluids is returned to a quality of use equal to or better than, and consistent with the uses for which the water was suitable prior to the operation by employing the best practicable technology;

(iv) "In situ mining" means a method of in-place surface mining in which limited quantities of overburden are disturbed to install a conduit or well and the mineral is mined by injecting or recovering a liquid, solid, sludge or gas that causes the leaching, dissolution, gasification, liquefaction or extraction of the mineral. In situ mining does not include the primary or enhanced recovery of naturally occurring oil and gas or any related process regulated by the Wyoming oil and gas conservation commission;

(v) "Production zone" means the geologic interval into which recovery fluids are to be injected or extracted;

(vi) "Reclamation" includes groundwater restoration;

(vii) "Recovery fluid" means any material which flows or moves, whether semi-solid, liquid, sludge, gas or other form or state, used to dissolve, leach, gasify or extract a mineral;

(viii) "Research and development testing" means conducting research and development activities to indicate mineability or workability of and develop reclamation techniques for an in situ operation.

(g) Specific definitions applying to voluntary remediation, real property remediation account and innocent owners:

(i) "Adjacent" means property contiguous to an eligible site, and contiguous or noncontiguous property onto or under which contaminants are known to have migrated from such site;

(ii) "Certificate of completion" means a certificate issued by the director stating that all remediation requirements for a site have been successfully implemented or satisfied. The certificate of completion shall incorporate any required institutional and engineering controls for future use of the site, which may include deed restrictions recorded by the site owner. A certificate

of completion may be conditioned upon the duty to perform any continuing requirements specified in a remedy agreement;

(iii) "Contaminant" means any chemical, material, substance or waste:

(A) Which is regulated under any applicable federal, state or local law or regulation;

(B) Which is classified as hazardous or toxic under federal, state or local law or regulation; or

(C) To which exposure is regulated under federal, state or local law or regulation.

(iv) "Covenant not to sue" means a written pledge issued by the director stating that the state shall not sue the person or any subsequent owner concerning contaminants and liability addressed by a remedy agreement. A covenant not to sue may be conditioned upon the duty to perform any continuing requirements specified in a remedy agreement;

(v) "Engineering controls" means measures, such as capping, containment, slurry walls, extraction wells or treatment methods that are capable of managing environmental and health risks by reducing contamination levels or limiting exposure pathways;

(vi) "Governmental entity" shall have the following meaning as determined by the location of an eligible site. For the purposes of this definition, city shall include both first class cities and towns:

(A) The city, for a site located entirely within the boundary of that city;

(B) Both the city and county, for a site located partially within that city or within the extraterritorial boundary of a city;

(C) The county, for a site located outside the boundary of a city and outside the extraterritorial boundary of the city; or

(D) The federal land management agency, for a site located on lands managed by that federal agency.

(vii) "Institutional controls" means restrictions on the use of a site, including deed notices, voluntary deed restrictions or other conditions, covenants or restrictions imposed by the property owner and filed with the county clerk, use control areas, and zoning regulations or restrictions;

(viii) "No further action letter" means a letter issued by the director stating that the department has determined that no further remediation is required on the site;

(ix) "Remediation" means all actions necessary to assess, test, investigate or characterize a site, and to clean up, remove, treat, or in any other way address any contaminants that are on, in or under a site or adjacent property to prevent, minimize or mitigate harm to human health or the environment;

(x) "Site" means a parcel of real property;

(xi) "Use control area" means an area designated by a governmental entity or entities for the purpose of controlling current and future property uses;

(xii) "Bona fide prospective purchaser" means a person who acquired ownership of contaminated real property after January 11, 2002 which the person knew to be contaminated at the time of acquisition and can establish each of the following:

(A) All release or disposal of contaminants located at the real property occurred before the person acquired the property;

(B) The owner or prospective purchaser stopped all continuing releases of contamination from the property;

(C) The owner or prospective purchaser prevented any threatened future release from the existing contamination;

(D) The owner or prospective purchaser prevented or limited human, environmental and natural resource exposure to previously released hazardous substances;

(E) The department has been notified in writing of the presence of contamination;

(F) The prospective purchaser is not potentially liable or affiliated with a potentially liable party for response costs at the property through:

(I) Familial relationships;

(II) Contractual, corporate or financial relationships; or

(III) The reorganization of a potentially liable business.

(h) Specific definitions applying to municipal solid waste landfills:

(i) "Aquifer" means an underground geologic formation:

(A) Which has boundaries that may be ascertained or reasonably inferred;

(B) In which water stands, flows or percolates;

(C) Which is capable of yielding to wells or springs significant quantities of groundwater that may be put to beneficial use; and

(D) Which is capable of yielding to wells or springs which produce a sustainable volume of more than one-half (1/2) gallon of water per minute.

(ii) "Credible data" means as defined in paragraph (c)(xix) of this section;

(iii) "Groundwater" means any water, including hot water and geothermal steam, under the surface of the land or the bed of any stream, lake, reservoir or other body of surface water, including water that has been exposed to the surface by an excavation such as a pit which:

(A) Stands, flows or percolates; and

(B) Is capable of being produced to the ground surface in sufficient quantity to be put to beneficial use.

(iv) "Lifetime" means the estimated time to fill and close a municipal solid waste landfill, not to exceed twenty-five (25) years.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.3; Laws 1974, ch. 14, § 1; 1975, ch. 198, § 2; 1977, ch. 132, § 1; 1978, ch. 33, § 2; 1979, ch. 96, § 2; 1980, ch. 64, § 2; ch. 67, §§ 1, 2; 1982, ch. 73, § 2; 1983, ch. 35, § 1; ch. 67, § 1; 1987, ch. 59, § 2; ch. 227, § 1; 1989, ch. 33, § 1; ch. 148, § 2; ch. 205, § 2; ch. 270, § 2; 1990, ch. 64, § 2; ch. 98, § 2; 1991, ch. 110, § 2; ch. 136, § 1; 1992, ch. 60, § 3; ch. 70, § 2; ch. 88, § 1; 1993, ch. 230, § 1; 1994, ch. 32, § 1; ch. 56, § 1; ch. 82, § 2; ch. 87, § 2; 1995, ch. 58, § 2; 1998, ch. 88, § 2; 1999, ch. 99, § 1; 2000, ch. 13, § 2; 2005, ch. 231, § 1; 2006, ch. 114, § 1; 2008, ch. 30, § 2; 2011, ch. 110, § 2; ch. 147, § 2; 2013, ch. 38, § 1; ch. 158, § 2.

The 2005 amendment, effective July 1, 2005, deleted "within the trust and agency fund" in (d)(vi).

The 2006 amendment substituted " 42 U.S.C. § 2021j" for "(42 U.S.C. § 2021i)" in (d)(v)(C); and deleted "and" at the end of (e)(xix).

Laws 2006, ch. 114, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 24, 2006.

The 2008 amendment, effective July 1, 2008, added (c)(xx) through (c)(xxii).

The 2011 amendments. — The first amendment, by Laws 2011, ch. 110, § 2, added (h).

Laws 2011, ch. 110, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 2, 2011.

The second amendment, by Laws 2011, ch. 147, § 2, added (d)(viii) through (d)(x).

Laws 2011, ch. 147, § 3, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 3, 2011.

While neither amendment gave effect to the other, both have been given effect in this section as set out above.

The 2013 amendments. — The first 2013 amendment, by Laws 2013, ch. 38, § 1, added (g)(xii).

Laws 2013, ch. 38, § 2, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo Const. Approved February 14, 2013.

The second 2013 amendment, by Laws 2013, ch. 158, § 2, added (d)(xi).

Laws 2013, ch. 158, § 4, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution. Approved March 13, 2013.

While neither amendment gave effect to the other, both have been given effect in this section as set out above.

Clean Air Act. — The federal Clean Air Act, and the 1990 amendments thereto, referred to in subsections (b)(iii) and (b)(v), respectively, both appear as 42 U.S.C. § 7401 et seq.

Conflicting legislation. — Laws 2005, ch. 231, § 3, provides: "The provisions of this act shall supersede the provisions of any other bill enacted into law during the 2005 general session which amends or references accounts or funds to the extent any other enactment is inconsistent with the establishment of the funds and accounts created under this act. The state auditor shall account for any fund or account created in any other legislation enacted in the 2005 general session in accordance with generally accepted accounting principles (GAAP) as promulgated by the governmental accounting standards board (GASB) and in accordance with this act."

Laws 2006, ch. 114, §3 provides: "[A]ny other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

Condemned lands no longer "affected lands." — Once particular lands have been condemned, those lands are no longer "affected lands" under this chapter and those owners are no longer "surface owners" for purposes of the Act. Stalkup v. State Dep't of Envtl. Quality, 838 P.2d 705, 1992 Wyo. LEXIS 123 (Wyo. 1992).

Gravel not "mineral" for purposes of mineral reservation. — Although the state of Wyoming considers gravel to be a mineral for reclamation purposes, gravel is not a mineral, for purposes of a mineral reservation in a deed. Miller Land & Mineral Co. v. State Highway Comm'n, 757 P.2d 1001, 1988 Wyo. LEXIS 98 (Wyo. 1988).

Topsoil included in "overburden." — Environmental quality council correctly determined that plain language in this section's definition of "overburden" clearly and unambiguously included topsoil, and that gravel mine operator must therefore include topsoil in calculating amount of overburden disturbed each year at its mine. Platte Dev. Co. v. State, Envtl. Quality Council, 966 P.2d 972, 1998 Wyo. LEXIS 158 (Wyo. 1998).

Applied in Town of Torrington v. Envtl. Quality Council, 557 P.2d 1143, 1976 Wyo. LEXIS 234 (Wyo.

1976); Grams v. Environmental Quality Council, 730 P.2d 784, 1986 Wyo. LEXIS 649 (Wyo. 1986).

Quoted in Nickelson v. People, 607 P.2d 904, 1980 Wyo. LEXIS 239 (Wyo. 1980); Rocky Mt. Oil & Gas Ass'n v. State, 645 P.2d 1163, 1982 Wyo. LEXIS 345 (Wyo. 1982); People v. Platte Pipe Line Company, 649 P.2d 208, 1982 Wyo. LEXIS 368 (Wyo. 1982); LeFaivre v. Environmental Quality Council, 735 P.2d 428, 1987 Wyo. LEXIS 421 (Wyo. 1987).

Cited in Belle Fourche Pipeline Co. v. Elmore Livestock Co., 669 P.2d 505, 1983 Wyo. LEXIS 357 (Wyo. 1983); Compass Ins. Co. v. Cravens, Dargan & Co., 748 P.2d 724, 1988 Wyo. LEXIS 4 (Wyo. 1988).

Law reviews. — For case note, "Environmental Law — Strict Liability for Oil Spills in Wyoming. People v. Platte Pipe Line Company, 649 P.2d 208, 1982 Wyo. LEXIS 368 (Wyo. 1982)," see XVIII Land & Water L. Rev. 805 (1983).

For comment, "Hazardous Waste Cleanup in Wyoming: Legal Tools Available to the Private Citizen," see XIX Land & Water L. Rev. 395 (1984).

For comment, "State Participation in Federal Policy Making for the Yellowstone Ecosystem: A Meaningful Solution or Business as Usual?" see XXI Land & Water L. Rev. 397 (1986).

Library references. — 18 Nat. Resources & Env't Law Review 24.

Am. Jur. 2d, ALR and C.J.S. references. — Recovery in trespass for injury to land caused by airborne pollutants, 2 ALR4th 1054.

What constitutes "discharge of dredged or fill material" into navigable waters, so as to be subject to permit requirements under § 404(a) of Federal Water Pollution Control Act (33 USC § 1344(a)), 72 ALR Fed 703.

Establishing "release or threatened release" of hazardous substance from facility for purposes of liability pursuant to § 107 of Comprehensive Environmental Response, Compensation, and Liability Act (42 USCS § 9607), 120 ALR Fed 1.

What are "navigable waters" subject to Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), 160 ALR Fed 585.

§ 35-11-104. Department of environmental quality created.

There is created a department within the executive branch entitled "The State Department of Environmental Quality" as provided in W.S. 9-2-2013.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.4; Laws 1992, ch. 60, § 3.

§ 35-11-105. Divisions enumerated.

(a) The department shall consist of the following divisions:
(i) Air quality division;
(ii) Water quality division;
(iii) Land quality division;
(iv) Solid and hazardous waste management division;
(v) Abandoned mine land division;
(vi) Industrial siting division.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.5; Laws 1992, ch. 60, § 3.

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

§ 35-11-106. Powers, duties, functions and regulatory authority.

(a) All powers, duties, functions and regulatory authority vested in the state office of industrial siting administration are transferred to the department, as of April 1, 1992. The performance of such acts or functions by the industrial siting division of the department shall have the same effect as if done by the former state office of industrial siting administration as referred to or designated by law, contract or other document. The reference or designation to the former state office of industrial siting administration shall now apply to the industrial siting division of the department. The industrial siting council shall retain all powers, duties, functions and regulatory authority but shall be within the department.

(b) All rules, regulations and orders of the former state office of industrial siting administration, the industrial siting council, abandoned mine reclamation program, solid waste management program or any other program or entity transferred to the department by this act which were lawfully adopted prior to April 1, 1992 are adopted as the rules, regulations and orders of the department and shall continue to be effective until revised, amended, repealed or nullified pursuant to law.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.6; Laws 1992, ch. 60, § 3.

Meaning of "this act." — For the definition of "this act," referred to in subsection (b), see § 35-11-103(a)(xiii).

§ 35-11-107. Transfer of funds, records, property and personnel.

(a) All records, physical property and personnel including their rights and privileges under the merit system, retirement system and personnel system, and any appropriated or unused funds of the former state office of industrial siting administration and of the industrial siting council shall be transferred to the department as of the effective date of this act. All records, lists or other information which by law are confidential or privileged in nature shall remain as such.

(b) through (d) Repealed by Laws 1992, ch. 60, § 4.

(e) The industrial siting division is the successor to the powers, duties, functions and regulatory authority of the state office of industrial siting administration which is abolished effective April 1, 1992.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.7; Laws 1992, ch. 60, §§ 3, 4.

Meaning of "this act." — For the meaning of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Editor's notes. — Section 5, ch. 250, Laws 1973, makes the act effective on July 1, 1973.

§ 35-11-108. Appointment of director and division administrators; qualifications of director; term; salaries; employment of assistants.

The governor with the advice and consent of the senate shall appoint a director of the department who is the department's executive and administrative head. The director shall possess technical qualifications and administrative and other experience sufficient to fulfill the duties of his position. The director shall appoint administrators for each of the divisions of abandoned mine land, industrial siting, solid and hazardous waste management, air quality, water quality and land quality, who are the executive and administrative heads of their respective divisions. The administrators shall serve at the pleasure of the director and are responsible to and under the control and supervision of the director. The salary and qualifications of each administrator shall be determined by the human resources division. The director, with the advice of the respective administrators, may employ professional, technical and other assistants, along with other employees as may be necessary to carry out the purposes of this act. The governor may remove the director as provided in W.S. 9-1-202.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.8; Laws 1982, ch. 73, § 2; 1987, ch. 175, § 1; 1992, ch. 60, § 3; 1997, ch. 178, § 1.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Stated in Wyo. Outdoor Council v. Wyo. Dep't of Envtl. Quality, 2010 WY 20, 225 P.3d 1054, 2010 Wyo. LEXIS 21 (Feb. 25, 2010).

§ 35-11-109. Powers and duties of director.

(a) In addition to any other powers and duties imposed by law, the director of the department shall:

(i) Perform any and all acts necessary to promulgate, administer and enforce the provisions of this act and any rules, regulations, orders, limitations, standards, requirements or permits adopted, established or issued thereunder, and to exercise all incidental powers as necessary to carry out the purposes of this act;

(ii) Advise, consult and cooperate with other agencies of the state, the federal government, other states, interstate agencies, and other persons in furtherance of the purposes of this act;

(iii) Exercise the powers and duties conferred and imposed by this act in such a manner as to carry out the policy stated in W.S. 35-11-102;

(iv) Conduct, encourage, request and participate in, studies, surveys, investigations, research, experiments, training and demonstrations by contract, grant or otherwise; prepare and require permittees to prepare reports and install, use and maintain any monitoring equipment or

methods reasonably necessary for compliance with the provisions of this act; and collect information and disseminate to the public such information as is deemed reasonable and necessary for the proper enforcement of this act;

(v) Conduct programs of continuing surveillance and of a regular periodic inspection of all actual or potential sources of pollution and of public water supplies with the assistance of the administrators;

(vi) Designate authorized officers, employees or representatives of the department to enter and inspect any property, premise or place, except private residences, on or at which an air, water or land pollution source is located or is being constructed or installed, or any premises in which any records required to be maintained by a surface coal mining permittee are located. Persons so designated may inspect and copy any records during normal office hours, and inspect any monitoring equipment or method of operation required to be maintained pursuant to this act at any reasonable time upon presentation of appropriate credentials, and without delay, for the purpose of investigating actual or potential sources of air, water or land pollution and for determining compliance or noncompliance with this act, and any rules, regulations, standards, permits or orders promulgated hereunder. For surface coal mining operations, right of entry to or inspection of any operation, premises, records or equipment shall not require advance notice. The owner, occupant or operator shall receive a duplicate copy of all reports made as a result of such inspections within thirty (30) days. The department shall reimburse any operator for the reasonable costs incurred in producing copies of the records requested by the department under this section;

(vii) Investigate violations of this act or regulations adopted hereunder and prepare and present enforcement cases before the council; to take such enforcement action as set out in articles 6 and 7 of this act; to appear before the council on any hearing under this act;

(viii) Represent Wyoming in any matters pertaining to plans, procedures or negotiations for interstate compacts or other intergovernmental arrangements relating to environmental enhancement and protection. The director shall cooperate and participate in the negotiation and execution of consent orders, permit issuance, site investigations and remedial measures by and between federal agencies and the owners or operators of Wyoming facilities where the department has not been delegated the authority to administer and enforce federal legislation;

(ix) Accept, receive and administer any grants, gifts, loans or other funds made available from any source for the purposes of this act. Any monies received by the director pursuant to this paragraph shall be deposited with the state treasurer in the account or fund as provided by law for the purpose designated;

(x) Serve as advisor to the council, without vote, on all matters other than the consideration of rules proposed by the department or contested case proceedings in which the department is a party;

(xi) Designate authorized officers, employees or representatives of the department to monitor the air, water, and land quality, and solid waste management operations of all facilities which have been granted permits under W.S. 35-12-101 through 35-12-119, for assuring continuing compliance with conditions and requirements of their permits and for discovering and preventing noncompliance with the permits or violations of law;

(xii) Exercise all the powers granted to administrators by W.S. 35-11-110;

(xiii) Issue, deny, amend, suspend or revoke permits and licenses and determine the amount of bonds to be posted by the operator to insure reclamation of any affected lands;

(xiv) Exercise the powers and duties conferred and imposed by this act. Any person who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous wastes shall, upon request, furnish information relating to the wastes and permit at all reasonable times the director or designated officers, employees or representatives of the department to have access to, and to copy all records relating to the wastes. For purposes of developing or assisting in the development of any hazardous waste regulation or enforcing the hazardous waste provisions of this act, the designated officers, employees or representatives are authorized to:

(A) Enter at reasonable times any establishment, property, premise or other place where hazardous wastes are or have been generated, stored, treated, disposed of or transported from; and

(B) Inspect and obtain samples from any person of the wastes and samples of any containers or labeling for the wastes.

(xv) Commence and complete with reasonable promptness each inspection conducted under paragraph (xiv) of this subsection. If an officer, employee or representative acting pursuant to paragraph (xiv) of this subsection, obtains any samples, prior to leaving the premises, he shall give to the owner, operator or agent in charge a receipt describing the sample obtained and if requested a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator or agent in charge.

(b) In addition to any other powers and duties imposed by law, the director of the department may allow the permitting and reporting requirements of this act to be conducted electronically as provided by the Uniform Electronic Transaction Act, W.S. 40-21-101 through 40-21-119 and any applicable federal electronic requirements.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.9; Laws 1977, ch. 66, § 2; 1980, ch. 64, § 2; 1988, ch. 53, § 1; 1989, ch. 148, § 2; 1992, ch. 60, § 3; 1995, ch. 139, § 1; 2005, ch. 29, § 1; ch. 231, § 1.

The 2005 amendments. — The first 2005 amendment, by chapter 29, § 1, added (b).

Laws 2005, ch. 29, § 2, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 17, 2005.

The second 2005 amendment, by ch. 231, § 1, effective July 1, 2005, substituted "law" for "the funds consolidation act" in (a)(ix), and made stylistic changes.

See the conflicting legislation note. This section is set out incorporating amendments by both 2005 acts.

Meaning of "this act." — For the definition of "this act," referred to throughout subsection (a), see § 35-11-103(a)(xiii).

Conflicting legislation. — Laws 2005, ch. 231, § 3, provides: "The provisions of this act shall supersede the provisions of any other bill enacted into law during the 2005 general session which amends or references accounts or funds to the extent any other enactment is inconsistent with the establishment of the funds and accounts created under this act. The state auditor shall account for any fund or account created in any other legislation enacted in the 2005 general session in accordance with generally accepted accounting principles (GAAP) as promulgated by the governmental accounting standards board (GASB) and in accordance with this act."

This section and § 35-11-112 discuss general powers and responsibilities of director and council respectively, and are general provisions which provide authority for the promulgation of regulations and standards "necessary," and not on an assembly-line basis which would cause an undesirable inflexibility in the agency's functioning and impair its ability to deal with specialized problems. Town of Torrington v. Envtl. Quality Council, 557 P.2d 1143, 1976 Wyo. LEXIS 234 (Wyo. 1976).

Warrantless inspection unconstitutional. — Warrantless inspection of an oil company's underground storage tanks under subsection (a)(vi) violated the company's fourth amendment rights, because this section does not provide a constitutionally adequate substitute for a warrant. V-1 Oil Co. v. Wyoming, Dep't of Environment Quality, 902 F.2d 1482, 1990 U.S. App. LEXIS 6710 (10th Cir. Wyo.), cert. denied, 498 U.S. 920, 111 S. Ct. 295, 112 L. Ed. 2d 249, 1990 U.S. LEXIS 5247 (U.S. 1990).

EQC and DEQ were proper parties to a proceeding challenging new water quality rules. — After the Wyoming Environmental Quality Council (EQC) adopted proposed revisions to Chapter 1 of the Wyoming Water Quality Rules and Regulations, petitioner special interest groups filed a petition to challenge the new rules and named the Wyoming Department of Environmental Quality (DEQ) as respondent; the district court erred in dismissing the petition for lack of jurisdiction on the ground that the EQC was not named in the petition. The Supreme Court of Wyoming, held that both the EQC and the DEQ were both proper parties to this proceeding under the Wyoming Environmental Quality Act, Wyo. Stat. Ann. § 35-11-101 through 35-11-1904; the director of the DEQ had a duty under Wyo. Stat. Ann. § 35-11-109(a)(i) to enforce the provisions of the Wyoming Environmental Quality Act and any rules adopted thereunder. Wyo. Outdoor Council v. Wyo. Dep't of Envtl. Quality, 2010 WY 20, 225 P.3d 1054, 2010 Wyo. LEXIS 21 (Wyo. 2010).

Applied in Powder River Basin Resource Council v. Babbitt, 834 F. Supp. 358, 1993 U.S. Dist. LEXIS 14136 (D. Wyo. 1993).

Quoted in Rocky Mt. Oil & Gas Ass'n v. State, 645 P.2d 1163, 1982 Wyo. LEXIS 345 (Wyo. 1982).

Cited in Hermes Consol., Inc. v. People, 849 P.2d 1302, 1993 Wyo. LEXIS 75 (Wyo. 1993).

Law reviews. — For comment, "Wyoming's Governmental Claims Act: Sovereign Immunity with Exceptions — A Statutory Analysis," see XV Land & Water L. Rev. 619 (1980).

For comment, "State Participation in Federal Policy Making for the Yellowstone Ecosystem: A Meaningful Solution or Business as Usual?" see XXI Land & Water L. Rev. 397 (1986).

Am. Jur. 2d, ALR and C.J.S. references. — Citizen's action against administrator of environmental protection agency to compel performance of nondiscretionary duty under § 505(a)(2) of federal Water Pollution Control Act Amendments of 1972 (33 USC § 1365(a)(2)), 57 ALR Fed 851.

Private contractor as "authorized representative" of administrator of environmental protection agency for purpose of inspections conducted under § 114 of Clean Air Act (42 USC § 7414), 72 ALR Fed 176.

§ 35-11-110. Powers of administrators of the divisions.

(a) The administrators of the air quality, land quality and water quality divisions, under the control and supervision of the director, shall enforce and administer this act and the rules, regulations and standards promulgated hereunder. Each administrator shall have the following powers:

(i) To serve as executive secretary of their respective advisory boards without vote;

(ii) To make recommendations to the director regarding the issuance, denial, amendment, suspension or revocation of permits and licenses and to make recommendations to the director regarding the amount of bond to be posted by the operator to insure reclamation of any affected lands;

(iii) To supervise studies, surveys, investigations, experiments and research projects assigned by the director and report all information gained therefrom to the director and the appropriate advisory board;

(iv) To determine the degrees of air, water or land pollution throughout the state and the several parts thereof;

(v) To administer, in accordance with this act, any permit or certification systems which may be established hereunder;

(vi) To require the owners and operators of any point source to complete plans and specifications for any application for a permit required by this act or regulations made pursuant hereto and require the submission of such reports regarding actual or potential violations of this act or regulations thereunder;

(vii) To require the owner or operator of any point source to:

(A) Establish and maintain records;

(B) Make reports;

(C) Install, use and maintain monitoring equipment or methods;

(D) Sample effluents, discharges or emissions;

(E) Provide such other information as may be reasonably required and specified.

(viii) To consult with and report to the appropriate advisory board and to make written reports of all the activities of his division to said advisory board at each of its regularly scheduled meetings;

(ix) To recommend to the director, after consultation with the appropriate advisory board, that any rule, regulation or standard or any amendment adopted hereunder may differ in its terms and provisions as between particular types, characteristics, quantities, conditions and circumstances of air, water or land pollution and its duration, as between particular air, water and land pollution services and as between particular areas of the state;

(x) To possess such further powers as shall be reasonably necessary and incidental to the proper performance of the duties imposed upon the divisions under this act.

(b) The administrator of the land quality division shall have, in addition to the powers set forth in subsection (a) of this section, the power to issue, deny, amend, suspend or revoke licenses and to determine the amount of bonds to be posted by an operator to insure reclamation of affected lands in accordance with the specific authority granted the administrator under article 4 of this act.

(c) The administrator of the solid and hazardous waste management division shall have the powers set forth in paragraphs (a)(ii) through (x) of this section.

(d) The administrator of the abandoned mine land division shall enforce and administer the provisions of W.S. 35-11-1201 through 35-11-1209 and 35-11-1301 through 35-11-1304. He shall have the powers set forth in paragraph (a)(x) of this section.

(e) The administrator of the industrial siting division shall enforce and administer the provisions of W.S. 35-12-101 through 35-12-119. He shall have the powers set forth in paragraph (a)(x) of this section.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.10; Laws 1992, ch. 60, § 3; 2004, ch. 130, § 1.

The 2004 amendment, in (d), substituted "35-11-1209" for "35-11-1208."

Laws 2004, ch. 130, § 4, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 19, 2004.

Meaning of "this act." — For the definition of "this act," referred to in subsections (a) and (b), see § 35-11-103(a)(xiii).

Conflicting legislation. — Laws 2004, ch. 130, § 3, provides: "Any other act adopted by the Wyoming legislature during the same session in which this act

is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

Stated in Wyo. Outdoor Council v. Wyo. Dep't of Envtl. Quality, 2010 WY 20, 225 P.3d 1054, 2010 Wyo. LEXIS 21 (Feb. 25, 2010).

Am. Jur. 2d, ALR and C.J.S. references. — Transporter liability under § 107(a)(4) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USC § 9607(a)(4)), 112 ALR Fed 49.

§ 35-11-111. Independent environmental quality council created; removal; terms; officers; meetings; expenses.

(a) There is created as a separate operating agency of state government an independent council consisting of seven (7) members to be known as the environmental quality council. Not more than four (4) of the members shall be of the same political party. Council members shall be appointed by the governor with the advice and consent of the senate. The governor may remove any council member as provided in W.S. 9-1-202. No employee of the state, other than employees of institutions of higher education, shall be a member of the council. At all times, there shall be at least one (1) member from the minerals industry and one (1) member from agriculture. Any member receiving more than ten percent (10%) of his income from any permit applicant shall not act on a permit application from that applicant.

(b) The terms of the members shall be for four (4) years, except that on the initial appointment, members' terms shall be as follows: three (3) shall serve for two (2) years, two (2) shall serve for three (3) years and two (2) shall serve for four (4) years, as designated by the initial appointment. If a vacancy occurs, the governor shall appoint a new member as provided in W.S. 28-12-101.

(c) The first meeting of the council shall be held within sixty (60) days after the effective date of this act at which time a chairman shall be elected from among the members to serve a one (1) year term. The council shall also annually elect from its membership a vice-chairman and a secretary, each for a term of one (1) year, and it shall keep a record of its proceedings.

(d) The council shall hold at least four (4) regularly scheduled meetings each year. Special meetings may be called by the chairman, and special meetings shall be called by the chairman, upon a written request submitted by three (3) or more members. Four (4) members shall constitute a quorum. All matters shall be decided by a majority vote of those on the council.

(e) Unless otherwise prohibited by law, each member of the council shall receive the same per diem, mileage and salary for attending and traveling to and from meetings, hearings and other activities necessary to the performance of the duties of the office in the same manner and amount as members of the Wyoming legislature. Council members who receive compensation from their employers for activities performed pursuant to this act shall not receive salary but shall receive mileage and per diem if they are not reimbursed by their employers.

(f) Effective July 1, 1979, appointments and terms under this section shall be in accordance with W.S. 28-12-101 through 28-12-103.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.11; Laws 1977, ch. 132, § 1; 1979, ch. 17, § 2; 1980, ch. 64, § 2; 1987, ch. 175, § 1; 1989, ch. 270, § 2; 1992, ch. 60, § 3.

Editor's notes. — Laws 1973, ch. 250, § 5, makes the act effective on July 1, 1973.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

EQC and DEQ were proper parties to a proceeding challenging new water quality rules. — After the Wyoming Environmental Quality Council (EQC) adopted proposed revisions to Chapter 1 of the Wyoming Water Quality Rules and Regulations, petitioner special interest groups filed a petition to challenge the new rules and named the Wyoming Department of Environmental Quality (DEQ) as respondent; the district court erred in dismissing the petition for lack of jurisdiction on the ground that the EQC was not named in the petition. The Supreme Court of Wyoming, held that both the EQC and the DEQ were both proper parties to this proceeding under the Wyoming Environmental Quality Act, Wyo. Stat. Ann. § 35-11-101 through 35-11-1904; the EQC was an agency of the state government under Wyo. Stat. § 35-11-111(a). Wyo. Outdoor Council v. Wyo. Dep't of Envtl. Quality, 2010 WY 20, 225 P.3d 1054, 2010 Wyo. LEXIS 21 (Wyo. 2010).

Am. Jur. 2d, ALR and C.J.S. references. — Transporter liability under § 107(a)(4) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USC § 9607(a)(4)), 112 ALR Fed 49.

§ 35-11-112. Powers and duties of the environmental quality council.

(a) The council shall act as the hearing examiner for the department and shall hear and

determine all cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by the department or its air quality, land quality, solid and hazardous waste management or water quality divisions. At the council's request the office of administrative hearings may provide a hearing officer for any rulemaking or contested case hearing before the council, and the hearing officer may provide recommendations on procedural matters when requested by the council. Notwithstanding any other provision of this act, including this section, the council shall have no authority to promulgate rules or to hear or determine any case or issue arising under the laws, rules, regulations, standards or orders issued or administered by the industrial siting or abandoned mine land divisions of the department. The council shall:

(i) Promulgate rules and regulations necessary for the administration of this act, after recommendation from the director of the department, the administrators of the various divisions and their respective advisory boards;

(ii) Conduct hearings as required by the Wyoming Administrative Procedure Act [§§ 16-3-101 through 16-3-115] for the adoption, amendment or repeal of rules, regulations, standards or orders recommended by the advisory boards through the administrators and the director. The council shall approve all rules, regulations, standards or orders of the department before they become final;

(iii) Conduct hearings in any case contesting the administration or enforcement of any law, rule, regulation, standard or order issued or administered by the department or any division thereof;

(iv) Conduct hearings in any case contesting the grant, denial, suspension, revocation or renewal of any permit, license, certification or variance authorized or required by this act;

(v) Designate at the earliest date and to the extent possible those areas of the state which are very rare or uncommon and have particular historical, archaeological, wildlife, surface geological, botanical or scenic value. When areas of privately owned lands are to be considered for such designation, the council shall give notice to the record owner and hold hearing thereon, within a county in which the area, or major portion thereof, to be so designated is located, in accordance with the Wyoming Administrative Procedure Act. No new designations shall be made pursuant to this paragraph after July 1, 2011, but the council shall retain the authority to remove designations made prior to that date;

(vi) Adopt and when applicable, enforce the provisions of rule 11 of the Wyoming Rules of Civil Procedure in a contested hearing conducted by the council. The council may modify the procedural provisions of rule 11 to fit the circumstances of a hearing before the council and sanctions imposed by the council. If the provisions of rule 11 are modified at a future date, the council may adopt the modifications.

(b) The council may contract with consultants having special expertise to assist in the performance of its duties.

(c) Subject to any applicable state or federal law, and subject to the right to appeal, the council may:

(i) Approve, disapprove, repeal, modify or suspend any rule, regulation, standard or order of the director or any division administrator;

(ii) Order that any permit, license, certification or variance be granted, denied, suspended, revoked or modified;

(iii) Affirm, modify or deny the issuance of orders to cease and desist any act or practice in violation of the laws, rules, regulations, standards or orders issued or administered by the department or any division thereof. Upon application by the council, the district court of the county in which the act or practice is taking place shall issue its order to comply with the cease and desist order, and violation of the court order may be punished as a contempt.

(d) The director and his staff shall provide the council with meeting facilities, secretarial or clerical assistance, supplies and such other assistance as the council may require in the performance of its duties.

(e) Upon request, the attorney general shall provide such legal assistance as the council may require in the conduct of its hearings, writing of its decisions or the enforcement of its orders. The council may employ independent legal assistance as necessary to the proper performance of its duties.

(f) All proceedings of the council shall be conducted in accordance with the Wyoming Administrative Procedure Act.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.12; Laws 1977, ch. 184, § 1; 1992, ch. 60, § 3; 2001, ch. 196, § 1; 2007, ch. 143, § 1; 2011, ch. 140, § 1.

Cross references. — As to duties generally of the attorney general, see § 9-1-603.

For Rule 11, Wyoming Rules of Civil Procedure, see *Wyoming Court Rules Annotated.*

The 2007 amendment inserted the second sentence in (a).

Laws 2007, ch. 143, § 3, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 28, 2007.

The 2011 amendment, effective July 1, 2011, in (a)(v), added the present last sentence.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Appropriations. — Laws 2007, ch. 143, § 2 states as follows: "There is appropriated fifty thousand dollars ($50,000.00) from the general fund to the environmental quality council to carry out the purposes of this act. This general fund appropriation is for the period beginning with the effective date of this act and ending June 30, 2008. A request shall be included in the environmental quality council's 2009 2010 biennium standard budget request for purposes of continuing funding of hearing examiners."

Application. — Laws 2011, ch. 140, § 2, provides: "Section 2. Any current designation of lands as very rare or uncommon made pursuant to W.S. 35-11-112(a)(v) prior to the effective date of this act shall remain in effect until removed by the environmental quality council as provided in W.S. 35-11-112(a)(v)."

Legal obligation imposed on council by legislature is to promulgate rules and regulations necessary to prevent, reduce and eliminate pollution. Tri-State Generation & Transmission Ass'n v. Environmental Quality Council, 590 P.2d 1324, 1979 Wyo. LEXIS 369 (Wyo. 1979).

Section 35-11-109 and this section discuss general powers and responsibilities of director and council respectively, and are general provisions which provide authority for the promulgation of regulations and standards "necessary," and not on an assembly-line basis which would cause an undesirable inflexibility in the agency's functioning and impair its ability to deal with specialized problems. Town of Torrington v. Envtl. Quality Council, 557 P.2d 1143, 1976 Wyo. LEXIS 234 (Wyo. 1976).

"Rare or uncommon" lands classified by regulation. — The environmental quality council (EQC) cannot, pursuant to subsection (a)(v), classify lands within the state as "very rare or uncommon" without adopting by regulation the criteria or factors that will establish a standard for such a classification; in the absence of factors or criteria established by regulation, the phrase "very rare or uncommon" is too amorphous to permit judicial review of the action of the EQC, as required by statute; and classifications made on an ad hoc basis are inherently arbitrary and capricious. Rissler & McMurray Co. v. Environmental Quality Council (In re Bessemer Mt.), 856 P.2d 450, 1993 Wyo. LEXIS 123 (Wyo. 1993).

Jurisdiction over interpreting law on permitting and operating small mines. — Environmental quality council had subject matter jurisdiction over review of department of environmental quality's interpretation of law governing the permitting and operation of small mines. Platte Dev. Co. v. State, Envtl. Quality Council, 966 P.2d 972, 1998 Wyo. LEXIS 158 (Wyo. 1998).

Jurisdiction to decide compensatory taking action. — The legislature has charged the Environmental Quality Council with the responsibility for approving or denying applications for mining permits and until its determination has been rendered, the courts do not have jurisdiction under § 35-11-1001(b) to make a decision on a compensatory taking action or entertain an appeal from the denial of an application for a permit under § 16-3-114 and W.R.A.P. 12. Rissler & McMurry Co. v. State, 917 P.2d 1157, 1996 Wyo. LEXIS 87 (Wyo. 1996), reh'g denied, 1996 Wyo. LEXIS 109 (Wyo. July 16, 1996), cert. denied, 519 U.S. 1091, 117 S. Ct. 765, 136 L. Ed. 2d 712, 1997 U.S. LEXIS 532 (U.S. 1997).

Evidence outside the record was properly considered. — Evidence outside the record was properly considered by the Wyoming Environmental Quality Council with regard to the use of best available control technology in a proposed facility. The Council is not limited to reviewing the administrative record prior to issuing an air quality permit but instead conducts a contested case hearing at which all parties are afforded the opportunity to present new evidence. Sierra Club v. Wyo. Dep't of Envtl. Quality, 2011 WY 42, 251 P.3d 310, 2011 Wyo. LEXIS 44 (Wyo. 2011).

Entitlement to administrative review. — In an appeal involving the issuance by the Department of Environmental Quality (DEQ) of two general permits for the discharge of produced water from coal bed methane operations, an outdoor council was entitled to administrative review of DEQ's decision to issue the general permits. Wyo. Dep't of Envtl. Quality v. Wyo. Outdoor Council, 286 P.3d 1045, 2012 WY 135, 2012 Wyo. LEXIS 141 (Oct 19, 2012).

EQC and DEQ were proper parties to a proceeding challenging new water quality rules. — After the Wyoming Environmental Quality Council (EQC) adopted proposed revisions to Chapter 1 of the Wyoming Water Quality Rules and Regulations, petitioner special interest groups filed a petition to challenge the new rules and named the Wyoming Department of Environmental Quality (DEQ) as respondent; the district court erred in dismissing the petition for lack of jurisdiction on the ground that the EQC was not named in the petition. The Supreme Court of Wyoming, held that both the EQC and the DEQ were both proper parties to this proceeding under the Wyoming Environmental Quality Act, Wyo. Stat. Ann. § 35-11-101 through 35-11-1904; the EQC was an agency of the state government pursuant to Wyo. Stat. § 35-11-111(a) with the authority to hear contested matters affecting water quality under Wyo. Stat. § 35-11-112(a). Wyo. Outdoor Council v. Wyo. Dep't of Envtl. Quality, 2010 WY 20, 225 P.3d 1054, 2010 Wyo. LEXIS 21 (Wyo. 2010).

Law reviews. — For case note, "Administrative Law— Broader Jurisdiction for the Wyoming Oil and Gas Conservation Commission. Gulf Oil Corp. v. Wyoming Oil & Gas Conservation Comm'n, 693 P.2d 227, 1985 Wyo. LEXIS 422 (Wyo. 1985)," see XXI Land & Water L. Rev. 69 (1986).

For comment, "State Participation in Federal Policy Making for the Yellowstone Ecosystem: A Meaningful

Solution or Business as Usual?" see XXI Land & Water L. Rev. 397 (1986).

For case note, "An Uncommonly Rare Decision—The Wyoming Supreme Court Orders Agency Rulemaking. In the Matter of Bessemer Mountain, Rissler & McMurray Co. v. Environmental Quality Council (In re Bessemer Mt.), 856 P.2d 450, 1993 Wyo. LEXIS 123 (Wyo. 1993)," see XXIX Land & Water L. Rev. 615 (1994).

Am. Jur. 2d, ALR and C.J.S. references. — Transporter liability under § 107(a)(4) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USC § 9607(a)(4)), 112 ALR Fed 49.

§ 35-11-113. Advisory boards created; membership; removal; terms; meetings; expenses.

(a) There is created within the department three (3) advisory boards, one (1) for each of the air quality, land quality and water quality divisions. Each advisory board shall consist of five (5) members appointed by the governor. Each board shall have one (1) member who represents industry, one (1) member who represents agriculture, one (1) member who represents political subdivisions and two (2) members who represent the public interest. Not more than three (3) members of each board shall be from the same political party. The governor may remove any member of any of the advisory boards as provided in W.S. 9-1-202.

(b) For the initial appointments to each board, the governor shall appoint one (1) member for a six (6) year term, two (2) members for four (4) year terms and two (2) members for two (2) year terms. Thereafter all appointments shall be for four (4) year terms. No officer or employee of the state, other than employees of institutions of higher education, may be appointed to a board. A vacancy occurs if any member ceases to represent the interest group or political party for which he was originally appointed, or if any member becomes unable or fails to serve for any reason. The governor shall fill vacancies by appointment for the unexpired portion of the term.

(c) Each advisory board shall meet within sixty (60) days after the effective date of this act to elect from among its members a chairman and a vice-chairman. Such officers shall be elected annually thereafter. Each board shall hold at least four (4) regularly scheduled meetings each year, and special meetings may be called by the chairman at any time. Three (3) members shall constitute a quorum for the purpose of conducting business, but all decisions must be approved by a majority of the total membership of the board. Each board shall keep a written record of its meetings and proceedings. Each board member shall be reimbursed for per diem, mileage and expenses for attending board meetings in the same manner and amount as state employees.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.13; Laws 1987, ch. 175, § 1; 1992, ch. 60, § 3.

Cross references. — As to per diem and traveling expenses of state employees, see § 9-3-102.

Editor's notes. — Laws 1973, ch. 250, § 5, makes the act effective on July 1, 1973.

Meaning of "this act." — For the meaning of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Stated in Wyo. Outdoor Council v. Wyo. Dep't of Envtl. Quality, 2010 WY 20, 225 P.3d 1054, 2010 Wyo. LEXIS 21 (Feb. 25, 2010).

§ 35-11-114. Powers and duties of the advisory boards.

(a) The advisory board shall recommend to the council through the administrator and director, comprehensive plans and programs for the management of solid and hazardous waste, the prevention, control and abatement of air, water and land pollution and the protection of public water supplies.

(b) The advisory board shall recommend to the council through the administrator and director the adoption of rules, regulations and standards to implement and carry out the provisions and purposes of this act which relate to their divisions, and variances therefrom.

(c) The advisory boards shall counsel with and advise the administrator of their respective divisions in the administration and performance of all the duties of the division and shall make an annual written report to the governor.

(d) The advisory board shall counsel with and advise each other, the public, and the director of the department in order to coordinate the policies and activities of their respective divisions and to achieve maximum efficiency and effectiveness in furthering the objectives of the department.

(e) Each administrator and staff shall provide the appropriate board with meeting facilities,

secretarial or clerical assistance, supplies and such other assistance as each board may require in the performance of its duties.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.14; Laws 1992, ch. 60, § 3.

Meaning of "this act." — For the definition of "this act," referred to in subsection (b), see § 35-11-103(a)(xiii).

EQC and DEQ were proper parties to a proceeding challenging amendments to water quality rules. — After the Wyoming Environmental Quality Council (EQC) adopted proposed revisions to Chapter 1 of the Wyoming Water Quality Rules and Regulations, petitioner special interest groups filed a petition pursuant to Wyo. Stat. § 16-3-114(a) to challenge the new rules and named the Wyoming Department of Environmental Quality (DEQ) as respondent; the district court erred in dismissing the petition for lack of jurisdiction on the ground that the EQC was not named in the petition. The Supreme Court of Wyoming, held that both the EQC and the DEQ were both proper parties to this proceeding under the Wyoming Environmental Quality Act, Wyo. Stat. Ann. § 35-11-101 through 35-11-1904. Wyo. Outdoor Council v. Wyo. Dep't of Envtl. Quality, 2010 WY 20, 225 P.3d 1054, 2010 Wyo. LEXIS 21 (Wyo. 2010).

§ 35-11-115. Power of director to issue emergency orders.

(a) Any other provisions of law to the contrary notwithstanding, if the director finds that a condition of air, water or land pollution exists and that it creates an emergency requiring immediate action to protect human or animal health or safety, the director, with the concurrence of the governor, shall order any persons causing or contributing to such pollution to reduce or discontinue immediately the actions causing the condition of pollution and such order shall fix a time and place for hearing before the council within forty-eight (48) hours thereafter. The council shall affirm, modify or set aside the director's order within forty-eight (48) hours following the adjournment of the hearing.

(b) If the director has evidence that any pollution source presents an immediate and substantial danger to human or animal health or safety, he may institute, through the attorney general, a civil action for immediate injunctive relief to halt any activity causing the danger. The court may issue an ex-parte order and shall schedule a hearing on the matter within three (3) working days from the date the petition for injunctive relief is filed.

(c) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision or inheres in the office.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.15.

Cross references. — As to injunctions, see Rule 65, W.R.C.P.

Law reviews. — For comment, "State Participation in Federal Policy Making for the Yellowstone Ecosystem: A Meaningful Solution or Business as Usual?" see XXI Land & Water L. Rev. 397 (1986).

Am. Jur. 2d, ALR and C.J.S. references. — Governmental recovery of cost of hazardous waste removal under Comprehensive Environmental Response, Compensation, and Liability Act (42 USC § 9601 et seq.), 70 ALR Fed 329.

ARTICLE 2. AIR QUALITY

Am. Jur. 2d, ALR and C.J.S. references. — 61B Am. Jur. 2d Pollution Control §§ 149 to 717.

Validity of state and local air pollution administrative rules, 74 ALR4th 566.

Private contractor as "authorized representative" of administrator of environmental protection agency for purpose of inspections conducted under § 114 of Clean Air Act (42 USC § 7414), 72 ALR Fed 176.

Control of interstate pollution under Clean Air Act as amended in 1977 (42 USC §§ 7401-7626), 82 ALR Fed 316.

Application of air quality modeling to decisionmaking under Clean Air Act (42 USC §§ 7401-7426), 84 ALR Fed 710.

Standing of air pollution source to challenge Clean Air Act (42 USC §§ 7401 — 7626) or its implementation, 85 ALR Fed 515.

Application of § 165 of Clean Air Act (42 USC § 7475), pertaining to preconstruction requirement for prevention of significant deterioration, to particular emission sources, 86 ALR Fed 255.

Clean Air Act implementation plans for nonattainment areas, 90 ALR Fed 481.

What constitutes modification of stationary source, under § 111 (a)(3), (4) of Clean Air Act (42 USC § 7411 (a)(3), (4)), so as to subject source to environmental protection agency's new source performance standards, 94 ALR Fed 750.

Conformity requirements of § 176(c) of Clean Air Act, 42 U.S.C. § 7506(c), 157 ALR Fed 217.

39A C.J.S. Health and Environment §§ 130, 133 to 157.

Library References. — American Law of Mining, 2nd Edition § 172.03 (Matthew Bender).

§ 35-11-201. Discharge or emission of contaminants; restrictions.

No person shall cause, threaten or allow the discharge or emission of any air contaminant in any form so as to cause pollution which violates rules, regulations and standards adopted by the council.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.16; Laws 1992, ch. 60, § 3.

Emissions Outside Routine Operations. — In determining a proposed facility's potential to emit sulfur dioxide, emissions from cold starts and malfunctions did not have to be considered because they were not routine operations; moreover, they would be regulated as excess emissions if they exceeded the limit in the air quality permit. Sierra Club v. Wyo. Dep't of Envtl. Quality, 2011 WY 42, 251 P.3d 310, 2011 Wyo. LEXIS 44 (Wyo. 2011).

Quoted in Powder River Basin Res. Council v. Wyo. Dep't of Envtl. Quality, 2010 WY 25, 226 P.3d 809, 2010 Wyo. LEXIS 27 (Mar. 5, 2010).

Cited in Board of Trustees v. Spiegel, 549 P.2d 1161, 1976 Wyo. LEXIS 191 (Wyo. 1976).

Law reviews. — For comment on air quality provisions of the Wyoming Environmental Quality Act of 1973, see IX Land & Water L. Rev. 69 (1974).

For comment, "State Participation in Federal Policy Making for the Yellowstone Ecosystem: A Meaningful Solution or Business as Usual?" see XXI Land & Water L. Rev. 397 (1986).

Am. Jur. 2d, ALR and C.J.S. references. — Pre-emption, by provisions of Clean Air Act (42 USC § 7401 et seq.), of federal common law of nuisance in area of air pollution, 61 ALR Fed 859.

§ 35-11-202. Establishment of standards.

(a) Without limiting the authority of the administrator as set out in W.S. 35-11-110, he shall, after consultation with the advisory board, recommend to the director such ambient air standards or emission control requirements by rule or regulation, as may be necessary to prevent, abate, or control pollution. Such standards or requirements may be for the state as a whole or may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this act, and in order to take account of varying local conditions.

(b) In recommending such standards or requirements the administrator shall:

(i) Consider all the facts and circumstances bearing upon the reasonableness of the emissions involved, including:

(A) The character and degree of injury to, or interference with the health and physical well being of the people, animals, wildlife and plant life;

(B) The social and economic value of the source of pollution;

(C) The priority of location in the area involved;

(D) The technical practicability and economic reasonableness of reducing or eliminating the pollution; and

(E) The social welfare and aesthetic value.

(ii) Grant such time as he shall find to be reasonable and necessary for owners and operators of air contaminant sources to comply with applicable standards or requirements;

(iii) Recommend to the director, after consultation with the advisory board, regulations to prevent construction, modification or operation of any source at any location where emissions from such source will prevent the attainment or maintenance of a state or national standard.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.17; Laws 1974, ch. 14, § 1; 1975, ch. 198, § 2; 1994, ch. 61, § 2.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xii).

Consideration of factors in section not mandatory. — The council does not act contrary to law in failing to consider the factors set forth in this section. Tri-State Generation & Transmission Ass'n v. Environmental Quality Council, 590 P.2d 1324, 1979 Wyo. LEXIS 369 (Wyo. 1979).

Am. Jur. 2d, ALR and C.J.S. references. — Pre-emption, by provisions of Clean Air Act (42 USC § 7401 et seq.), of federal common law of nuisance in area of air pollution, 61 ALR Fed 859.

Environmental protection agency's classifications of air quality control regions under § 107(d)(2) of Clean Air Act (42 USC § 7407(d)(2)), 75 ALR Fed 328.

§ 35-11-203. Sources subject to operating permit program.

(a) The following sources of air contaminants are subject to the provisions of W.S. 35-11-203 through 35-11-212:

(i) Any stationary source, or any group of stationary sources located within a contiguous area and under common control, that:

(A) Has the potential to emit one hundred (100) tons or more per year of any pollutant regulated under the Clean Air Act and is a major stationary source as defined in section 302 of the Clean Air Act;

(B) Has the potential to emit ten (10) tons per year of any single hazardous air pollutant or twenty-five (25) tons per year of any combination of hazardous air pollutants as defined by section 112 of the Clean Air Act. Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(C) Is subject to the nonattainment area provisions of title I, part D, of the Clean Air Act.

(ii) Any other source of hazardous air pollutants, including an area source, which the environmental protection agency may designate pursuant to the provisions of section 112 of the Clean Air Act;

(iii) Any source subject to the new source performance standards promulgated by the environmental protection agency pursuant to section 111 of the Clean Air Act;

(iv) Any "affected source" subject to the acid rain provisions of title IV of the Clean Air Act as defined in section 501 of the Clean Air Act;

(v) Any source subject to preconstruction review permits pursuant to the prevention of significant deterioration regulations promulgated by the environmental protection agency pursuant to the Clean Air Act;

(vi) Any other stationary source that the environmental protection agency may designate by regulation pursuant to authority granted under the Clean Air Act.

(b) After the effective date of the operating permit program authorized under W.S. 35-11-203 through 35-11-212, it shall be unlawful for any person to violate any requirement of a permit issued under the operating permit program or to operate any source required to have a permit under this section, without having complied with the provisions of the operating permit program.

(c) The department shall exempt any nonmajor source from the obligation to obtain a permit under this section until the environmental protection agency requires such sources to obtain an operating permit in final regulations promulgated pursuant to title V of the Clean Air Act.

History:
Laws 1992, ch. 70, § 1; 1994, ch. 11, § 1.

Clean Air Act. — For the definition of the federal "Clean Air Act," referred to in this section, see § 35-11-103(b)(iii) and notes thereto. Title I, part D of the act appears as 42 U.S.C. § 7501 et seq. Title IV of the act appears as 42 U.S.C. § 7651 et seq. Title V of the act appears as 42 U.S.C. § 7661 et seq. Sections 111, 112, 302 and 501 of the act appear as 42 U.S.C. §§ 7411, 7412, 7602 and 7661, respectively.

§ 35-11-204. Department to establish requirements for applications; certification.

(a) The department shall promulgate rules for permit applications, including standard application forms to be submitted pursuant to the operating permit program. The rules shall:

(i) Establish specific criteria for defining a complete permit application, including information which identifies a source, its applicable air pollution control requirements, current compliance status, intended operating regime and emissions levels;

(ii) Provide for adequate, streamlined and reasonable procedures for determining when an application is complete and for processing an application; and

(iii) Provide for public notice of the application, and opportunity for public comment and public hearings.

(b) The application, including any information required to be submitted with the application pursuant to this section shall be signed by a responsible official who shall certify the accuracy of the information.

(c) Operating permit applications are not required until after the date that the environmental protection agency has issued approval of the state's permit program, or by November 15, 1995, whichever comes first.

History:
Laws 1992, ch. 70, § 1.

§ 35-11-205. Application procedures.

(a) Any source required to have a permit under W.S. 35-11-203 shall, not later than twelve (12) months after the date on which the source becomes subject to the requirements of the operating permit program or such earlier date as the department may establish, submit to the department a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted. The department shall approve or disapprove a completed application, consistent with the procedures established under W.S. 35-11-204 for consideration of such applications, and shall issue or deny the permit, within eighteen (18) months after the date of receipt thereof, except that the department shall establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of the operating permit program, or a partial or interim program. Any such schedule shall assure that at least one-third (⅓) of the permits will be acted on by the department annually over a period of not to exceed three (3) years after the effective date. The department shall establish reasonable procedures to prioritize approval or disapproval actions in the case of applications for construction or modification under the applicable requirements of the Clean Air Act and this article.

(b) Any source submitting a permit application shall submit with the application a compliance plan describing how the source will comply with all applicable requirements under this article and the Clean Air Act. The compliance plan shall include a schedule of compliance, and a schedule under which the permittee will submit progress reports to the department no less frequently than every six (6) months.

(c) Except for sources required to have a permit before construction or modification under the applicable requirements of this article or the Clean Air Act, if an applicant has submitted a timely and complete application for a permit or a renewal of a permit required by the operating permit program, but final action has not been taken on the application, the source's failure to have a permit shall not be a violation of W.S. 35-11-203, unless the delay in final action was due to the failure of the applicant to timely submit information required or requested to process the application. No source required to have a permit under the operating permit program shall be in violation of W.S. 35-11-203 before the date on which the source is required to submit an application under subsection (a) of this section.

(d) A copy of each permit application, compliance plan, schedule of compliance, emissions or compliance monitoring report, certification, and each permit issued under the operating permit program, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under section 114(c) of the Clean Air Act, W.S. 35-11-1101(a) or 16-4-203(d)(v), the applicant or permittee may submit the information separately. The requirements of section 114(c), W.S. 35-11-1101(a) and 16-4-203(d)(v) shall apply to the information. The contents of a permit shall not be entitled to protection under section 114(c), W.S. 35-11-1101(a) or 16-4-203(d)(v).

History:
Laws 1992, ch. 70, § 1.

Clean Air Act. — For the definition of the federal "Clean Air Act," referred to in this section, see § 35-11-103(b)(iii) and notes thereto. Section 114(c) of the act, referred to throughout subsection (d), appears as 42 U.S.C. § 7414(c).

§ 35-11-206. Operating permit requirements and conditions.

(a) Every permit issued under the operating permit program shall include enforceable emission

limitations and standards, a schedule of compliance, a requirement that the permittee submit to the department no less often than every six (6) months, the results of any required monitoring, and other conditions as are necessary to assure compliance with applicable requirements established pursuant to this article and the Clean Air Act.

(b) The department may by rule prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under the Clean Air Act and this article, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. Nothing in this subsection shall be construed to affect any continuous emissions monitoring requirement of title IV of the Clean Air Act, or where required elsewhere in the Clean Air Act.

(c) Every permit issued under the operating permit program shall set forth inspection, entry, monitoring, compliance certification and reporting requirements to assure compliance with the permit terms and conditions. Monitoring and reporting requirements shall conform to any applicable regulation under subsection (b) of this section. Any report required to be submitted by a permit issued to a corporation under the operating permit program shall be signed by a responsible corporate official, who shall certify its accuracy.

(d) The department may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to permits under title V of the Clean Air Act and the operating permit program. No source covered by a general permit shall thereby be relieved from the obligation to file an application under W.S. 35-11-205.

(e) The department may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of the operating permit program and the Clean Air Act at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under part C of title I of the Clean Air Act. Any such permit shall in addition require the owner or operator to notify the department in advance of each change in location. The department may require a separate permit fee for operations at each location.

(f) Every permit issued pursuant to the operating permit program shall:

(i) Be issued for a fixed term of five (5) years unless the department makes a finding, after public comment and hearing, and based on substantial evidence in the record, that an operating permit term of less than five (5) years is necessary to protect the public health and the environment except that operating permits to any affected source as defined in section 501 of the Clean Air Act shall be issued for no less and no more than five (5) years;

(ii) Be subject to termination, modification, revocation or reissuance for cause;

(iii) Allow for operational flexibility at the permitted facility without revising the permit; and

(iv) Be subject to revision by the department to incorporate applicable requirements under the Clean Air Act and this article which are promulgated after the permit is issued if the remaining term of the permit is for a term of three (3) or more years. Any revision required by this paragraph shall be acted on by the department within the time limits provided in W.S. 35-11-205(a).

History:
Laws 1992, ch. 70, § 1.

Clean Air Act. — For the definition of the federal "Clean Air Act," referred to in this section, see § 35-11-103(b)(iii) and notes thereto. Title IV of the act, referred to in the second sentence in subsection (b), appears as 42 U.S.C. § 7651 et seq. Title V of the act, referred to in the second sentence in subsection (d), appears as 42 U.S.C. § 7661 et seq. Part C of title I of the act, referred to in the second sentence in subsection (e), appears as 42 U.S.C. § 7470 et seq. Section 501 of the act, referred to in subsection (f)(i), appears as 42 U.S.C. § 7661.

§ 35-11-207. Notification to the environmental protection agency and contiguous states.

(a) The department shall transmit to the environmental protection agency:

(i) A copy of each permit application and any application for a permit modification or renewal or any portion thereof including any compliance plan, as the environmental protection agency may require to effectively review the application and otherwise carry out its responsibilities under the Clean Air Act; and

(ii) A copy of each permit proposed to be issued and issued as a final permit.

(b) The department shall provide notice of each permit application or proposed permit forwarded to the environmental protection agency under this section, to all states:

(i) Whose air quality may be affected and that are contiguous to this state; or

(ii) That are within fifty (50) miles of the source.

(c) The department shall provide an opportunity for states notified pursuant to subsection (b) of this section to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations are not accepted by the department it shall notify the state submitting the recommendations and the environmental protection agency in writing of its failure to accept those recommendations and the reasons therefor.

(d) Upon receipt of timely objection by the environmental protection agency under title V of the Clean Air Act the department shall not issue any permit under the operating permit program unless it is revised and issued in accordance with section 505(c) of the Clean Air Act. Any permit issued under the operating permit program shall be subject to revocation or revision by the department throughout the period of time that EPA may object under title V of the Clean Air Act.

History:
Laws 1992, ch. 70, § 1.

Clean Air Act. — For the definition of the federal "Clean Air Act," referred to in subsection (a)(i), see § 35-11-103(b)(iii) and notes thereto. Title V of the act, referred to in both sentences in subsection (d), appears as 42 U.S.C. § 7661 et seq. Section 505(c) of the act, referred to in the first sentence in subsection (d), appears as 42 U.S.C. § 7661d(c).

Am. Jur. 2d, ALR and C.J.S. references. — Decisions of Environmental Protection Agency (EPA) approving or disapproving state implementation plans as interfering with primary role of states to determine how national ambient air quality standards should be met under Clean Air Act (42 USC §§ 7401 et seq.) 151 ALR Fed 495.

§ 35-11-208. Review of actions on applications.

(a) An applicant may seek relief pursuant to W.S. 35-11-802 on any final action taken on a permit including the director's refusal to grant a permit under the operating permit program or failure to act on a completed application within eighteen (18) months.

(b) Any person who participated in the public comment process on a permit application and who is aggrieved by any final action taken by the director on a permit application may seek relief pursuant to W.S. 35-11-1001.

History:
Laws 1992, ch. 70, § 1.

Evidence outside the record was properly considered. — Evidence outside the record was properly considered by the Wyoming Environmental Quality Council with regard to the use of best available control technology in a proposed facility. The Council is not limited to reviewing the administrative record prior to issuing an air quality permit but instead conducts a contested case hearing at which all parties are afforded the opportunity to present new evidence. Sierra Club v. Wyo. Dep't of Envtl. Quality, 2011 WY 42, 251 P.3d 310, 2011 Wyo. LEXIS 44 (Wyo. 2011).

§ 35-11-209. Small business stationary source technical and environmental compliance assistance program.

(a) The department shall act as ombudsman for small business stationary sources in connection with implementation of the operating permit program and the Clean Air Act.

(b) As ombudsman the department shall, in accordance with section 507 of the Clean Air Act, submit to the environmental protection agency plans for establishing a small business stationary source technical and environmental compliance assistance program.

(c) The program shall be implemented by rules adopted by the department and shall contain:

(i) Adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Clean Air Act;

(ii) Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution;

(iii) A compliance assistance program for small business stationary sources which assists small business stationary sources in determining applicable requirements and in receiving permits under the operating permit program and the Clean Air Act in a timely and efficient manner;

(iv) Adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Clean Air Act in a manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under the operating permit program or the Clean Air Act;

(v) Adequate mechanisms for informing small business stationary sources of their obligations under the operating permit program and the Clean Air Act, including mechanisms for referring such sources to qualified auditors or, at the option of the state, for providing audits of the operations of such sources to determine compliance with the Clean Air Act;

(vi) Procedures for consideration of requests from a small business stationary source for modification of:

(A) Any work practice or technological method of compliance; or

(B) The schedule of milestones for implementing a work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of the small business stationary source. No modification may be granted unless it is in compliance with the applicable requirements established pursuant to this article, the Clean Air Act, and the requirements of the operating permit program.

(d) Except as provided in subsection (e) of this section, for purposes of this section, "small business stationary source" means a stationary source that:

(i) Is owned or operated by a person that employs one hundred (100) or fewer individuals;

(ii) Is a small business concern as defined in the Small Business Act [15 U.S.C. § 631 et seq.];

(iii) Is not a major stationary source as defined in W.S. 35-11-203(a)(i)(A);

(iv) Does not emit fifty (50) tons or more per year of any regulated pollutant; and

(v) Emits less than seventy-five (75) tons per year of all regulated pollutants.

(e) Upon petition by a source, the department may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this section any stationary source which does not meet the criteria of paragraph (d)(iii), (iv) or (v) of this section but which does not emit more than one hundred (100) tons per year of all regulated pollutants.

(f) The department, in consultation with the environmental protection agency and the administrator of the small business administration and after providing notice and opportunity for public hearing, may exclude from the small business stationary source definition under this section any category or subcategory of sources that the department determines to have sufficient technical and financial capabilities to meet the requirements of the Clean Air Act without the application of this section.

History:
Laws 1992, ch. 70, § 1; 2006, ch. 114, § 1.

The 2006 amendment, substituted "paragraph" for "paragraphs" in (e).

Laws 2006, ch. 114, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 24, 2006.

Clean Air Act. — For the definition of the federal "Clean Air Act," referred to throughout this section, see § 35-11-103(b)(iii) and notes thereto. Section 507 of the act, referred to in subsection (b), appears as 42 U.S.C. § 7661f.

Small Business Act. — The federal Small Business Act, referred to in subsection (d)(ii), appears as 15 U.S.C. § 631 et seq.

Conflicting legislation. — Laws 2006, ch. 114, §3 provides:

"[A]ny other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

§ 35-11-210. Small business assistance program advisory panel.

(a) There is created a compliance advisory panel consisting of the following nine (9) members:

(i) Two (2) members, who are not owners, or representatives of owners, of small business stationary sources, shall be appointed by the governor to represent the general public;

(ii) Four (4) members shall be appointed by the legislature who are owners, or who represent owners of small business stationary sources. One (1) member each shall be appointed by the majority and minority leadership of the house of representatives and one (1) member each shall be appointed by the majority and minority leadership of the senate;

(iii) One (1) member shall be selected by the director of the department to represent the department;

(iv) Two (2) members who represent major source operators in the state of Wyoming, shall be appointed by the governor.

(b) The panel shall:

(i) Render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement;

(ii) Make periodic reports to the environmental protection agency required under title V of the Clean Air Act;

(iii) Review information for small business stationary sources to assure such information is understandable by the layperson; and

(iv) Have the small business stationary source technical and environmental compliance assistance program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(c) Except for the initial members the panel members shall serve four (4) year terms and may be reappointed. The legislative members appointed from the house of representatives shall initially serve two (2) year terms. One (1) member appointed by the governor shall initially serve a three (3) year term. A vacancy occurs if a member ceases to meet the qualifications specified in subsection (a) of this section. A vacancy shall be filled in the same manner as the original appointment. The panel shall select from its members a chairman. The panel shall hold at least four (4) regularly scheduled meetings each year, and may hold special meetings as called by the chairman. Five (5) members shall constitute a quorum for the purposes of conducting business, but all decisions must be approved by a majority of the total membership of the panel. Each member, except the department representative, shall be reimbursed for per diem, mileage and expenses for attending panel meetings in the same manner and amount as state employees. The department representative shall suffer no loss of wages for the time devoted to the duties of the panel.

(d) The panel shall be in addition to and operate separate from the advisory boards created pursuant to W.S. 35-11-113.

History:
Laws 1992, ch. 70, § 1.

Clean Air Act. — Title V of the federal Clean Air Act, referred to in subsection (b)(ii), appears as 42 U.S.C. § 7661 et seq.

§ 35-11-211. Fees.

(a) The department shall implement a permit fee system and schedule of fees adequate to cover all reasonable direct and indirect costs of reviewing and acting upon any construction and modification permits under this article and developing, implementing and administering the operating permit program including the small business technical assistance program.

(b) Permit fees shall be assessed against operators of sources applying for any permit under this article and annually thereafter for the duration of the permit. The fee for operating sources shall be based on the emissions of each regulated pollutant, as defined in section 502(b)(3)(B)(ii) of the Clean Air Act. The department shall exclude any amount of regulated pollutant emitted by any source in excess of four thousand (4,000) tons per year in determining the amount of fee required for any operating source. A fee shall be assessed upon applicants for construction and modification permits based on costs to the department in reviewing and acting upon those permit applications. The department shall develop a fee structure which equitably assesses the fees based on emissions for operating sources and projected costs of reviewing and acting upon construction and modification permits sufficient to recover the amount reviewed by the joint appropriations committee and appropriated by the legislature for implementing the operating permit program. The fee structure and appropriation shall be based upon measurable goals and approved by the joint appropriations committee prior to implementation. The department shall prepare a biennium report for review by the joint minerals, business and economic development committee by October 31 of the year prior to the Wyoming legislative budget session. Permit fees shall cover all reasonable direct and indirect costs including the costs of:

(i) Reviewing and acting upon any permit application including construction and modification permit applications;

(ii) Implementing and enforcing permits;

(iii) Emissions and ambient monitoring;

(iv) Preparing regulations and guidance;

(v) Modeling analyses and demonstrations;

(vi) Preparing emission and source inventories and tracking emissions;

(vii) Permit-related functions performed by the department;

(viii) Development and administration of the state small business assistance program; and

(ix) Information management activities.

(c) The fees collected by the department pursuant to this section shall be deposited in a separate account, and shall be subject to appropriation by the legislature to the department solely for permitting construction and modification and for the development and administration of the construction, modification and operating permit programs.

(d) The department shall give written notice of the amount of the fee to be assessed and the basis for the assessment to the operator of the source. The operator may appeal the assessment to the council within twenty (20) days after receipt of the written notice. The appeal shall be based only upon the allegation that the particular assessment is erroneous or excessive and may not be based upon the entire fee schedule adopted to fund the permitting programs. The contested case procedures of the Wyoming Administrative Procedure Act shall apply to any appeal under this subsection.

(e) If any part of the assessment is not appealed it shall be paid to the department upon receipt of the written notice.

(f) The department may reduce any fee required under the operating permit program to take into account the financial resources of small business stationary sources.

(g) There shall be no double counting of the regulated emissions for the purpose of fee determination.

(h) Fees under this section, for sources subject to the operating permit program as enumerated in W.S. 35-11-203(a), shall not be assessed for tailpipe emissions from any nonroad vehicle as defined under section 201 of the Clean Air Act.

History:

Laws 1992, ch. 70, § 1; 1995, ch. 7, § 1; 2005, ch. 231, § 1.

Cross references. — As to legislative sessions, see § 28-1-102.

The 2005 amendment, effective July 1, 2005, deleted "within the earmarked revenue fund" in (c).

Clean Air Act. — Section 502(b)(3)(B)(ii) of the federal Clean Air Act, referred to in the second sentence in the introductory paragraph of subsection (b), appears as 42 U.S.C. § 7661a(b)(3)(B)(ii).

Wyoming Administrative Procedure Act. — See § 16-3-101(a), (b)(xi).

Appropriations. — Laws 2002, Sp. Sess., ch. 83, § 2, effective July 1, 2002, provides that of the total appropriation to the air quality division, $5,443,333 is for operating permit program activities, and is to be the basis for the fee rate calculation under W.S. 35-11-211. Of the total air quality division appropriation, $846,258 is for the new source review permit program. All costs associated with the new source review permit program permit review process are to be recovered by a permit review fee charged to applicants under W.S. 35-11-211. Of this appropriation, $391,555 from the special revenue fund and two (2) positions for the voluntary clean-up program are to be terminated not later than June 30, 2004 and are not to be included in the agency's standard budget request for the budget period beginning July 1, 2004 and ending June 30, 2006.

Conflicting legislation. — Laws 2005, ch. 231, § 3, provides: "The provisions of this act shall supersede the provisions of any other bill enacted into law during the 2005 general session which amends or references accounts or funds to the extent any other enactment is inconsistent with the establishment of the funds and accounts created under this act. The state auditor shall account for any fund or account created in any other legislation enacted in the 2005 general session in accordance with generally accepted accounting principles (GAAP) as promulgated by the governmental accounting standards board (GASB) and in accordance with this act."

§ 35-11-212. Effect of other provisions.

(a) Nothing in W.S. 35-11-203 through 35-11-212 shall be construed as affecting allowances under the allowance program and phase II compliance schedule under the acid rain provisions of title IV of the federal Clean Air Act [42 U.S.C. § 7651 et seq.].

(b) Nothing in W.S. 35-11-203 through 35-11-212 shall be construed as affecting the department's permitting or other regulation of the construction or modification of sources pursuant to

W.S. 35-11-202 including rules in effect as of April 1, 1992 or subsequently promulgated under W.S. 35-11-202.

History:
Laws 1992, ch. 70, § 1.

Act, referred to in subsection (a), appears as 42 U.S.C. § 7651 et seq.

Clean Air Act. — Title IV of the federal Clean Air

§ 35-11-213. Restrictions on state regulations related to greenhouse gas emissions.

(a) Effective March 31, 1999, neither the department nor the council shall propose or promulgate any new rule or regulation intended in whole or in part to reduce emissions as called for by the Kyoto Protocol, from the residential, commercial, industrial, electric utility, transportation, agricultural, energy or mining sectors.

(b) In the absence of a resolution or other act of the legislature approving same, the director of the department shall not submit to the United States environmental protection agency or to any other agency of the federal government any legally enforceable commitments related to the Kyoto Protocol.

(c) Nothing in this section shall be construed to limit or to impede state or private participation in any on-going voluntary initiatives to reduce emissions of greenhouse gases, including, but not limited to, the United States environmental protection agency's green lights program, the United States department of energy's climate challenge program and similar state and federal initiatives relying on voluntary participation.

(d) This section shall remain in effect until repealed by an act of the Wyoming legislature or until ratification of the Kyoto Protocol by the United States senate and enactment of federal legislation implementing the Kyoto Protocol.

(e) Notwithstanding the provisions of subsections (a) through (d) of this section and pursuant to the provisions of subsections (e) through (k) of this section, the department and council shall adopt regulations to amend Wyoming's Clean Air Act state implementation plan and Wyoming's Title V operating permit program to the extent necessary to obtain state primacy over the regulation of greenhouse gases for those sources that would otherwise be subject to federal regulation for greenhouse gases by the United States environmental protection agency. The department and council may promulgate new source performance standards for greenhouse gases that are no more stringent than federal greenhouse gas new source performance standards.

(f) In no event shall any greenhouse gas emission regulations, new source performance standards or potential to emit thresholds promulgated pursuant to subsection (e) of this section be more stringent than those imposed or required by federal law. Regulations under subsection (e) of this section shall only regulate those gases identified by the United States environmental protection agency as greenhouse gases.

(g) Notwithstanding W.S. 35-11-203(a), the department and the council are authorized to determine by regulation potential to emit thresholds for greenhouse gas emissions which are no more stringent than those imposed or required by federal law.

(h) The department may submit an amended state implementation plan providing for regulation of greenhouse gases to the United States environmental protection agency for approval.

(i) and (ii) Repealed by Laws 2013, ch. 39, § 2.

(j) Subsections (e) through (k) of this section and the authority granted in subsection (e) of this section to the department and the council to promulgate and adopt greenhouse gas regulations and all regulations adopted pursuant to subsection (e) of this section are repealed upon the occurrence of any one (1) of the following events:

(i) The United States congress enacts a law prohibiting the United States environmental protection agency from regulating greenhouse gases; or

(ii) A federal court issues a final judgment prohibiting the United States environmental protection agency from regulating greenhouse gas emissions from stationary sources.

(k) As used in this section, the term "final judgment" means a judgment issued by a federal court that is no longer subject to potential or ongoing appeal to any federal court with jurisdiction over the court judgment.

(m) The governor shall certify to the secretary of state the occurrence of any act which repeals subsections (e) through (k) of this section pursuant to subsection (j) of this section. The effective

date of such repeal of subsections (e) through (k) of this section shall be the date the governor's certification is filed with the secretary of state.

(i) and (ii) Repealed by Laws 2013, ch. 39, § 2.

History:

Laws 1999, ch. 85, § 1; 2012, ch. 11, § 1; 2013, ch. 39, §§ 1, 2.

The 2012 amendment, added (e) through (m).

Laws 2012, ch. 11 § 2, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 6, 2012.

The 2013 amendment, in (e) substituted the last sentence "The department and council may promulgate new source performance standards for greenhouse gases that are no more stringent than federal greenhouse gas new source performance standards" for "Pursuant to the provisions of W.S. 16 3 104(b)(i), the regulations promulgated and adopted pursuant to the authority granted in this subsection shall be effective on the date the department receives authority to submit an amended state implementation plan to the United States environmental protection agency as provided by subsection (h) of this section," in (f) added ", new source performance standards" following "gas emission regulations," in (h) substituted the period for "only after the occurrence of the earlier of the following events;" and in (m) substituted "repeals subsections (e) through (k) of this section pursuant to subsection (j) of this section. The effective date of such repeal of subsections (e) through (k) of this section shall be the date the governor's certification is filed with the secretary of state." for the semicolon.

Laws 2013, ch. 39, §3, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo Const. Approved February 14, 2013.

Editor's notes. — There is no subsection (i) or (l) in this section as it appears in the printed acts.

Carbon sequestration. — Laws 2001, ch. 173, §§ 1 through 6, as amended by Laws 2002, Sp. Sess., ch. 75, § 1, and Laws 2004, ch. 38, § 1, creates a carbon sequestration advisory committee, which is to assist the director of the department of agriculture in assessing agricultural and forest lands in Wyoming for past carbon sequestration and future carbon sequestration potential, recommend policies or programs to enhance the ability of Wyoming agricultural and forest landowners to participate in systems of carbon trading, encourage the production of educational and advisory materials regarding carbon sequestration and carbon or greenhouse emissions trading, and identify and recommend areas of research needed to better understand and quantify the processes of carbon sequestration on agricultural and forest lands. On or before December 1, 2001, the director, in consultation with the advisory committee, is to prepare a report to the legislature, to include (1) the potential for greenhouse emissions regulation, (2) the potential for development of a system of carbon emission trading or markets for sequestered carbon, (3) agricultural and forest practices, management systems or lands uses which increase stored soil carbon and minimize carbon dioxide or other greenhouse emissions, (4) methods for measuring and modeling net carbon sequestration and greenhouse emissions reduction, and legislation to define and protect property rights in carbon sequestration and greenhouse emissions, (5) areas of scientific uncertainty with respect to quantifying and understanding greenhouse emission reductions or soil carbon sequestration, and (6) recommendations. The act creates the carbon sequestration assessment cash fund to carry out the purposes of this act and appropriates $35,600 from the budget reserve account to the department of agriculture for such purposes. Additionally, it appropriates from the general fund to the department of agriculture $35,600, or as much thereof as is necessary, for purposes of this act. Notwithstanding §§ 9-2-1008, 9-2-1012(e) and 9-2-207(a), any monies remaining from this appropriation shall not lapse, but are appropriated to the department for purposes of the act.

Laws 2001, ch. 173, § 8, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 1, 2001. Section 7, as amended by Laws 2002, Sp. Sess., ch. 75, § 1, and Laws 2004, ch. 38, § 1, repeals the act effective July 1, 2009.

Law reviews. — For article, "State and Regional Efforts, In Wyoming and Beyond, To Reduce Greenhouse Gas Emissions", see 7 Wyo L. Rev 269 (2008).

For article, "State and Local Governments Address the Twin Challenges of Climate Change and Energy Alternatives", see 23 Nat. Resources & Env't 9 (2008).

§ 35-11-214. Emission trading programs.

The department through rule and regulation may establish intrastate, participate in interstate, or establish intrafacility emissions trading programs. Any trading program established shall be consistent with the Clean Air Act and regulations promulgated thereunder, and consistent with ambient air quality standards.

History:

Laws 2003, ch. 146, § 1.

Clean Air Act. — The Clean Air Act is codified at 42 U.S.C. § 7401 et seq.

ARTICLE 3. WATER QUALITY

Bankruptcy trustee authorized to abandon valueless, noncomplying waste water treatment plant. — The trustee in a Chapter 7 no-asset bankruptcy case was authorized to abandon property of the estate, i.e., a trailer park, which had no value to the estate and which was burdensome to the estate, even though the property, specifically a waste water treatment plant located thereon, was in a condition of noncompliance with state environmental laws. In re A & T Trailer Park, Inc., 53 B.R. 144, 1985 Bankr. LEXIS 6147 (Bankr. D. Wyo. 1985).

Law reviews. — For comment, "Hazardous Waste Cleanup in Wyoming: Legal Tools Available to the Private Citizen," see XIX Land & Water L. Rev. 395 (1984).

For article, "Wyoming's Groundwater Laws: Quantity and Quality Regulation," see XXIV Land & Water L. Rev. 39 (1989).

For case note, "Environmental Law—Agricultural Pollution— The Uncertain Future of Clean Water Act Agricultural Pollution Exemptions After Concerned Area Residents for the Environment v. Southview Farm, 34 F.3d 114, 1994 U.S. App. LEXIS 24248 (2d Cir. 1994), cert. denied, 514 U.S. 1082, 115 S. Ct. 1793, 131 L. Ed. 2d 721, 1995 U.S. LEXIS 2889 (1995)," see XXXI Land & Water L. Rev. 113 (1996).

For case note, "Hazardous Waste — The Supreme Court's Interpretation of RCRA: An Inequitable Result. KFC Western, Inc. v. Meghrig, 516 U.S. 479, 116 S. Ct. 1251, 134 L. Ed. 2d 121, 1996 U.S. LEXIS 1955 (1996)," see XXXII Land & Water L. Rev. 699 (1997).

Am. Jur. 2d, ALR and C.J.S. references. — 61C Am. Jur. 2d Pollution Control §§ 718 to 1133.

Tort liability for pollution from underground storage tank, 5 ALR5th 1.

Necessity and sufficiency of environmental impact statements under § 102(2)(C) of National Environmental Policy Act of 1969 (42 USC § 4332(2)(C)) in cases involving water and waterworks projects, 67 ALR Fed 54.

What constitutes "issuing or denying" permit for discharge of pollutants within meaning of § 509(b)(1)(F) of the Federal Water Pollution Control Act (33 USC § 1369(b)(1)(F)) which authorizes judicial review of such action by administrator of environmental protection agency, 67 ALR Fed 365.

39A C.J.S. Health and Environment §§ 46, 131, 133 to 157.

Library References. — American Law of Mining, 2nd Edition § 172.03 (Matthew Bender).

§ 35-11-301. Prohibited acts.

(a) No person, except when authorized by a permit issued pursuant to the provisions of this act, shall:

(i) Cause, threaten or allow the discharge of any pollution or wastes into the waters of the state;

(ii) Alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state;

(iii) Construct, install, modify or operate any sewerage system, treatment works, disposal system or other facility, excluding uranium mill tailing facilities, capable of causing or contributing to pollution, except that no permit to operate shall be required for any publicly owned or controlled sewerage system, treatment works or disposal system;

(iv) Increase the quantity or strength of any discharge;

(v) Construct, install, modify or operate any public water supply or construct any subdivision water supply, except that no permit to operate shall be required for any publicly owned or controlled public water supply and a permit under this section shall not be required for subdivision water supplies consisting of individual wells serving individual lots of a subdivision.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.18; Laws 1982, ch. 73, § 2; 1987, ch. 227, § 1; 1997, ch. 179, § 1.

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

Meaning of "this act." — For the definition of "this act," referred to the introductory language of subsection (a), see § 35-11-103(a)(xiii).

Purpose of section is to protect public from impure water by assuring a sound public water supply system which satisfies some state criteria. Nickelson v. People, 607 P.2d 904, 1980 Wyo. LEXIS 239 (Wyo. 1980).

Oil spilling into state river comes within scope of subsection (a)(iii) since it clearly is "pollution," altering the water's physical, chemical and biological properties. People v. Platte Pipe Line Co., 649 P.2d 208, 1982 Wyo. LEXIS 368 (Wyo. 1982).

Owners of pipelines which discharge oil into state waters are liable regardless of fault for damages and for the civil penalties set out in § 35-11-901. People v. Platte Pipe Line Co., 649 P.2d 208, 1982 Wyo. LEXIS 368 (Wyo. 1982).

Action, initiated prior to statutory enactment, dismissed. — A gas station operator charged with violating §§ 35-11-301 and 35-11-901 was entitled to have his action dismissed and his supersedeas bond released where an appeal of the damage decision

against him was pending when these sections were enacted. V-1 Oil Co. v. People, 799 P.2d 1199, 1990 Wyo. LEXIS 125 (Wyo. 1990).

Cited in Board of Trustees v. Spiegel, 549 P.2d 1161, 1976 Wyo. LEXIS 191 (Wyo. 1976); Belle Fourche Pipeline Co. v. Elmore Livestock Co., 669 P.2d 505, 1983 Wyo. LEXIS 357 (Wyo. 1983).

Law reviews. — For comment on the Wyoming Water Quality Act and the Federal Water Pollution Control Act Amendments of 1972, see IX Land & Water L. Rev. 79 (1974).

For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see XI Land & Water L. Rev. 27 (1976).

For case note, "Importation Doctrine Applied to Water Transfers Within a River System: A Step Too Far," see XV Land & Water L. Rev. 99 (1980).

For case note, "Environmental Law — Strict Liability for Oil Spills in Wyoming. People v. Platte Pipe Line Company, 649 P.2d 208, 1982 Wyo. LEXIS 368 (Wyo. 1982)," see XVIII Land & Water L. Rev. 805 (1983).

For comment, "Hazardous Waste Cleanup in Wyoming: Legal Tools Available to the Private Citizen," see XIX Land & Water L. Rev. 395 (1984).

For comment, "State Participation in Federal Policy Making for the Yellowstone Ecosystem: A Meaningful Solution or Business as Usual?" see XXI Land & Water L. Rev. 397 (1986).

Am. Jur. 2d, ALR and C.J.S. references. — State and local government control of pollution from underground storage tanks, 11 ALR5th 388.

Liability, under § 311(i) of Federal Water Pollution Control Act (33 USC § 1321(i)), of United States to owner or operator of onshore or offshore facility, or vessel, for removal costs of oil or hazardous substance, 59 ALR Fed 282.

What constitutes "discharge of dredged or fill material" into navigable waters, so as to be subject to permit requirements under § 404(a) of Federal Water Pollution Control Act (33 USC § 1344(a)), 72 ALR Fed 703.

Actions brought under Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act)(33 U.S.C. §§ 1251 et seq.) — Supreme Court cases, 163 ALR Fed 531.

§ 35-11-302. Administrator's authority to recommend standards, rules, regulations or permits.

(a) The administrator, after receiving public comment and after consultation with the advisory board, shall recommend to the director rules, regulations, standards and permit systems to promote the purposes of this act. Such rules, regulations, standards and permit systems shall prescribe:

(i) Water quality standards specifying the maximum short-term and long-term concentrations of pollution, the minimum permissible concentrations of dissolved oxygen and other matter, and the permissible temperatures of the waters of the state;

(ii) Effluent standards and limitations specifying the maximum amounts or concentrations of pollution and wastes which may be discharged into the waters of the state;

(iii) Standards for the issuance of permits for construction, installation, modification or operation of any public water supply and sewerage system, subdivision water supply, treatment works, disposal system or other facility, capable of causing or contributing to pollution;

(iv) Standards for the definition of technical competency and the certification of operating personnel for community water systems and nontransient noncommunity water systems, sewerage systems, treatment works and disposal systems and for determining that the operation shall be under the supervision of certified personnel. Prior to recommending these standards to the director, the administrator shall consult with affected municipalities, water and sewer districts, counties and treatment operators;

(v) Standards for the issuance of permits as authorized pursuant to section 402(b) of the Federal Water Pollution Control Act [33 U.S.C. § 1342(b)] as amended in 1972, and as it may be hereafter amended;

(vi) In recommending any standards, rules, regulations, or permits, the administrator and advisory board shall consider all the facts and circumstances bearing upon the reasonableness of the pollution involved including:

(A) The character and degree of injury to or interference with the health and well being of the people, animals, wildlife, aquatic life and plant life affected;

(B) The social and economic value of the source of pollution;

(C) The priority of location in the area involved;

(D) The technical practicability and economic reasonableness of reducing or eliminating the source of pollution; and

(E) The effect upon the environment.

(vii) Such reasonable time as may be necessary for owners and operators of pollution sources to comply with rules, regulations, standards or permits;

(viii) Financial assurance requirements for plugging, abandonment, post-closure monitoring

and corrective actions, if required, for any underground injection facility for hazardous wastes as defined in Title 40 of the Code of Federal Regulations, Part 146, Subpart G;

(ix) Standards for housed facilities where swine are confined, fed and maintained for a total of forty-five (45) consecutive days or more in any twelve (12) month period and the feedlot or facility is designed to confine an equivalent of one thousand (1,000) or more animal units. If any county adopts a land use plan or zoning resolution which imposes stricter requirements than those found in subparagraph (C) of this paragraph, the county requirements shall prevail. These standards shall include:

(A) Financial assurance for accidents and closure requirements for facilities which contain treatment works;

(B) Waste and manure management plans to prevent pollution of waters of the state, to minimize odors for public health concerns, pathogens and vectors capable of transporting infectious diseases and to specify land application requirements;

(C) Setback requirements which will restrict the location and operation of structures housing swine and lagoons within:

(I) One (1) mile of an occupied dwelling without the written consent of the owner of the house;

(II) One (1) mile of a public or private school without the consent of the school's board of trustees or board of directors;

(III) One (1) mile of the boundaries of any incorporated municipality without the resolution and consent of the governing body of the municipality;

(IV) One-quarter (¼) mile of a water well permitted for current domestic purposes without the written consent of the owner of the well;

(V) One-quarter (¼) of a mile of a perennial stream unless it is demonstrated to the department that potential adverse impacts to the water quality of the stream can be avoided.

(D) Provisions for notice of intent to issue a permit and opportunity for public comment.

(x) Standards for the determination of capacity development capabilities to ensure that all new or modified community water systems and new or modified nontransient noncommunity water systems commencing operation after October 1, 1999, demonstrate capacity development capabilities and by October 1, 2001, develop a strategy to assist all community and noncommunity water systems in acquiring and maintaining capacity development by adopting procedures governing capacity development in compliance with section 1420 of the Safe Drinking Water Act (42 U.S.C. § 300g-9). The department shall have the authority to require new systems in noncompliance of capacity development capabilities to take steps to correct inadequacies or cease water system operations;

(xi) Standards for subdivision applications submitted to the department under W.S. 18-5-306. The administrator shall consult with county commissioners and the state engineer's office in developing standards to recommend to the director.

(b) The administrator, after receiving public comment and after consultation with the advisory board, shall recommend to the director rules, regulations and standards to promote the purposes of this act. The rules, regulations and standards shall prescribe:

(i) A schedule for the use of credible data in designating uses of surface water consistent with the requirements of the Federal Water Pollution Control Act (33 U.S.C. sections 1251 through 1387). The use of credible data shall include consideration of soils, geology, hydrology, geomorphology, climate, stream succession and human influence on the environment. The exception to the use of credible data may be in instances of ephemeral or intermittent water bodies where chemical or biological sampling is not practical or feasible;

(ii) The use of credible data in determining water body's attainment of designated uses. The exception to the use of credible data may be in instances where numeric standards are exceeded, or in ephemeral or intermittent water bodies where chemical or biological sampling is not practical or feasible.

(c) Nothing in this act shall be construed to supersede or abrogate any valid water right. It is recognized that diversion of water caused by the exercise of a valid water right is an allowable practice. The administrator shall:

(i) Develop water quality standards for surface waters where hydrologic modification resulting from the exercise of valid water rights precludes the attainment of existing water quality standards;

(ii) Prepare a schedule to develop appropriate water quality standards based on the completion of a use attainability analysis for any waters that have been identified pursuant to 33 U.S.C. § 1315(b) where dams, diversions or other types of hydrologic modification preclude the attainment of any existing water quality standard.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.19; Laws 1974, ch. 14, § 1; 1982, ch. 73, § 3; 1989, ch. 231, § 1; 1997, ch. 157, § 1; ch. 179, § 1; 1998, ch. 88, § 2; 1999, ch. 99, § 1; 2000, ch. 95, § 1; 2015, ch. 173, § 1.

The 2015 amendment, added subsection (c).

Law 2015, ch. 173, § 1, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, § 8 of the Wyo. Const. Approved March 9, 2015.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Applied in United States Steel Corp. v. Wyoming Envtl. Quality Council, 575 P.2d 749, 1978 Wyo. LEXIS 270 (Wyo. 1978).

Stated in Wyo. Outdoor Council v. Wyo. Dep't of Envtl. Quality, 2010 WY 20, 225 P.3d 1054, 2010 Wyo. LEXIS 21 (Feb. 25, 2010).

Law reviews. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see XI Land & Water L. Rev. 27 (1976).

For comment, "Enforcement of Section 208 of the Federal Water Pollution Control Act Amendments of 1972 to Control Nonpoint Source Pollution," see XIV Land & Water L. Rev. 419 (1979).

For case note, "Environmental Law — Strict Liability for Oil Spills in Wyoming. People v. Platte Pipe Line Company, 649 P.2d 208, 1982 Wyo. LEXIS 368 (Wyo. 1982)," see XVIII Land & Water L. Rev. 805 (1983).

For article, "A Guide to Permitting Confined Animal Feeding Operations in Wyoming," see XXXV Land & Water L. Rev. 339 (2000).

Am. Jur. 2d, ALR and C.J.S. references. — Liability, under § 311(i) of Federal Water Pollution Control Act (33 USC § 1321(i)), of United States to owner or operator of onshore or offshore facility, or vessel, for removal costs of oil or hazardous substance, 59 ALR Fed 282.

Availability of Court of Appeals review, under § 509(b)(1)(E) of Federal Water Pollution Control Act (33 USC § 1369(b)(1)(E)), of action by Administrator of Environmental Protection Agency in approving or promulgating effluent and other limitations, 62 ALR Fed 906.

§ 35-11-303. Duties of the administrator of water quality division.

(a) In addition to other duties imposed by law, the administrator of the water quality division at the direction of the director:

(i) May conduct on site compliance inspections of all facilities and works during or following the completion of any construction, installation or modification for which a permit is issued under W.S. 35-11-301(a)(iii) or (v); and

(ii) Shall establish as necessary for the efficient enforcement of this act water quality districts within the state and provide for a field office to be located within the boundaries of each district created.

History:

Laws 1982, ch. 73, § 1; 1992, ch. 60, § 3.

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Am. Jur. 2d, ALR and C.J.S. references. — Citizen's action against administrator of environmental protection agency to compel performance of nondiscretionary duty under § 505(a)(2) of federal Water Pollution Control Act Amendments of 1972 (33 USC § 1365(a)(2)), 57 ALR Fed 851.

§ 35-11-304. Administrator required to delegate certain management functions to local governmental entities.

(a) To the extent requested by a municipality, water and sewer district or county, the administrator of the water quality division, with the approval of the director, shall delegate to municipalities, water and sewer districts or counties which apply the authority to enforce and administer within their boundaries the provisions of W.S. 35-11-301(a)(iii) and (v), including the authority to develop necessary rules, regulations, standards and permit systems and to review and approve construction plans, conduct inspections and issue permits. Any authority delegated under this section shall be subject to the following conditions:

(i) The delegation of authority under this section is limited to small wastewater facilities, publicly owned or controlled sewage collection and water distribution facilities and publicly owned or controlled nondischarging treatment works;

(ii) The delegation of authority under this section shall be by written agreement signed by the administrator and the local elected representative empowered to do so;

(iii) The local governmental entity has established rules, regulations and standards for the issuance of permits required under W.S. 35-11-301(a)(iii) and (v) which standards shall be at least as stringent as those promulgated by the state under W.S. 35-11-302(a)(iii);

(iv) The local governmental entity shall demonstrate to the administrator that all facilities will be approved by a registered professional engineer or city or county sanitarian for small wastewater facilities or other qualified individual approved by the water quality division administrator, and that it employs a properly certified waste treatment plant operator responsible for operation and maintenance of the treatment works in a manner at least as stringent as the department of environmental quality would require;

(v) The administrator shall periodically review the standards and administrative and enforcement programs of each local governmental entity receiving a delegation of authority under this section and may with the consent of the director revoke or temporarily suspend the delegation agreement entered into with any entity which has failed to perform its delegated duties or has otherwise violated the terms of its agreement of delegation.

History:
Laws 1982, ch. 73, § 1.

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

§ 35-11-305. [Repealed.]

Repealed by Laws 1985, ch. 141, § 1.

§ 35-11-306. Oil field waste disposal facilities; restriction.

(a) In addition to any other requirement or restriction imposed under the Wyoming Environmental Quality Act, no person shall locate, construct or operate any commercial oil field waste disposal facility within one (1) mile of any:

(i) Occupied dwelling house without the written consent of the owner of the dwelling; or

(ii) Public or private school without the consent of the school's board of trustees or board of directors.

(b) Any person who knowingly locates, constructs or operates a commercial oil field waste disposal facility in violation of subsection (a) of this section is subject to the penalties provided by W.S. 35-11-901. The provisions of subsection (a) of this section relating to commercial oil field waste disposal facilities shall be enforced by the water quality division of the Wyoming department of environmental quality.

(c) As a condition of receiving a permit pursuant to W.S. 35-11-301, any person locating, constructing or operating any commercial oil field waste disposal facility shall post a bond as required by this section.

(d) The council, by rules and regulations, shall establish bonding or financial assurance requirements for commercial oil field waste disposal facilities to assure there are adequate sources of funds to provide for:

(i) Cost effective closure, post-closure inspection and maintenance, and environmental monitoring and control, including but not limited to:

(A) Removal and disposal of buildings, fences, roads and other facility developments, and reclamation of affected lands;

(B) Construction of any waste cover or containment system required as a condition of any facility permit;

(C) Removal and off-site treatment or disposal of any wastes that are being stored or treated;

(D) Decontamination, dismantling and removal of any waste storage, treatment or disposal equipment or vessels;

(E) Operating any environmental monitoring systems or pollution control systems that are required as a condition of any facility permit or by order of the director; and

(F) Conducting periodic post-closure inspections of cover systems, surface water diversion structures, monitor wells or systems, pollutant detection and control systems, and performing maintenance activities to correct deficiencies that are discovered.

(ii) The estimated costs of remedying or abating, in a cost effective manner, the violation or damages caused by the violation in the event of any discharge of pollution to the air, land or to

waters of the state which is in violation of a permit, standard, rule or requirement established under the provisions of this act.

(e) The bond established under subsection (d)(i) of this section shall be available during the operating life of the commercial oil field waste disposal facility to abate or remedy any violation of a permit, standard, rule or requirement established under the provisions of this act.

(f) The amount of any bond or financial assurance requirement shall be established by the director in accordance with procedures contained in rules and regulations of the council, but shall not be less than an amount sufficient to satisfy the purposes specified in subsection (d) of this section.

(g) The council shall provide rules for the establishment of a self-bonding program to be used if such a program will provide protection consistent with the objectives and purposes of article 3 of the act. In any such program, rules of the council shall provide for a timely reappraisal of pledged assets, require evidence of a suitable agent to receive service of process, assure that pledged assets are not already pledged for other projects, provide that pledged assets reside continuously in the state of Wyoming and provide for determination of the suitability of pledged assets.

(h) In lieu of a bond, the facility operator may deposit federally insured certificates of deposit payable to the Wyoming department of environmental quality, cash or government securities, or all three (3).

(j) Any bond may be cancelled by the surety only after ninety (90) days written notice to the director, and upon receipt of the director's written consent, which may be granted only when the requirements of the bond have been fulfilled.

(k) If the license to do business in Wyoming of any surety upon a bond filed pursuant to this act is suspended or revoked by any state authority then the facility operator, within thirty (30) days after receiving notice thereof, shall substitute a good and sufficient corporate surety licensed to do business in the state. Upon failure of the facility operator to make substitution of surety within a reasonable period of time, not to exceed sixty (60) days, the director shall suspend the facility permit to accept oil field wastes until proper substitution has been made.

(m) Bond forfeiture proceedings shall occur only after the department provides notice to the operator and surety pursuant to W.S. 35-11-701 that a violation exists and the council has approved the request of the director to begin forfeiture proceedings.

(n) With the approval of the council the director may:

(i) Expend forfeited funds to remedy and abate the circumstances with respect to which the bond was provided; and

(ii) Expend funds from the account under W.S. 35-11-424 to remedy and abate any immediate danger to human health, safety and welfare.

(o) If the forfeited bond or other financial assurance instrument is inadequate to cover the costs to carry out the activities specified in subsection (d) of this section, or in any case where the department has expended account monies under subsection (n) of this section, the attorney general shall bring suit to recover the cost of performing the activities where recovery is deemed possible.

(p) When the director determines that the violation has been remedied or the damage abated, the director shall release that portion of the bond or financial assurance instrument being held under paragraph (d)(ii) of this section. When the director determines that closure activities have been successfully completed at any commercial oil field waste disposal facility, the director shall release that portion of the bond or financial assurance instrument being held to guarantee performance of activities specified in subparagraphs (d)(i)(A) through (E) of this section. The remaining portion of the bond or financial assurance instrument shall be held for a period of not less than five (5) years after the date of facility closure, or so long thereafter as necessary to assure proper performance of any post-closure activities specified in subparagraph (d)(i)(F) of this section. The retained portion of the bond or other financial assurance instrument may be returned to the facility operator at an earlier date if the director determines that the facility has been adequately stabilized and that environmental monitoring or control systems have demonstrated that the facility closure is protective of public health and the environment consistent with the purposes of this act.

History:
Laws 1989, ch. 111, § 1; 2005, ch. 231, § 1.

The 2005 amendment, effective July 1, 2005, deleted "trust and agency" preceding "account" in (n)(ii) and (o).

Editor's notes. — There is no subsection (i) or (l) in this section as it appears in the printed acts.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Conflicting legislation. — Laws 2005, ch. 231, § 3, provides: "The provisions of this act shall supersede the provisions of any other bill enacted into law during the 2005 general session which amends or references accounts or funds to the extent any other enactment is inconsistent with the establishment of the funds and accounts created under this act. The state auditor shall account for any fund or account created in any other legislation enacted in the 2005 general session in accordance with generally accepted accounting principles (GAAP) as promulgated by the governmental accounting standards board (GASB) and in accordance with this act."

Savings clauses. — Laws 1989, ch. 111, § 2, provides: "This act shall not prohibit the continued operation, at current level, of any facility in existence prior to the effective date of this act or prohibit the construction and operation of any facility for which a valid permit is issued prior to the effective date of this act."

§ 35-11-307. Commercial waste treatment, storage and disposal facilities.

(a) In addition to any other requirement or restriction imposed under the Wyoming Environmental Quality Act, commercial waste treatment, storage and disposal facilities used for the management of more than ten (10) tons of dried wastewater treatment sludges or the equivalent thereto per operating day, are subject to the location restrictions and bond requirements provided for commercial oil field waste disposal facilities under W.S. 35-11-306.

(b) Any person who locates, constructs or operates a commercial waste treatment, storage and disposal facility in violation of the location restrictions provided by subsection (a) of this section and W.S. 35-11-306(a) is subject to the penalties provided by W.S. 35-11-901. This subsection shall be enforced by the water quality division of the department of environmental quality.

(c) The environmental quality council shall promulgate rules and regulations necessary to carry out this section including rules establishing bonding and financial assurance requirements in conformance with W.S. 35-11-306(d) through (p).

(d) This section shall not apply to publicly owned waste treatment, storage and disposal facilities.

History:
Laws 1990, ch. 67, § 1.

Wyoming Environmental Quality Act. — See §§ 35-11-101 and 35-11-103(a)(xiii).

§ 35-11-308. Short title.

This act, W.S. 35-11-308 through 35-11-311, may be known and shall be cited as the "Wyoming Wetlands Act".

History:
Laws 1991, ch. 110, § 1.

§ 35-11-309. Legislative policy and intent.

(a) The legislature declares that all water, including collections of still water and waters associated with wetlands within the borders of this state are property of the state. The legislature further declares that water is one of Wyoming's most important natural resources, and the protection, development and management of Wyoming's water resources is essential for the long-term public health, safety, general welfare and economic security of Wyoming and its citizens.

(b) The legislature finds that agriculture, energy development, mining, highway construction and timbering are important industries in this state and that industrial concerns must be accommodated in the protection of wetlands. Wetlands can have an impact on industry practices. Even though property taxes are generally paid on such lands, wetlands provide limited economic return to the landowner. Wetland policies can obstruct water development projects and water management projects for private industry as well as public entities and can affect other developments.

(c) The legislature finds that wetlands are considered important for a variety of reasons. Wetlands provide the habitat base for the production and maintenance of waterfowl and are sometimes critical to the survival of endangered plants and animals. Wetlands also serve to

moderate water flow and have value as natural flood control mechanisms, can aid in water purification by trapping, filtering and storing sediment and other pollutants and by recycling nutrients, and can serve as groundwater recharge and discharge areas. Wetlands also function as nursery areas for numerous aquatic animal species and are habitat for a wide variety of plant and animal species, and provide vital habitat for resident wildlife. Wetlands also can provide scientific, aesthetic and recreational benefits. The legislature therefore concludes that wetlands and values associated therewith deserve to be effectively managed, protected and preserved.

(d) The legislature recognizes that significant differences exist in Wyoming between naturally occurring wetlands and those wetlands that result from human activities. Because portions of Wyoming are arid or semiarid, water was diverted from streams and rivers for irrigating cropland, resulting in the creation of wetlands. These wetlands have partially compensated for wetlands losses. Additionally, road and highway construction, petroleum industry operations and other human activities have created wetlands where none previously existed. While these man-made wetlands are equally as important as naturally occurring wetlands, having the same characteristics and providing the same values and functions, management flexibility is required to acknowledge their different origins and to protect the property rights of landowners and water right holders.

(e) In view of the legislative findings and conclusions of the importance of wetlands, water development and management, and industry in Wyoming it is hereby declared to be the wetlands policy of this state that water management and development and wetland preservation activities should be balanced to protect and accommodate private property, industry, water and wetland interests and objectives.

History:
Laws 1991, ch. 110, § 1; 1994, ch. 56, § 1.

Appropriations. — Laws 1999, ch. 81, § 5, as amended by Session Laws 2001, ch. 86, § 2, appropriates from water development account I $1,700,000.00 to the state engineer's office for the state's proportionate share of the capitalization of components to recover and remove from the endangered species act list four species of fish inhabiting the Upper Colorado River basin, and provides that funds not expended prior to July 1, 2005 are to revert back to water development account I. Session Laws 2001, ch. 86, § 3, appropriates from water development account I $50,000.00 for the conservation staff position, contingent upon Bureau of Reclamation matching funds, with funds remaining July 1, 2003, to revert back to water development account I.

Laws 2001, ch. 86, § 4, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 21, 2001.

§ 35-11-310. Notice to drain waters required; exception.

(a) Except as provided in subsection (b) of this section, after July 1, 1996, no person shall drain water from a naturally occurring or man-made wetland, or any series thereof, which has an area comprising five (5) acres or more, without first notifying the department that the water which will be drained from the wetland, or any series thereof, will not flood or adversely affect downstream lands. Notification shall include the size and location of the wetland, and whether the wetland is natural or man-made.

(b) Subsections (a) and (c) of this section do not apply to disturbances of wetlands resulting from mining operations conducted pursuant to mining permits issued by the department of environmental quality.

(c) Any person draining, or causing to be drained, water of a naturally occurring wetland, or any series thereof, which has an area comprising five (5) acres or more, without first notifying the department as required by subsection (a) of this section, shall not be eligible to participate in the mitigation credit banking system as provided by W.S. 35-11-311. Failure to notify the department pursuant to this section does not constitute a violation for purposes of W.S. 35-11-901.

History:
Laws 1991, ch. 110, § 1.

§ 35-11-311. Mitigation; guidelines.

(a) The department, after consultation with the Wyoming department of agriculture, state engineer, game and fish department, Wyoming water development commission and the department of transportation, shall adopt guidelines for evaluating ecological function and values and for

establishing and administering a mitigation credit banking system for compensatory mitigation. The guidelines shall, at a minimum, provide for:

(i) Criteria under which mitigation credits may be earned, with credit to be recognized for man-made wetlands created after July 1, 1991;

(ii) Geographical and other appropriate limitations for the application of mitigation bank credits;

(iii) Criteria for the use, banking or sale of banked credits;

(iv) The approval by the department for the earning, using, banking, transfer or selling of mitigation bank credits; and

(v) Requirements for the maintenance and submission by the department of records concerning ecological function and wetland value losses, and credit and debit accounts for each mitigation bank.

History:
Laws 1991, ch. 110, § 1; 1994, ch. 56, § 1.

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

§ 35-11-312. Fees.

(a) The department shall implement a surface water point source discharge permit fee system for each permit issued pursuant to W.S. 35-11-302(a)(v). The department shall assess an annual permit fee of one hundred dollars ($100.00) for each Wyoming pollution discharge elimination system permit and for each permit authorization held by any person under W.S. 35-11-301. All payment of permit fees shall be received prior to processing and issuance of the permit. Permit fees shall not be prorated and are nonrefundable upon permit modification, termination or expiration. The department shall prepare a biennium report on the fee system for review by the joint minerals, business and economic development interim committee by October 31 of the year prior to the Wyoming legislative budget session.

(b) The fees collected by the department pursuant to this section shall be deposited in a separate account, and shall be subject to appropriation by the legislature to the department to be used for costs associated with:

(i) Surface water quality monitoring and analysis;

(ii) Surface water quality modeling analysis and demonstrations;

(iii) Other nonoperating costs associated with surface water discharges.

(c) The revenue generated by this section shall not be used for operational costs associated with permit processing.

History:
Laws 2004, ch. 60, § 1; 2005, ch. 231, § 1; 2007, ch. 178, § 1; 2013, ch. 181, § 1.

The 2005 amendment, effective July 1, 2005, deleted "within the earmarked revenue fund" in (b).

The 2007 amendment, in (a) substituted "January 1" for "July 1."

Laws 2007, ch. 178, § 3, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 4, 2007.

The 2013 amendment, effective July 1, 2013, in (a), substituted "permit issued pursuant to W.S. 35-11-302(a)(v)" for "national pollutant discharge elimination system permit" in the first sentence, in the second sentence, deleted "On January 1 of each year" from the beginning, substituted "Wyoming pollution" for "national pollutant," and deleted "during any portion of the preceding twelve (12) month period" at the end, and added the third and fourth sentences.

Editor's notes. — Laws 2007, ch. 178, § 2, states as follows: "The department of environmental quality shall assess and collect the full annual fee on July 1, 2007 and shall assess and collect one-half (1/2) of the annual fee on January 1, 2008 and the full fee annually thereafter."

Effective date. — Laws 2004, ch. 60, § 2, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 4, 2004.

Conflicting legislation. — Laws 2005, ch. 231, § 3, provides: "The provisions of this act shall supersede the provisions of any other bill enacted into law during the 2005 general session which amends or references accounts or funds to the extent any other enactment is inconsistent with the establishment of the funds and accounts created under this act. The state auditor shall account for any fund or account created in any other legislation enacted in the 2005 general session in accordance with generally accepted accounting principles (GAAP) as promulgated by the governmental accounting standards board (GASB) and in accordance with this act."

§ 35-11-313. Carbon sequestration; permit requirements.

(a) The geologic sequestration of carbon dioxide is prohibited unless authorized by a permit issued by the department.

(b) The injection of carbon dioxide for purposes of a project for enhanced recovery of oil or other minerals approved by the Wyoming oil and gas conservation commission shall not be subject to the provisions of this chapter.

(c) If an oil and gas operator converts to geologic sequestration upon the cessation of oil and gas recovery operations, then regulation of the geologic sequestration facility and the geologic sequestration site shall be transferred to the department. If the oil and gas operator does not convert to geologic sequestration, the wells shall be plugged and abandoned according to the rules of the Wyoming oil and gas conservation commission.

(d) Temporary time limited permits for pilot scale testing of technologies for geologic sequestration shall be issued by the department based upon current rules and regulations.

(e) Permit requirements for geologic sequestration of carbon dioxide shall be as defined by department rules.

(f) The administrator of the water quality division of the department of environmental quality, after receiving public comment and after consultation with the state geologist, the Wyoming oil and gas conservation commission and the advisory board created under this act, shall recommend to the director rules, regulations and standards for:

(i) The creation of subclasses of wells within the existing Underground Injection Control (UIC) program administered by the United States Environmental Protection Agency under Part C of the Safe Drinking Water Act to protect human health, safety and the environment and allow for the permitting of the geologic sequestration of carbon dioxide;

(ii) Requirements for the content of applications for geologic sequestration permits. Such applications shall include:

(A) A description of the general geology of the area to be affected by the injection of carbon dioxide including geochemistry, structure and faulting, fracturing and seals, stratigraphy and lithology including petrophysical attributes;

(B) A characterization of the injection zone and aquifers above and below the injection zone which may be affected including applicable pressure and fluid chemistry data to describe the projected effects of injection activities;

(C) The identification of all other drill holes and operating wells that exist within and adjacent to the proposed sequestration site;

(D) An assessment of the impact to fluid resources, on subsurface structures and the surface of lands that may reasonably be expected to be impacted and the measures required to mitigate such impacts;

(E) Plans and procedures for environmental surveillance and excursion detection, prevention and control programs. For purposes of this section, "excursion" shall mean the detection of migrating carbon dioxide at or beyond the boundary of the geologic sequestration site;

(F) A site and facilities description, including a description of the proposed geologic sequestration facilities and documentation sufficient to demonstrate that the applicant has all legal rights, including but not limited to the right to surface use, necessary to sequester carbon dioxide and associated constituents into the proposed geologic sequestration site. The department may issue a draft permit contingent on obtaining a unitization order pursuant to W.S. 35-11-314 through 35-11-317;

(G) Proof that the proposed injection wells are designed at a minimum to the construction standards set forth by the department and the Wyoming oil and gas conservation commission;

(H) A plan for periodic mechanical integrity testing of all wells;

(J) A monitoring plan to assess the migration of the injected carbon dioxide and to insure the retention of the carbon dioxide in the geologic sequestration site;

(K) Proof of bonding or financial assurance to ensure that geologic sequestration sites and facilities will be constructed, operated and closed in accordance with the purposes and provisions of this act and the rules and regulations promulgated pursuant to this act;

(M) A detailed plan for post-closure monitoring, verification, maintenance and mitigation;

(N) Proof of notice to surface owners, mineral claimants, mineral owners, lessees and other owners of record of subsurface interests as to the contents of such notice. Notice requirements shall at a minimum require:

(I) The publishing of notice of the application in a newspaper of general circulation in each county of the proposed operation at weekly intervals for four (4) consecutive weeks;

(II) A copy of the notice shall also be mailed to all surface owners, mineral claimants, mineral owners, lessees and other owners of record of subsurface interests which are located within one (1) mile of the proposed boundary of the geologic sequestration site.

(O) A certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the geologic sequestration operations for which the permit is sought, or evidence that the applicant has satisfied other state or federal self insurance requirements. The policy shall provide for personal injury and property damage protection in an amount and for a duration as established by regulations.

(iii) Requirements for the operator to provide immediate verbal notice to the department of any excursion after the excursion is discovered, followed by written notice to all surface owners, mineral claimants, mineral owners, lessees and other owners of record of subsurface interests within thirty (30) days of when the excursion is discovered;

(iv) Procedures for the termination or modification of any applicable Underground Injection Control (UIC) permit issued under Part C of the Safe Drinking Water Act if an excursion cannot be controlled or mitigated;

(v) Such other conditions and requirements as necessary to carry out this section;

(vi) Requirements for bonding and financial assurance for geologic sequestration facilities and geologic sequestration sites including:

(A) Procedures to establish the type and amount of the bond or financial assurance instrument to assure that the operator faithfully performs all requirements of this chapter, complies with all rules and regulations and provides adequate financial resources to pay for mitigation or reclamation costs that the state may incur as a result of any default by the permit holder, provided that, any insurance instruments submitted for financial assurance purposes shall include the state of Wyoming as an additional insured, which inclusion shall not be deemed a waiver of sovereign immunity;

(B) Annual or other periodic reporting by the permittee during geologic sequestration and reclamation activities to allow the administrator to confirm or adjust the amount or type of the bond or other financial assurance requirements consistent with the site, facility and operation specific risks and conditions;

(C) Procedures to require proof of compliance from any permittee ordered by the administrator to adjust a bond or other financial assurance, including procedures for permit suspension or termination procedures following notice and an opportunity for a hearing if adequate bonding or financial assurance cannot be demonstrated;

(D) Procedures for replacement of a bond or financial assurance instrument if notice of cancellation is provided or notice that the license to do business in Wyoming of the surety or insurance company issuing a bond or other financial assurance pursuant to this chapter is suspended or revoked;

(E) Procedures for the director to forfeit the bond or to make a claim against any insurance instrument providing financial assurance, including the right of the attorney general to bring suit to recover costs if the bond or financial assurance is inadequate, to pay for closure, mitigation, reclamation, measurement, monitoring, verification and pollution control, where recovery is deemed possible;

(F) Procedures, including public notice and a public hearing if requested, for the release of bonds or the termination of insurance instruments not less than ten (10) years after the date when all wells excluding monitoring wells have been appropriately plugged and abandoned, all subsurface operations and activities have ceased and all surface equipment and improvements have been removed or appropriately abandoned, or so long thereafter as necessary to obtain a completion and release certificate from the administrator certifying that plume stabilization as defined by rule has been achieved without the use of control equipment based on a minimum of three (3) consecutive years of monitoring data, and that the operator has completed site reclamation and all required monitoring and remediation sufficient to show that the carbon dioxide injected into the geologic sequestration site will not harm or present a risk to human health, safety or the environment, including drinking water supplies, consistent with the purposes of this chapter and the rules and regulations adopted by the council;

(G) Requirements for the operator to record an affidavit in the office of the county clerk of the county or counties in which a geologic sequestration site is located, which affidavit shall be reasonably calculated to alert a person researching the title of a particular tract that such tract is underlain by a site permitted for geologic sequestration.

(vii) Requirements for fees to be paid by all permittees of geologic sequestration sites and facilities, which may include a per ton injection fee or a closure fee, during the period of injection of carbon dioxide and associated constituents into subsurface geologic formations in Wyoming, which fees shall be deposited in the geologic sequestration special revenue account created by W.S. 35-11-318 for use as provided therein.

(g) Repealed by Laws 2010, ch. 52, § 3.

(h) At the time a permit application is filed, an applicant shall pay a fee to be determined by the director based upon the estimated costs of reviewing, evaluating, processing, serving notice of an application and holding any hearings. The fee shall be credited to a separate account and shall be used by the division as required to complete the tasks necessary to process, publish and reach a decision on the permit application. Unused fees shall be returned to the applicant.

(j) The director shall recommend to the council any changes that may be required to provide consistency and equivalency between the rules or regulations promulgated under this section and any promulgated for the regulation of carbon dioxide sequestration by the United States environmental protection agency.

(k) The Wyoming oil and gas conservation commission shall have jurisdiction over any subsequent extraction of sequestered carbon dioxide that is intended for commercial or industrial purposes.

(m) Nothing in this section shall be construed to create any liability by the state for failure to comply with this section.

History:

Laws 2008, ch. 30, § 1; 2009, ch. 76, § 2; 2010, ch. 52, §§ 2, 3.

The 2009 amendment, effective July 1, 2009, inserted "the Wyoming oil and gas conservation commission" in the introductory language of (f), added "The department may issue a draft permit contingent on obtaining a unitization order pursuant to W.S. 35-11-314 through 35-11-317" at the end of (f)(ii)(F), and made a related change.

The 2010 amendment, in (f), added (f)(ii)(O), (f)(vi) and (f)(vii); and repealed former (g), pertaining to convening a working group to develop appropriate bonding procedure and other financial assurance methods to assure adequate financial resources are provided to pay for mitigation or reclamation costs.

Laws 2010, ch. 52, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2010.

Editor's notes. — Laws 2008, Ch. 30, § 4 provides: "Nothing in this act is intended to impede or impair the ability of an oil and gas operator to inject carbon dioxide through an approved enhanced oil or gas recovery project and establish, verify, register and sell emission reduction credits associated with the project."

Laws 2008, Ch. 30, § 5 provides: "The department of environmental quality and the oil and gas conservation commission shall submit a joint written report, on or before November 1 of each year, to the joint minerals, business and economic development and joint judiciary interim committees as to all aspects of compliance with this legislation including, but not limited to, the promulgation of rules and regulations, the formation of the working group, permitting and changes to pertinent federal regulations affecting the same."

There is no subparagraph (f)(ii)(I) or (f)(ii)(L) or subsection (i) or (l) in this section as it appears in the printed acts.

Meaning of "this act." — For the meaning of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Appropriations. — Laws 2008, Ch. 30, § 3 provides: "There is appropriated two hundred fifty thousand dollars ($250,000.00) from the general fund to the department of environmental quality for use by the working group created by W.S. 35-11-313(g) for expenses related to performing the tasks assigned it pursuant to this act. Expenses may include the costs to secure expert consultation. This appropriation shall be for the period beginning with the effective date of this act and ending June 30, 2010. Notwithstanding any other provision of law, this appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on June 30, 2010. This appropriation shall not be included in the department's standard biennial budget request."

Effective dates. — Laws 2008, ch. 30, § 6, makes the act effective July 1, 2008.

§ 35-11-314. Unitization of geologic sequestration sites; purposes; definitions.

(a) The purpose of W.S. 35-11-314 through 35-11-317 is declared by the Wyoming legislature to be the protection of corresponding rights, compliance with environmental requirements and to facilitate the use and production of Wyoming energy resources.

(b) Except when context otherwise requires or when otherwise defined in this subsection, the terms used or defined in W.S. 35-11-103, shall have the same meaning when used in W.S. 35-11-314 through 35-11-317. When used in W.S. 35-11-314 through 35-11-317:

(i) "Corresponding rights" means the right of all pore space owners in a unit area who will be affected by unit operations, either now or in the future, to concurrently share in the economic benefits generated by using the pore space in the unit area.

History:
Laws 2009, ch. 76, § 1.

§ 35-11-315. Unitization of geologic sequestration sites; agreements; application for permit; contents.

(a) Any interested person may file an application with the Wyoming oil and gas conservation commission requesting an order providing for the operation and organization of a unit of one (1) or more parts as a geologic sequestration site and for the pooling of interests in pore space in the proposed unit area for the purpose of conducting the unit operation. The application shall contain:

(i) A copy of any permit or draft permit issued by the department allowing geologic sequestration or any application for such permit;

(ii) A description of the pore space and surface lands proposed to be so operated, termed the "unit area";

(iii) The names, as disclosed by the conveyance records of the county or counties in which the proposed unit area is situated, and the status records of the district office of the bureau of land management of:

(A) All persons owning or having an interest in the surface estate and pore space in the unit area including mortgages and the owners of other liens or encumbrances; and

(B) All owners of the surface estate and pore space not included within but which immediately adjoins the proposed unit area or a corner thereof.

(iv) The addresses of all persons and owners identified in subparagraphs (iii)(A) and (B) of this subsection, if known. If the name or address of any person or owner is unknown, the application shall so indicate;

(v) A statement of the type of operations contemplated in order to effectuate the purposes specified in W.S. 35-11-314 to comply with environmental requirements and to facilitate the use and production of Wyoming energy resources;

(vi) A proposed plan of unitization applicable to the proposed unit area which the applicant considers fair, reasonable and equitable and which shall include provisions for determining the pore space to be used within the area, the appointment of a unit operator and the time when the plan is to become effective;

(vii) A proposed plan for determining the quantity of pore space storage capacity to be assigned to each separately owned tract within the unit and the formula or method by which pore space will be allocated the economic benefits generated by use of pore space in the unit area;

(viii) A proposed plan for generating economic benefits for the use of pore space within the unit area;

(ix) A proposed operating plan providing the manner in which the unit area will be supervised and managed and, if applicable, costs allocated and paid, unless all owners within the proposed unit area have joined in executing an operating agreement or plan providing for such supervision, management and allocation and, if applicable, payment of costs. All operating plans shall comply with all applicable environmental requirements.

History:
Laws 2009, ch. 76, § 1.

§ 35-11-316. Unitization of geologic sequestration sites; hearings on application, order; modifications.

(a) Upon receipt of an application under W.S. 35-11-315, the Wyoming oil and gas conservation commission shall promptly set the matter for hearing, and in addition to any notice otherwise required by law or the commission's rules, shall cause the applicant to give notice of the hearing,

specifying the time and place of hearing, and describing briefly its purpose and the land and pore space affected, to be mailed by certified mail at least thirty (30) days prior to the hearing to all persons whose names and addresses are required to be listed in the application.

(b) After considering the application and hearing the evidence offered in connection therewith, the Wyoming oil and gas conservation commission shall enter an order setting forth the following findings and approving the proposed plan of unitization and proposed operating plan, if any, if the commission finds that:

(i) The material allegations of the application are substantially true;

(ii) The purposes specified in W.S. 35-11-314 will be served by granting the application;

(iii) The application outlines operations that will comply with environmental requirements;

(iv) Granting the application will facilitate the use and production of Wyoming energy resources;

(v) The quantity of pore space storage capacity, and method used to determine the quantity of pore space storage capacity allocated to each separately owned tract within the unit area represents, so far as can be practically determined, each tract's actual share of the pore space to be used in the sequestration activity;

(vi) The method by which the allocation of economic benefits generated from use of pore space within the unit area between pore space owners; and between pore space owners and the unit operator or others is fair and reasonable, taking into consideration the costs required to capture, transport and sequester the carbon dioxide;

(vii) The method of generating economic benefits from the use of pore space in the unit area is fair and equitable and is reasonably designed to maximize the value of such use;

(viii) Other requirements specified by rules or regulations adopted by the oil and gas conservation commission have been met.

(c) No order of the Wyoming oil and gas conservation commission authorizing the commencement of unit operations shall become effective until the plan of unitization has been signed or in writing ratified or approved by those persons who own at least eighty percent (80%) of the pore space storage capacity within the unit area. If such consent has not been obtained at the time the commissioner's order is made, the commission shall, upon application, hold supplemental hearings and make findings as may be required to determine when and if the consent will be obtained. The commission shall require the applicant to give notice of a supplemental hearing by regular mail at least thirty (30) days prior to the hearing to each person owning interests in the pore space in the proposed unit area whose name and address was required by W.S. 35-11-315(a) to be listed in the application for the unit operations. If the required percentages of consent have not been obtained within a period of six (6) months from and after the date on which the order of approval is made, the order shall be ineffective and revoked by the commission, unless, for good cause shown, the commission extends that time. Any interested person may file an application with the Wyoming oil and gas conservation commission requesting an order applicable only to the proposed unit area described in the application which shall provide for the percentage of approval or ratification to be reduced from eighty percent (80%) to seventy-five percent (75%). The application shall contain the information required by W.S. 35-11-315(a) and any order of the commission entered pursuant to the application shall comply with subsection (b) of this section. Notice of the hearing on the application shall be given in the same manner and to the same persons as required by subsection (a) of this section. If the commission finds that negotiations were being conducted since July 1, 2009, or have been conducted for a period of at least nine (9) months prior to the filing of the application, that the applicant has participated in the negotiations diligently and in good faith, and that the percentage of approval or ratification required by this subsection cannot be obtained, the commission may reduce any percentage of approval or ratification required by this section from eighty percent (80%) to seventy-five percent (75%). The order shall affect only the unit area described in the application and shall operate only to approve the proposed plan of unitization and proposed operating plan and to reduce the required percentage of approval or ratification thereof and shall not change any other requirement contained in this section.

(d) From and after the effective date of an order of the Wyoming oil and gas conservation commission entered under the provisions of this section, the operation of the unit area defined in the order by persons other than the unit operator or persons acting under the unit operator's authority, or except in the manner and to the extent provided in the plan of unitization approved by the order, shall be unlawful and is hereby prohibited.

(e) Unless otherwise provided in this section, an order entered by the Wyoming oil and gas conservation commission under this section may be amended in the same manner and subject to the same conditions as an original order or previous agreement: provided, no amendatory order shall change the assignments of pore space storage capacity between existing pore space owners in the unit area as established by the original order or previous agreement, except with the written consent of those persons who own at least eighty percent (80%) of the pore space storage capacity in the unit area, nor change any allocation of costs as established by the original order or previous agreement, except with the written consent of those persons who own at least eighty percent (80%) of the unit pore space storage capacity. If consent has not been obtained at the time the commission order is made, the commission shall, upon application, hold supplemental hearings and make findings as may be required to determine when and if such consent will be obtained. The commission shall require the applicant to give notice of a supplemental hearing by regular mail at least thirty (30) days prior to the hearing to each person owning interests in the unit area whose name and address was required by the provisions of W.S. 35-11-315(a)(iii) to be listed in the application for the unit operations. If the required percentages of consent have not been obtained within a period of six (6) months from and after the date on which the order of approval is made, the order shall be ineffective and revoked by the commission, unless, for good cause shown, the commission extends that time. Any interested person may file an application with the Wyoming oil and gas conservation commission requesting an order applicable only to the unit area described in the application which shall provide for the percentage of approval or ratification to be reduced from eighty percent (80%) to seventy-five percent (75%). The application shall contain the information required by W.S. 35-11-315(a) and any order of the commission entered pursuant to the application shall comply with subsection (b) of this section. Notice of the hearing on the application shall be given in the same manner and to the same persons as required by subsection (a) of this section. If the commission finds that negotiations were being conducted since July 1, 2009 or have been conducted for a period of at least nine (9) months prior to the filing of the application, that the applicant has participated in the negotiations diligently and in good faith, and that the percentage of approval or ratification required by this subsection cannot be obtained, the commission may reduce any percentage of approval or ratification required by this section from eighty percent (80%) to seventy-five percent (75%). The order shall affect only the unit area described in the application and operate only to reduce the required percentage of approval or ratification necessary for amending the assignment of pore space and shall not change any other requirement contained in this section.

(f) The Wyoming oil and gas conservation commission, upon its own motion or upon application, and with notice and hearing, may modify its order regarding the operation, size or other characteristic of the unit area in order to prevent or assist in preventing a substantial inequity resulting from operation of the unit, provided that no such modification may amend any permit issued under W.S. 35-11-313.

(g) Any owner of pore space within a geologic sequestration site who has not been included within a unitization application or order authorizing a unit under this section, may petition for inclusion in the unit area. The petition shall be filed with the Wyoming oil and gas conservation commission and shall describe the petitioner's legal entitlement to the pore space, the location of the pore space, whether the pore space is included within any permitting area applicable to the unit area and the bases for inclusion in the unit area. The petition shall be accompanied by a deposit of money sufficient to pay all costs of the inclusion proceedings. The commission shall require the petitioner to publish a notice of filing of the petition which notice shall state the filing of the petition, the name of the petitioner, the location of the pore space and the prayer of the petitioner. The notice shall notify all interested persons to appear at a specified time and place and to show cause, in writing, if any they have, why the petition should not be granted. The commission at the time and place mentioned in the notice shall proceed to hear the petition and all objections thereto and shall thereafter grant or deny the petition. The filing of the petition shall be deemed and taken as an assent by each and all petitioners to the inclusion in the unit of the pore space mentioned in the petition or any part thereof. If the petition is granted, the petitioner shall be considered to have been a member of the unit since its inception and, upon the payment of any costs paid by unit members, shall be entitled to all economic benefits received by unit members since the inception of the unit provided that no unit modification affects any permit issued under W.S. 35-11-313. The oil and gas conservation commission shall adopt rules providing for the fair and equitable determi-

nation of pore space storage capacity for each successful petitioner and the means by which successful petitioners shall be paid the economic benefits to which they are entitled under this subsection, including, if necessary, a reallocation of economic benefits among unit members.

(h) A certified copy of any order of the Wyoming oil and gas conservation commission entered under the provisions of this section shall be entitled to be recorded in the land records of the county clerk for the counties where all or any portion of the unit area is located, and the recordation shall constitute notice thereof to all persons.

(j) No provision of W.S. 35-11-314 through 35-11-317 shall be construed to confer on any person the right of eminent domain and no order for unitization issued under this section shall act so as to grant to any person the right of eminent domain.

(k) No order for unitization issued under this section shall act so as to grant any person a right of use or access to a surface estate if that person would not otherwise have such a right.

History:
Laws 2009, ch. 76, § 1.

§ 35-11-317. Unitization of geologic sequestration sites; economic benefits; liens.

(a) No order of the Wyoming oil and gas conservation commission or other contract relating to a separately owned tract within the unit area shall be terminated by the order providing for unit operations, but shall remain in force and apply to that tract, its benefits, burdens and obligations, until terminated in accordance with the provisions thereof.

(b) Except to the extent that the parties affected agree, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title to pore space or other rights in any tract in the unit area and no agreement or order shall operate to violate the terms and requirements of any permit applicable to pore space within the unit area.

History:
Laws 2009, ch. 76, § 1.

§ 35-11-318. Geologic sequestration special revenue account.

(a) There is created the Wyoming geologic sequestration special revenue account. The account shall be administered by the director and all funds in the account shall be transmitted to the state treasurer for credit to the account and shall be invested by the state treasurer as authorized under W.S. 9-4-715(a), (d) and (e) in a manner to obtain the highest return possible consistent with the preservation of the corpus. Any interest earned on the investment or deposit of monies into the fund shall remain in the fund and shall not be credited to the general fund. All funds in the account are continuously appropriated for use by the director consistent with this section.

(b) The account shall consist of all monies collected by the department to measure, monitor and verify Wyoming geologic sequestration sites following site closure certification, release of all financial assurance instruments and termination of the permit. The department shall promulgate rules necessary to collect monies in an amount reasonably calculated to pay the costs of measuring, monitoring and verifying the sites.

(c) Funds in the account shall be used only for the measurement, monitoring and verification of geologic sequestration sites following site closure certification, release of all financial assurance instruments and termination of the permit.

(d) The existence, management and expenditure of funds from this account shall not constitute a waiver by the state of Wyoming of its immunity from suit, nor does it constitute an assumption of any liability by the state for geologic sequestration sites or the carbon dioxide and associated constituents injected into those sites.

History:
Laws 2010, ch. 52, § 1.

Appropriations. — Laws 2010, ch. 52, § 4, provides:

"(a) For the period beginning July 1, 2010 and ending June 30, 2012:

"(i) There is appropriated two hundred thousand dollars ($200,000.00) from the general fund to the Wyoming department of environmental quality to pay

the salary and benefits for the position authorized to be reclassified and filled under paragraph (ii) of this subsection;

"(ii) The Wyoming department of environmental quality is authorized to reclassify one (1) computer technology support specialist full-time equivalent position which is vacant as of the effective date of this act to a principal accountant full-time equivalent position to assist the department in fulfilling its rulemaking duties relating to financial assurances pursuant to this act.

"(b) The funding for the position authorized under subsection (a) of this section shall be included in the exception budget request of the department of environmental quality for the biennium beginning July 1, 2012.

"(c) The authorization under paragraph (a)(ii) of this section to reclassify and fill the vacant position shall not be considered to be the filling of a vacant position for purposes of section 314 of 2010 House Bill 0001. The appropriation in paragraph (a)(i) of this section shall be reduced dollar for dollar by any funds appropriated in 2010 House Bill 0001 to the department for the vacant position reclassified pursuant to this section."

Effective dates. — Laws 2010, ch. 52, § 5, provides: "(a) Except as provided in subsection (b) of this section, this act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution." Approved March 5, 2010.

"(b) Section 4 of this act is effective July 1, 2010."

ARTICLE 4. LAND QUALITY

Law reviews. — For article, "Strip Mining, the West and the Nation," see XII Land & Water L. Rev. 1 (1977).

Am. Jur. 2d, ALR and C.J.S. references. — 53A Am. Jur. 2d Mines and Minerals §§ 225, 260, 340 to 348.

Tort liability for pollution from underground storage tank, 5 ALR5th 1.

58 C.J.S. Mines and Minerals §§ 335, 362 to 370, 379 to 383, 427 to 433.

Library References. — American Law of Mining, 2nd Edition § 172.03 (Matthew Bender).

§ 35-11-401. Compliance generally; exceptions.

(a) No mining operation or operation by which solid minerals are intended to be extracted from the earth shall be commenced after the effective date of the act, except in accordance with its requirements. It is recognized these measures are performed in the public interest and constitute an expense to the operator, and while this act applies to all mining operations, no operator shall be compelled to perform at his own expense measures required under this act with respect to operations that were completed or substantially completed prior to the effective date of this act. Nothing in this act shall provide the land quality division regulatory authority over oil mining operations as defined in W.S. 30-5-104(d)(ii)(F).

(b) All surface or underground mining operations operating at the date of enactment of this statute shall have a period of one (1) year within which to fulfill the requirements of this act. This period may be extended at the discretion of the council if the administrator has been unable to review and evaluate all operations that are presently operating under a permit issued by the state land commissioner in compliance with the "Open Cut Land Reclamation Act of 1969".

(c) An operator presently operating under a permit issued by the state land commissioner in accordance and in full compliance with the Open Cut Land Reclamation Act of 1969 will be issued a permit upon submission to the administrator of:

(i) The information, maps and other exhibits required by this act; and

(ii) A reclamation plan which fulfills all of the requirements of this act and is reviewed by the advisory board.

(d) Within two (2) months following the final approval of a state program pursuant to Section 503 of P.L. § 95-87 [30 U.S.C. § 1253], all operators of surface coal mining operations operating under a permit issued in accordance with the terms of this act shall apply for a new mining permit covering those lands expected to be mined or reclaimed after eight (8) months from state program approval. Within eight (8) months from the date of state program approval, the administrator shall approve or deny an application for a surface coal mining permit. No person shall engage in or carry out surface coal mining operations unless the person has first obtained a permit pursuant to this section except as hereafter provided. A person conducting operations consistent with this act may continue operating beyond eight (8) months from state program approval if an application for a permit has been filed in accordance with this act but the administrator's decision on the application has not been rendered.

(e) The provisions of this article shall not apply to any of the following activities:

(i) Building or expansion of utilities, soil conservation conveyances and foundation excavations for the purpose of constructing buildings and other structures not used in mining operations;

(ii) Excavations other than for the extraction of coal by an agency of federal, state or local government or its authorized contractors for highway and railroad cuts and for the purpose of providing fill, sand, gravel and other materials for use in connection with any public project if reclamation requirements of federal, state or local governments are consistent with all provisions of this act or regulations promulgated thereunder. Excavations for the extraction of coal as an incidental part of federal, state or local government financed highway or other construction shall be conducted in accordance with regulations established by the council;

(iii) The extraction of sand, gravel, dirt, scoria, limestone, dolomite, shale, ballast or feldspar by a landowner for his own noncommercial use from land owned or leased by him;

(iv) Archaeological excavations;

(v) Other surface mining operations which the administrator determines to be of an infrequent nature and which involve only minor surface disturbances;

(vi) Limited mining operations, whether commercial or noncommercial, for the removal of sand, gravel, scoria, limestone, dolomite, shale, ballast or feldspar from an area of fifteen (15) acres or less of affected land, excluding roads used to access the mining operation, if the operator has written permission for the operation from the owner and lessee, if any, of the surface. The operator shall notify the land quality division of the department of environmental quality and the inspector of mines within the department of workforce services of the location of the land to be mined and the postal address of the operator at least thirty (30) days before commencing operations. A copy of the notice shall also be mailed to all surface owners located within one (1) mile of the proposed boundary of the limited mining operation at least thirty (30) days before commencing operations. Limited mining operations authorized under this paragraph are subject to the following:

(A) That the affected lands shall not be within three hundred (300) feet of any existing occupied dwelling, home, public building, school, church, community or institutional building, park or cemetery unless the landowner's consent has been obtained;

(B) Before commencing any limited mining operations, the operator shall file a bond to insure reclamation in accordance with the purposes of this act in the amount of two thousand dollars ($2,000.00) per acre, except for quarries for which the bond amount shall not exceed three thousand dollars ($3,000.00) per acre of affected land including roads used to access the mining operation. Within ninety (90) days after limited mining operations commence, the administrator may require the operator to post an additional bond per acre of affected land if he determines that such amount is necessary to insure reclamation. The operator shall post the additional bond not later than thirty (30) days after receipt of such notification;

(C) After the limited mining operations have ceased or within thirty (30) days after abandonment of the limited mining operation, the operator shall notify the administrator of such fact and commence reclamation and restoration in compliance with the rules and regulations of the land quality division of the department of environmental quality. The rules and regulations for reclamation shall at all times be reasonable; and

(D) Immediate reclamation will not be required if the landowner advises the department in writing of his intent to further utilize the product of the mine, and if he assumes the obligation of reclamation.

(vii) through (ix) Repealed by Laws 2013, ch. 44, § 2.

(f) In promulgating regulations to implement this section the administrator and director shall consider:

(i) The nature of the class, type, or types of activities involved;

(ii) Their magnitude (in tons and acres);

(iii) Their potential for adverse environmental impact; and

(iv) Whether the class, type, or types of activities are already subject to an existing regulatory system by state or local government or an agency of the federal government.

(g) A single permit may be issued to all county or other local governmental entities of the state to operate noncontiguous facilities in compliance with the statutes.

(h) A single permit may be issued for mining of noncontiguous minerals deposits at the discretion of the administrator in compliance with the statutes.

(j) The council, upon recommendation from the advisory board through the administrator and director, may modify or suspend certain requirements of W.S. 35-11-406(a), (b), (d), (f) and (g) by rules and regulations, for surface mining operations involving not more than thirty-five thousand (35,000) yards of overburden, excluding topsoil, and ten (10) acres of affected land in any one (1) year, if the application requirements insure reclamation in accordance with the purposes of this act. Roads used to access a mining operation permitted under this section shall be excluded from the annual ten (10) acres of affected land limit, but shall be included in the permit and bonded for reclamation liability.

(k) An operator conducting operations pursuant to W.S. 35-11-401(e)(vi) shall file an annual report with the administrator on or within thirty (30) days prior to the anniversary date of the commencement date of initial operation. The report shall contain:

(i) The name and address of the operator;

(ii) The location of the mining operations;

(iii) The number of acres of affected lands at the conclusion of the past year's operation;

(iv) The number of acres of land that have been reclaimed during the past year;

(v) The number of yards of overburden or mined mineral removed;

(vi) The expected remaining life of the mining operation.

(m) No steep slope surface coal mining operation shall be commenced until the council has promulgated rules and regulations establishing steep slope mining performance standards.

(n) In promulgating regulations to implement W.S. 35-11-401 and 35-11-402, the administrator and director shall consider interim mine stabilization.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.20; Laws 1974, ch. 14, § 1; 1975, ch. 198, §§ 2, 3; 1976, ch. 15, § 1; 1977, ch. 108, § 1; ch. 132, § 1; 1980, ch. 64, § 2; 1983, ch. 35, § 1; 1987, ch. 211, § 1; 1992, ch. 60, § 3; 1993, ch. 39, § 1; 2002 Sp. Sess., ch. 40, § 1; 2012, ch. 1, § 1; 2013, ch. 44, §§ 1, 2; ch. 187, § 1.

The 2012 amendment, effective July 1, 2012, substituted "workforce services" for "employment" in (e)(vi).

The 2013 amendments. — The first 2013 amendment, by ch. 44, §§ 1 and 2, substituted "Limited" for "Surface" in the beginning of the first sentence; substituted "fifteen (15)" for "ten (10)" following "an area of", added ", excluding roads used to access the mining operation," following "affected land", substituted a period for "provided that" at the end of the first sentence, added "at least thirty (30) days" in the second sentence, added the last two sentences in (e)(vi); added (e)(vi)(A) through (e)(vi)(D); and repealed former (e)(vii) through (e)(ix).

The second 2013 amendment, by ch. 187, § 1, in (j), substituted "thirty-five thousand (35,000) yards" for "ten thousand (10,000) yards" and added "excluding topsoil" in the first sentence and added the last sentence.

While neither amendment gave effect to the other, both have been given effect in this section as set out above.

Editor's notes. — There is no subsection (i) or (l) in this section as it appears in the printed acts.

Meaning of "this act." — For the definition of "this act," referred to throughout this section, see § 35-11-103(a)(xiii).

Open Cut Land Reclamation Act. — The Open Cut Land Reclamation Act of 1969, referred to in the second sentence in subsection (b) and in the introductory language of subsection (c), was repealed by Laws 1973, ch. 250, § 3.

Applied in River Springs Ltd. Liab. Co. v. Board of County Comm'rs, 899 P.2d 1329, 1995 Wyo. LEXIS 125 (Wyo. 1995).

Cited in Board of Trustees v. Spiegel, 549 P.2d 1161, 1976 Wyo. LEXIS 191 (Wyo. 1976); Platte Dev. Co. v. State, Envtl. Quality Council, 966 P.2d 972, 1998 Wyo. LEXIS 158 (Wyo. 1998).

Law reviews. — For comment, "Land Quality: The Regulation of Surface Mining Reclamation in Wyoming," see IX Land & Water L. Rev. 97 (1974).

See article, "Federal Mineral Reservations," X Land & Water L. Rev. 1 (1975).

For article, "Accommodation or Preemption? State and Federal Control of Private Coal Lands in Wyoming," see XII Land & Water L. Rev. 73 (1977).

For comment, "Hazardous Waste Cleanup in Wyoming: Legal Tools Available to the Private Citizen," see XIX Land & Water L. Rev. 395 (1984).

For case note, "Mining Law — Are Surface Lessees 'Surface Owners' Entitled to Protection of Consent and Bonding Provisions of Wyoming's Environmental Quality Act? Belle Fourche Pipeline Co. v. State, 766 P.2d 537, 1988 Wyo. LEXIS 175 (Wyo. 1988)," see XXV Land & Water L. Rev. 447 (1990).

For case note, "Mining Law — Gravel Extraction — Is Control Over Small Gravel Mining The Best Road For Regulation? River Springs Limited Liability Company v. Board of County Commissioners of County of Teton, 1995 Wyo. LEXIS 142 (Wyo. 1995)," see XXXII Land & Water L. Rev. 155 (1997).

Library References. — American Law of Mining, 2nd Edition § 200.02 (Matthew Bender).

§ 35-11-402. Establishment of standards.

(a) The council shall, upon recommendation by the advisory board through the administrator and the director, establish rules and regulations pursuant to the following reclamation standards for the affected areas, including but not limited to:

(i) The highest previous use of the affected lands, the surrounding terrain and natural vegetation, surface and subsurface flowing or stationary water bodies, wildlife and aquatic habitat and resources, and acceptable uses after reclamation including the utility and capacity of the reclaimed lands to support such uses;

(ii) Backfilling, regrading or recontouring to assure the reclamation of the land to a use at least equal to its highest previous use;

(iii) A time schedule encouraging the earliest possible reclamation program consistent with the orderly and economic development of the mining property;

(iv) Revegetation of affected lands including species to be used, methods of planting and other details necessary to assure the development of a vegetative cover consistent with the surrounding terrain and the highest prior use standards set out in paragraph (i) of this subsection;

(v) Stockpiling, preservation and reuse of topsoil for revegetation, unless it can be demonstrated to the satisfaction of the administrator that other methods of reclamation or types of soil are superior;

(vi) Prevention of pollution of waters of the state from mining operations, substantial erosion, sedimentation, landslides, accumulation and discharge of acid water, and flooding, both during and after mining and reclamation;

(vii) In administering established rules and regulations on such standards the administrator shall consider all the facts and circumstances bearing upon any reclamation plan. In consideration of reclamation plans for any mining operation that is presently being conducted in the state under a permit issued by the state land commission under the "Open Cut Land Reclamation Act of 1969", particular attention shall be paid to:

(A) The social and economic value of the product mined;

(B) The technological availability for economic feasibility of reclaiming the affected area.

(viii) Establishing methods of estimating cost of reclamation which shall be computed according to established engineering methods;

(ix) Establishing procedures to obtain special license to explore by dozing. Such procedures will include but not be limited to method of application, location of proposed exploration, present use of affected lands, name of surface owner, proposed reclamation program, bonding requirement, and such other procedures as are necessary to insure that the exploration work will be conducted within the intent of this act;

(x) Rules and regulations for the criteria for review and information and public notice requirements for permit revisions. A permit may be revised without public notice or hearing for revisions, including incidental boundary revisions to the area covered by the permit, if these do not propose significant alterations in the reclamation plan. Subject to applicable standards, any permit, except for surface coal mining permits, may be revised, in the permitted area, by identifying proposed alterations to the mining or reclamation plan in the annual report or addendum thereto, or by obtaining prior approval from the director, at the operator's discretion;

(xi) Rules and regulations for conducting coal exploration operations which shall include prior notice of intention to explore, written approval by the director for the removal of more than two hundred fifty (250) tons of coal and reclamation provisions for new and existing operations in accordance with the reclamation standards governing surface mining;

(xii) Rules and regulations governing new and existing special bituminous surface coal mines as recognized in P.L. 95-87, which shall be controlling notwithstanding other provisions of this act to the contrary. The regulations shall pertain only to standards governing on site handling of spoils, elimination of depressions capable of collecting water, creation of impoundments and regrading to the approximate original contour, and shall specify that all remaining highwalls be stable. All other performance standards contained in this act shall apply to such mines;

(xiii) Establishing such other rules and regulations necessary to insure full compliance with all requirements relating to reclamation, and the attainment of those objectives directed to public health, safety, and welfare.

(b) To the extent federal law or regulations require approval by state wildlife agencies regarding surface mining lands to be reclaimed for fish and wildlife habitat, the Wyoming game and fish department shall consider fish and wildlife habitat to mean as defined in W.S. 35-11-103(e)(xxvi) and does not include grazingland as defined in W.S. 35-11-103(e)(xxvii), unless the grazingland has been designated as:

(i) Critical habitat by the United States fish and wildlife service; or

(ii) Crucial habitat by the Wyoming game and fish department prior to submittal of the initial permit application or any subsequent amendments to the permit application.

(c) For the reclamation of grazingland, native shrubs shall be used for reestablishment. No shrub species shall be required to be more than one-half (½) of the shrubs in the post-mining standard.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.21; Laws 1978, ch. 33, § 2; 1980, ch. 64, § 2; 1987, ch. 234, § 1; 1991, ch. 136, § 1; 1992, ch. 60, § 3; 1993, ch. 230, § 1; 1994, ch. 87, § 1; 1995, ch. 32, § 1.

State land preservation and enhancement account. — Laws 2005, ch. 85, § 1, creates account for state land preservation and enhancement. The act appropriates $750,000 from the school foundation program account to the office of state lands and investments to be deposited in the new account. Funds in the state land preservation and enhancement account are to be used by the office of state lands and investments to fund projects that preserve and enhance the asset value of all surface and mineral lands held in trust by the state. The director of the office of state lands and investments is to report on the use and expenditure of the fund not later than October 1 of each year to the joint agriculture, public lands and water resources, joint education and the joint appropriations interim committees.

Laws 2005, ch. 85, § 2, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 24, 2005.

Federal reference. — P.L. 95-87, referred to in the first sentence in subsection (a)(xii), appears mainly as 30 U.S.C. § 1201 et seq.

Meaning of "this act." — For the definition of "this act," referred to in subsections (a)(ix) and (a)(xii), see § 35-11-103(a)(xiii).

Open Cut Land Reclamation Act. — The Open Cut Land Reclamation Act of 1969, referred to in the second sentence in the introductory paragraph of subsection (a)(vii), was repealed by Laws 1973, ch. 250, § 3.

Application to preexisting operations. — The reclamation requirements of this chapter apply to preexisting operations which were not completed or substantially completed prior to this chapter's enactment. Universal Equip. Co. v. State, 839 P.2d 967, 1992 Wyo. LEXIS 152 (Wyo. 1992).

§ 35-11-403. Powers of the administrator of land quality division.

(a) The administrator of the land quality division shall have the following powers:

(i) To utilize qualified experts in the field of hydrology, soil science, plant or wildlife ecology, and other related fields to advise on mining reclamation practices, and the adoption of rules. Advisors shall be reimbursed for travel and other expenses incurred in performance of official duties in the same manner and amount as state employees;

(ii) To fix the amount of, collect, maintain and otherwise comply with the statutory performance bond requirement set out in W.S. 35-11-417. The council may order the forfeiture of a bond as set out in W.S. 35-11-421;

(iii) To reclaim any affected land with respect to which a bond has been forfeited;

(iv) To recommend to the director, the issuance, denial, amendment, revocation and suspension of permits, licenses and special exploration licenses in accordance with the provisions of this act.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.22; Laws 1992, ch. 60, § 3.

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Application to preexisting operations. — Both subsection (a)(ii) of this section and § 35-11-417(c)(ii) authorize the administrator to require a bond to ensure the reclamation of buildings and facilities existing prior to the enactment of this chapter. Universal Equip. Co. v. State, 839 P.2d 967, 1992 Wyo. LEXIS 152 (Wyo. 1992).

§ 35-11-404. Drill holes to be capped, sealed or plugged.

(a) All drill holes sunk in the exploration for locatable or leasable minerals on all lands within the state of Wyoming shall be capped, sealed or plugged in the manner described hereinafter by or on behalf of the discoverer, locator or owner who drilled the hole. Prospecting and exploration drill holes shall include all drill holes except those drilled in conjunction with the expansion of an existing mine operation or wells or holes regulated pursuant to W.S. 30-5-101 through 30-5-204.

(b) "Person" means any person, firm, association or corporation who drills or is responsible for drilling holes for the purpose of exploration or development of these minerals.

(c) "Plugging, sealing and capping upon abandonment" means any hole drilled shall be abandoned in the following manner:

(i) "Plugging".All artesian flow of ground water to surface shall be eliminated by a cement plug or other similar material sufficient to prevent such artesian flow;

(ii) "Sealing".Drill holes which have encountered any ground water shall be sealed by leaving a column of drilling mud in the hole or by such other sealing procedure which is adequate to prevent fluid communication between aquifers;

(iii) "Surface Cap".Each drill hole is to be completely filled to the collar of the hole or securely capped at a minimum depth of two (2) feet below either the original land surface or the collar of the hole, whichever is at the lower elevation. If capped, the cap is to be made of concrete or other material satisfactory for such capping. The hole shall be backfilled above the cap to the original land surface;

(iv) "Water Well".If any holes drilled are to be ultimately used as or converted to water wells, the user shall comply with the applicable provisions of W.S. 41-3-911 through 41-3-938;

(v) "Surface Restoration".Each drill site shall be restored as nearly as possible to its original condition, including reseeding if grass or other crop was destroyed.

(d) Within sixty (60) days after the completion and abandonment of any hole drilled which has artesian flow at the surface, the person for whom the hole was drilled shall report the existence of the hole to the administrator, land quality division and the state engineer. The report, set forth in affidavit form, shall contain at least the location of the hole to the nearest two hundred (200) feet, the depth of the hole and estimated rate of flow, if known, and the facts of the plugging technique used.

(e) Within twelve (12) months after the completion and proper abandonment of any hole drilled any person shall file with the administrator, land quality division and the state engineer a report which shall include the location of each hole, utilizing Wyoming state plane coordinates, and the depth of each hole drilled. The reports shall be confidential for a period of five (5) years from the date of filing. The period may be extended for additional five (5) year periods upon request of the person filing the report. When a report is no longer confidential pursuant to this subsection, the provisions of W.S. 35-11-1101 shall apply.

(f) Where plugging reports are required to conform with federal regulations, and if such reports cover all the requirements of this section, they are adequate for the purposes described herein.

(g) Except for drilling in conjunction with coal mining or coal exploration operations, the director in consultation with the administrator, land quality division, may waive any of the administrative provisions of this act pertaining to aquifers following a formal written application for a waiver of any particular provisions, if in the opinion of the director waiver of any such provisions shall not adversely affect the interests of the state of Wyoming and would create an undue hardship upon application. Waivers shall be in writing and may be appealed under the provisions of the Wyoming Administrative Procedure Act.

(h) The drill hole should be capped immediately following the drilling and probing. If it is necessary to temporarily delay the capping or keep the hole open for any reason, the drill hole must be securely covered in a manner which will prevent injury to persons or animals.

(j) Before drilling on lands within the state of Wyoming, any person conducting coal exploration operations shall give notice to the administrator which shall, at a minimum include a legal description of the area, the approximate number of holes to be drilled and a reclamation plan for proper abandonment in accordance with regulations promulgated by the council. This excludes drilling within an existing permit area approved prior to August 3, 1977.

(k) Except as follows, any person who fails or refuses to comply with the provisions of this section is guilty of a misdemeanor and on conviction is subject to imprisonment in a county jail for not more than ninety (90) days or a fine of not more than five thousand dollars ($5,000.00), or both. Any person who drills in conjunction with coal mining or coal exploration operations in violation of this section or regulations promulgated pursuant hereto is subject to the provisions of W.S. 35-11-901.

(m) When exploratory drill holes have been abandoned in violation of these provisions, the director in consultation with the administrator, land quality division may then cause such holes to be capped, sealed or plugged and the state of Wyoming is granted a cause of action against the person refusing to comply with the provisions of this section for the recovery of the reasonable costs incurred by the director in having the holes properly capped, sealed or plugged.

(n) All actions pursuant to subsection (k) or (m) of this section, must be initiated by the state of Wyoming within three (3) years of the date of the report required by subsection (d) of this section.

History:

Laws 1977, ch. 140, § 1; W.S. 1957, § 35-502.22:1; Laws 1978, ch. 33, § 2; 1980, ch. 64, § 2; 1992, ch. 60, § 3; 2004, ch. 130, § 1; 2007, ch. 145, § 1.

The 2004 amendment, in (c)(ii), substituted "hole" for "hold."

Laws 2004, ch. 130, § 4, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 19, 2004.

The 2007 amendment, effective July 1, 2007, in (e) substituted "utilizing Wyoming state plane coordinates," for "to the nearest forty (40) acre legal subdivision" following "the location of each hole", in the second sentence substituted "The" for "Such", "shall be" for "are", inserted "for a period of five (5) years from the date of filing" and added the last sentence.

Editor's notes. — Laws 2007, ch. 145, § 2, states as follows: "(a) If the division receives a request for a release of any report filed prior to the effective date of this act, the division shall notify the person filing the report of the request for the release of the report at his last known address on file with the division. If no objection is received by the division within thirty (30) days from the date of notification, the report shall be released. If an objection is received by the division within thirty (30) days from the date of notification, the report shall not be released.

"(b) Not later than ninety (90) days following the effective date of this act, the division shall file notice of the provisions of this act in a newspaper of statewide distribution. The notice shall contain provisions for any person who filed a report prior to the effective date of this act to request that the report be kept confidential according to the provisions of this act."

There is no subsection (i) or (l) in this section as it appears in the printed acts.

Meaning of "this act." — For the meaning of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Wyoming Administrative Procedure Act. — See § 16-3-101(a), (b)(xi).

Conflicting legislation. — Laws 2004, ch. 130, § 3, provides: "Any other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

Quoted in People v. Fremont Energy Corp., 651 P.2d 802, 1982 Wyo. LEXIS 386 (Wyo. 1982).

§ 35-11-405. Permit defined; no mining operation without valid permit; when validity terminated.

(a) A mining permit is the certification that the tract of land described may be mined by an operator licensed to do so in conformance with an approved mining plan and reclamation plan. No mining operation may be commenced or conducted on land for which there is not in effect a valid mining permit to which the operator possesses the rights.

(b) A mining permit once granted remains valid and in force from the date of its issuance until the termination of all mining and reclamation operations, except as otherwise provided in this act.

(c) All surface coal mining permits issued subsequent to approval of the state program pursuant to P.L. 95-87 shall be issued for a term of not to exceed five (5) years. If the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation and if the application is complete for this specified longer term, the director shall grant a permit for a longer term.

(d) A surface coal mining permit shall terminate if the permittee has not commenced the surface coal mining operations covered by the permit within three (3) years of the issuance of the permit, except as provided in P.L. 95-87.

(e) Any valid surface coal mining permit issued pursuant to this act is entitled to a right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit if public notice has been given, any additional revised or updated information has been provided and the operation is in compliance with applicable laws and regulations and if the renewal requested will not substantially jeopardize the operator's responsibility on existing affected land.

(f) If an application for renewal of a valid surface coal mining permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal which addresses any new land areas shall be subject to the standards applicable to new applications under this act. However, areas previously identified in the mining plan and reclamation plan of those surface coal mining operations not subject to the standards in W.S. 35-11-406(m)(xiii) [repealed] will not be subject to those standards in the renewal application.

(g) An application for renewal of a valid surface coal mining permit shall be made at least one hundred twenty (120) days prior to expiration of a valid coal permit.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.23; Laws 1975, ch. 198, § 2; 1978, ch. 33, § 2; 1980, ch. 64, § 2; 1992, ch. 60, § 3.

Editor's notes. — Section 35-11-406(m)(xiii), referred to in the second sentence in subsection (f), was repealed by Laws 1980, ch. 64, § 3.

Meaning of "this act." — For the definition of

"this act," referred to in this section, see § 35-11-103(a)(xiii).

Federal reference. — P.L. 95-87, referred to in the first sentence in subsection (c) and in subsection (d), appears mainly as 30 U.S.C. § 1201 et seq.

Law reviews. — See article, "Federal Mineral Reservations," X Land & Water L. Rev. 1 (1975).

For comment, "State Participation in Federal Policy Making for the Yellowstone Ecosystem: A Meaningful Solution or Business as Usual?" see XXI Land & Water L. Rev. 397 (1986).

For case note, "Mining Law — Are Surface Lessees 'Surface Owners' Entitled to Protection of Consent and Bonding Provisions of Wyoming's Environmental Quality Act? Belle Fourche Pipeline Co. v. State, 766 P.2d 537, 1988 Wyo. LEXIS 175 (Wyo. 1988)," see XXV Land & Water L. Rev. 447 (1990).

§ 35-11-406. Application for permit; generally; denial; limitations.

(a) Applications for a mining permit shall be made in writing to the administrator and shall contain:

(i) The name and address of the applicant, and, if the applicant is a partnership, association, or corporation, the names and addresses of all managers, partners and executives directly responsible for operations in this state;

(ii) A sworn statement stating that the applicant has the right and power by legal estate owned to mine from the land for which the permit is desired;

(iii) A sworn statement that the applicant has not forfeited a bond posted for reclamation purposes and that all the statements contained in the permit application are true and correct to the best knowledge of the applicant;

(iv) The names and last known addresses of the owners of record of the surface and mineral rights on the land to be covered by the proposed permit;

(v) The names and last known addresses of the owners of record of the surface rights of the lands immediately adjacent to the proposed permit area and for surface coal mining operations, the names and last known addresses of coal ownership immediately adjacent to the permit area;

(vi) An identification of the land to be included in the permit area to include:

(A) The location of the lands by legal subdivision, section, township, range, county, and municipal corporation, if any;

(B) The name, if any, by which such lands or any part thereof are known;

(C) The approximate number of acres to be affected, including the total number of acres in the area covered by the permit application;

(D) The nearest town, village, or city.

(vii) A general description of the land which shall include as nearly as possible its vegetative cover, the annual rainfall, the general directions and average velocities of the winds, indigenous wildlife, its past and present uses, its present surface waters, and adjudicated water rights and their immediate drainage areas and uses, and, if known, the nature and depth of the overburden, topsoil, subsoil, mineral seams or other deposits and any subsurface waters known to exist above the deepest projected depth of the mining operation;

(viii) A United States Geological Survey topographic map, if available, of the permit area;

(ix) A map based upon public records showing the boundaries of the land to be affected, its surrounding immediate drainage area, the location and names, where known, of all roads, railroads, public or private rights-of-way and easements, utility lines, lakes, streams, creeks, springs, and other surface water courses, oil wells, gas wells, water wells, and the probable limits of underground mines and surface mines, whether active or inactive, on or immediately adjacent to the land to be affected. The map shall also show:

(A) The names, last known addresses and boundary lines of the present surface landowners and occupants on the adjacent land to be affected;

(B) The location, ownership, and uses of all buildings on, or on lands adjacent to, the land to be affected;

(C) An outline of all areas previously disturbed by underground mining or that will be affected by future underground mining as a guide to potential subsidence problems;

(D) Any political boundaries of special districts on or near the land to be affected.

(x) The mineral or minerals to be mined;

(xi) The estimated dates of commencement and termination of the proposed permit;

(xii) A minimum fee of one hundred dollars ($100.00) plus ten dollars ($10.00) for each acre in the requested permit, but the maximum fee for any single permit shall not exceed two thousand dollars ($2,000.00). The permit is amendable, excepting permits for surface coal mining

operations, without public notice or hearing if the area sought to be included by amendment does not exceed twenty percent (20%) of the total permit acreage, is contiguous to the permit area, and if the operator includes all of the information necessary in his application to amend that is required in this section including a mining and reclamation plan acceptable to the administrator. The fee for a permit amendment shall be two hundred dollars ($200.00) plus ten dollars ($10.00) for each acre not to exceed two thousand dollars ($2,000.00);

(xiii) A certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which this permit is sought, or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations including use of explosives and entitled to compensation under the applicable provisions of state law. This policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations;

(xiv) For surface coal mining permit applications, a schedule listing all notices of violation which resulted in enforcement action of this act, and any law, rule or regulation of the United States, or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three (3) year period prior to the date of application;

(xv) Such other information as the administrator deems necessary or as good faith compliance with the provisions of this act require.

(b) The application shall include a mining plan and reclamation plan dealing with the extent to which the mining operation will disturb or change the lands to be affected, the proposed future use or uses and the plan whereby the operator will reclaim the affected lands to the proposed future use or uses. The mining plan and reclamation plan shall be consistent with the objectives and purposes of this act and of the rules and regulations promulgated. The mining plan and reclamation plan shall include the following:

(i) A statement of the present and proposed use of the land after reclamation;

(ii) Plans for surface gradient to a contour suitable for proposed use after reclamation is completed and proposed method of accomplishment;

(iii) Type of vegetation and manner of proposed revegetation or other surface treatment of affected area;

(iv) Method of disposal of buildings and structures erected during the operation;

(v) One (1) or more maps as may be required by the administrator of reclamation and mining operators on an appropriate scale showing location and extent of the proposed affected lands, together with the location of any public highways, dwelling, surface drainage area, and all utility and other easements existing on the affected lands. The map shall also show the location of all proposed pits, spoil banks, haul roads, railroads, topsoil conservation areas, buildings, refuse or waste areas, shipping areas including conveyors, and shall further set forth the drainage plan on, below, above and away from the affected land including subsurface water above the mineral seam to be removed; and shall further show the location of all waste water impoundments, any settling ponds, and other water treatment facilities, constructed drainways and natural drainways, and the surface bodies of water receiving this discharge. In lieu of an original map, a reproduction of a United States Geological Survey topographic map or aerial photograph is acceptable if the required information is platted. The map of the affected lands shall be accompanied by a typical cross section, showing the elevations of the surface, top and bottom of the mineral seam. Additional cross sections at appropriate intervals may be required by the administrator. The cross sections shall show surface elevations for a distance beyond the outlines of the affected areas as may be determined by the administrator;

(vi) An estimate of the total cost of reclaiming the affected lands as outlined in the written proposal computed in accordance with established engineering principles;

(vii) A contour map on the same scale as the reclamation map showing to the extent possible the proposed approximate contours of the affected area after completion of proposed reclamation;

(viii) The proposed method of separating topsoil, subsoil, and spoil piled, protecting and conserving them from wind and water erosion before reclamation begins by planting a quick growing cover or other acceptable methods, and the proposed method of preserving topsoil free of

acid or toxic materials, as well as the manner in which topsoil shall be replaced. If topsoil is virtually nonexistent or is not capable of sustaining vegetation, then the method of removing, segregating and preserving in a like manner subsoil which is better able to support vegetation. Spoil piles are to be kept separate and apart from topsoil. All piles are to be clearly marked so as to avoid confusion. If conditions do not permit the separation, conservation and replacement of topsoil or subsoil, a full explanation of such conditions shall be given and alternate procedures proposed;

(ix) A plan for insuring that all acid forming, or toxic materials, or materials constituting a fire, health or safety hazard uncovered during or created by the mining process are promptly treated or disposed of during the mining process in a manner designed to prevent pollution of surface or subsurface water or threats to human or animal health and safety. Such method may include, but not be limited to covering, burying, impounding or otherwise containing or disposing of the acid, toxic, radioactive or otherwise dangerous material;

(x) For a surface mining operation granted a new permit after July 1, 1973, and prior to March 1, 1975, except for an operation legally operating under the 1969 Open Cut Land Reclamation Act, an instrument of consent from the surface landowner, if different from the mineral owner, to the mining plan and reclamation plan. If consent cannot be obtained as to either or both, the applicant may request a hearing before the environmental quality council. The council shall issue an order in lieu of consent if it finds:

(A) That the mining plan and the reclamation plan have been submitted to the surface owner for approval;

(B) That the mining plan and the reclamation plan is detailed so as to illustrate the full proposed surface use including proposed routes of egress and ingress;

(C) That the use does not substantially prohibit the operations of the surface owner;

(D) The proposed plan reclaims the surface to its approved future use, in segments if circumstances permit, as soon as feasibly possible.

(xi) For an application filed after March 1, 1975, an instrument of consent from the resident or agricultural landowner, if different from the owner of the mineral estate, granting the applicant permission to enter and commence surface mining operation, and also written approval of the applicant's mining plan and reclamation plan. As used in this paragraph "resident or agricultural landowner" means a natural person or persons who, or a corporation of which the majority stockholder or stockholders:

(A) Hold legal or equitable title to the land surface directly or through stockholdings, such title having been acquired prior to January 1, 1970, or having been acquired through descent, inheritance or by gift or conveyance from a member of the immediate family of such owner; and

(B) Have their principal place of residence on the land, or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by the surface mining operation, or receive directly a significant portion of their income from such farming or ranching operations.

(xii) For any application filed after March 1, 1975, including any lands privately owned but not covered by the provisions of paragraph (b)(xi) of this section an instrument of consent from the surface landowner, if different from the owner of the mineral estate, to the mining plan and reclamation plan. If consent cannot be obtained as to the mining plan or reclamation plan or both, the applicant may request a hearing before the environmental quality council. The council shall issue an order in lieu of consent if it finds:

(A) That the mining plan and the reclamation plan have been submitted to the surface owner for approval;

(B) That the mining plan and the reclamation plan is detailed so as to illustrate the full proposed surface use including proposed routes of egress and ingress;

(C) That the use does not substantially prohibit the operations of the surface owner;

(D) The proposed plan reclaims the surface to its approved future use, in segments if circumstances permit, as soon as feasibly possible;

(E) For surface coal mining operations, that the applicant has the legal authority to extract coal by surface mining methods.

(xiii) The procedures proposed to avoid constituting a public nuisance, endangering the public safety, human or animal life, property, wildlife and plant life in or adjacent to the permit area

including a program of fencing all stockpiles, roadways, pits and refuse or waste areas to protect the surface owner's ongoing operations;

(xiv) The methods of diverting surface water around the affected lands where necessary to effectively control pollution or unnecessary erosion;

(xv) The methods of reclamation for effective control of erosion, siltation, and pollution of affected stream channels and stream banks by the mining operations;

(xvi) A statement of the source, quality and quantity of water, if any, to be used in the mining and reclamation operations;

(xvii) A blasting plan which shall outline the procedures and standards by which the operator of a surface coal mine will meet the provisions of W.S. 35-11-415(b)(xi);

(xviii) For surface coal mining operations, a plan to minimize the disturbances to the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after mining operations and during reclamation. This paragraph does not alter the authority granted under any other section of this act with respect to requirements for maintaining the hydrologic balance in the minesite, or associated offsite areas, of other mining operations;

(xix) A projected timetable for accomplishment of the reclamation plan;

(xx) For surface coal mining operations, a request for approval of any alternatives which may be proposed to the provisions of the regulations promulgated by the council. For each alternative provision the applicant shall:

(A) Identify the provision in the regulations promulgated by the council for which the alternative is requested;

(B) Describe the alternative proposed and provide an explanation including the submission of data, analysis and information in order to demonstrate that the alternative is in accordance with the applicable provisions of the act and consistent with the regulations promulgated by the council. In addition, the applicant shall demonstrate that the proposed alternative is necessary because of local requirements or local environmental or agricultural conditions;

(C) Paragraph (xx) of this subsection shall not take effect until approved by the secretary of the interior as an amendment to a state program approved pursuant to section 503 of P.L. 95-87 [30 U.S.C. § 1253].

(c) The applicant may have the local conservation district assist in preparation of, provide data for, perform research, review and comment upon the reclamation. For those lands in a surface coal mining permit application which a reconnaissance inspection suggests may be prime farm lands, a soil survey shall be made or obtained according to standards established by the United States secretary of agriculture in order to confirm the exact location of these prime farm lands, if any. If the United States secretary of agriculture or his representative has determined that the state, area or exact location within the permit area does not contain prime farm lands this subsection is inapplicable.

(d) The applicant shall file a copy of his application for public inspection at the office of the administrator and in the offices of the county clerks of the counties in which the proposed permit area is located. Those parts of the application which contain confidential trade secrets whose disclosure would be harmful to the applicant are exempt from these filings.

(e) The administrator shall notify the applicant within sixty (60) days of submission of the application whether or not it is complete. If the administrator deems the application incomplete, he shall so advise and state in writing to the applicant the information required. All items not specified as incomplete at the end of the first sixty (60) day period shall be deemed complete for the purposes of this subsection.

(f) If the applicant resubmits an application or further information, the administrator shall review the application or additional information within sixty (60) days of each submission and advise the applicant in writing if the application or additional information is complete.

(g) After the application is determined complete, the applicant shall publish a notice of the filing of the application once each week for two (2) consecutive weeks in a newspaper of general circulation in the locality of the proposed mining site.

(h) The administrator shall review the application and unless the applicant requests a delay advise the applicant in writing within one hundred fifty (150) days from the date of determining the application is complete, that it is suitable for publication under subsection (j) of this section, that the application is deficient or that the application is denied. All reasons for deficiency or denial shall

be stated in writing to the applicant. All items not specified as being deficient at the end of the first one hundred fifty (150) day period shall be deemed complete for the purposes of this subsection. After this period, for noncoal permits, the administrator shall not raise any item not previously specified as being deficient unless the applicant in subsequent revisions significantly modifies the application. If the applicant submits additional information in response to any deficiency notice, the administrator shall review such additional information within thirty (30) days of submission and advise the applicant in writing if the application is suitable for publication under subsection (j) of this section, that the application is still deficient or that the application is denied.

(j) The applicant shall cause notice of the application to be published in a newspaper of general circulation in the locality of the proposed mining site once a week for four (4) consecutive weeks commencing within fifteen (15) days after being notified by the administrator. The notice shall contain information regarding the identity of the applicant, the location of the proposed operation, the proposed dates of commencement and completion of the operation, the proposed future use of the affected land, the location at which information about the application may be obtained, and the location and final date for filing objections to the application. For initial applications or additions of new lands the applicant shall also mail a copy of the notice within five (5) days after first publication to all surface owners of record of the land within the permit area, to surface owners of record of immediately adjacent lands, and to any surface owners within one-half (½) mile of the proposed mining site. The applicant shall mail a copy of the application mining plan map within five (5) days after first publication to the Wyoming oil and gas commission. Proof of notice and sworn statement of mailing shall be attached to and become part of the application.

(k) Any interested person has the right to file written objections to the application with the administrator within thirty (30) days after the last publication of the above notice. For surface coal mining operations, the director may hold an informal conference if requested and take action on the application in accordance with the department's rules of practice and procedure, with the right of appeal to the council which shall be heard and tried de novo. A conference shall be held if the director determines that the nature of the complaint or the position of the complainants indicates that an attempt to informally resolve the disputes is preferable to a contested case proceeding. An informal conference or a public hearing shall be held within twenty (20) days after the final date for filing objections unless a different period is stipulated to by the parties. The council or director shall publish notice of the time, date and location of the hearing or conference in a newspaper of general circulation in the locality of the proposed operation once a week for two (2) consecutive weeks immediately prior to the hearing or conference. The hearing shall be conducted as a contested case in accordance with the Wyoming Administrative Procedure Act, and right of judicial review shall be afforded as provided in that act.

(m) The requested permit, other than a surface coal mining permit, shall be granted if the applicant demonstrates that the application complies with the requirements of this act and all applicable federal and state laws. The director shall not deny a permit except for one (1) or more of the following reasons:

(i) The application is incomplete;

(ii) The applicant has not properly paid the required fee;

(iii) Any part of the proposed operation, reclamation program, or the proposed future use is contrary to the law or policy of this state, or the United States;

(iv) The proposed mining operation would irreparably harm, destroy, or materially impair any area that has been designated by the council a rare or uncommon area and having particular historical, archaeological, wildlife, surface geological, botanical or scenic value;

(v) If the proposed mining operation will cause pollution of any waters in violation of the laws of this state or of the federal government;

(vi) If the applicant has had any other permit or license issued hereunder revoked, or any bond posted to comply with this act forfeited;

(vii) The proposed operation constitutes a public nuisance or endangers the public health and safety;

(viii) The affected land lies within three hundred (300) feet of any existing occupied dwelling, home, public building, school, church, community or institutional building, park or cemetery, unless the landowner's consent has been obtained. The provisions of this subsection shall not apply to operations conducted under an approved permit issued by the state land commissioner in compliance with the "Open Cut Land Reclamation Act of 1969";

(ix) The operator is unable to produce the bonds required;

(x) If written objections are filed by an interested person under subsection (g) of this section;

(xi) If information in the application or information obtained through the director's investigation shows that reclamation cannot be accomplished consistent with the purposes and provisions of this act;

(xii) through (xiv) Repealed by Laws 1980, ch. 64, § 3.

(xv) If the applicant has been and continues to be in violation of the provisions of this act;

(xvi) No permit shall be denied on the basis that the applicant has been in actual violation of the provisions of this act if the violation has been corrected or discontinued.

(n) The applicant for a surface coal mining permit has the burden of establishing that his application is in compliance with this act and all applicable state laws. No surface coal mining permit shall be approved unless the applicant affirmatively demonstrates and the administrator finds in writing:

(i) The application is accurate and complete;

(ii) The reclamation plan can accomplish reclamation as required by this act;

(iii) The proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

(iv) The area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to W.S. 35-11-425, within an area where mining is prohibited pursuant to section 522(e) of P.L. 95-87 [30 U.S.C. § 1272(e)], or within an area under review for this designation under an administrative proceeding, unless in such an area as to which an administrative proceeding has commenced pursuant to W.S. 35-11-425, the operator making the permit application demonstrates that, prior to January 1, 1977, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit;

(v) The proposed operation would:

(A) Not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, but, excluding undeveloped range lands which are not significant to farming on said alluvial valley floors and those lands as to which the administrator finds that if the farming that will be interrupted, discontinued or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(B) Not materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors. Paragraph (n)(v) of this section shall not affect those surface coal mining operations which in the year preceding August 3, 1977, produced coal in commercial quantities, and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the administrator to conduct surface coal mining operations within said alluvial valley floors. If coal deposits are precluded from being mined by this paragraph, the administrator shall certify to the secretary of the interior that the coal owner or lessee may be eligible for participation in a coal exchange program pursuant to section 510(b)(5) of P.L. 95-87 [30 U.S.C. § 1260(b)(5)].

(vi) If the area proposed to be surface coal mined contains prime farmland, the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards of this act and the regulations promulgated pursuant thereto;

(vii) The schedule provided in paragraph (a)(xiv) of this section indicates that all surface coal mining operations owned or controlled by the applicant are currently in compliance with this act and all laws referred to in paragraph (a)(xiv) of this section or that any violation has been or is in the process of being corrected to the satisfaction of the authority, department or agency which has jurisdiction over the violation.

(o) No permit shall be issued to an applicant after a finding by the director or council, after opportunity for hearing, that the applicant or operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of such nature and duration with such resulting irreparable harm to the environment as to indicate reckless, knowing or intentional conduct.

(p) The director shall render a decision on the application within thirty (30) days after completion of the notice period if no informal conference or hearing is requested. If an informal conference is held, all parties to the conference shall be furnished with a copy of the final written

decision of the director issuing or denying the permit within sixty (60) days of the conference. If a hearing is held, the council shall issue findings of fact and a decision on the application within sixty (60) days after the final hearing. The director shall issue or deny the permit no later than fifteen (15) days from receipt of any findings of fact and decision of the environmental quality council.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.24; Laws 1974, ch. 14, § 1; 1975, ch. 198, § 2; 1977, ch. 132, § 1; ch. 184, § 1; 1978, ch. 33, § 2; 1980, ch. 64, §§ 2, 3; ch. 65, § 1; ch. 67, § 1; 1983, ch. 67, § 1; 1991, ch. 227, § 1; 1992, ch. 60, § 3; 1993, ch. 40, § 1; ch. 90, § 1; 1995, ch. 64, § 1; 1996, ch. 66, § 1.

Editor's notes. — There is no subsection (i) or (l) in this section as it appears in the printed acts.

Open Cut Land Reclamation Act. — The Open Cut Land Reclamation Act of 1969, referred to in the first sentence in the introductory paragraph of subsection (b)(x) and in the second sentence in subsection (m)(viii), was repealed by Laws 1973, ch. 250, § 3.

Wyoming Administrative Procedure Act. — See § 16-3-101(a), (b)(xi).

Meaning of "this act." — For the definition of "this act," referred to throughout this section, see § 35-11-103(a)(xiii).

Application to pre-existing operations. — The reclamation requirements of this chapter apply to preexisting operations which were not completed or substantially completed prior to this chapter's enactment. Universal Equip. Co. v. State, 839 P.2d 967, 1992 Wyo. LEXIS 152 (Wyo. 1992).

Long-term lessee of land or holder of right-of-way easement is not "surface landowner" or "surface owner" entitled to the protection of the statutory provisions requiring consent of a "surface landowner" and the posting of a bond to protect the "surface owner or owners." Belle Fourche Pipeline Co. v. State, 766 P.2d 537, 1988 Wyo. LEXIS 175 (Wyo. 1988), reh'g denied, 1989 Wyo. LEXIS 26 (Wyo. Jan. 9, 1989).

Following condemnation, servient estate owner not surface owner for purposes of required consent. — Condemnation of a way of necessity for a railroad spur track and a mine truck haul road, according to statute, dispenses with the statutory requirement that a resident or agricultural landowner or a surface landowner consent to mining operations, or an order in lieu of such consent in the case of the latter kind of ownership, be included in an application for a mining permit, since after condemnation of such an easement the owner of the servient estate is not a surface owner for purposes of this section. Wymo Fuels, Inc. v. Edwards, 723 P.2d 1230, 1986 Wyo. LEXIS 601 (Wyo. 1986).

Notice adequate absent prejudice. — Where the objectors' actions indicated they recognized and understood they were protesting against any alteration in the direction and sequence of the mine plan progression, the notice served to inform adjoining property owners that a significant revision to a mining permit was under consideration and they were not prejudiced by the omission of the information from the notice. Pfeil v. Amax Coal W., 908 P.2d 956, 1995 Wyo. LEXIS 232 (Wyo. 1995).

Prior special-area designation is not required before council consideration of individual permit application can be made, which may result in denial premised on the site-sensitive statutory criteria. LeFaivre v. Environmental Quality Council, 735 P.2d 428, 1987 Wyo. LEXIS 421 (Wyo. 1987).

Special nature of mine site justifies denial. — The special nature of a mine site in Sweetwater county known as the "Natural Corrals" justified approval of the council's decision that reclamation would be impossible if the special nature of the area were destroyed by cutting up and hauling away the area's special features, namely the rock formation. LeFaivre v. Environmental Quality Council, 735 P.2d 428, 1987 Wyo. LEXIS 421 (Wyo. 1987).

Applied in Grams v. Environmental Quality Council, 730 P.2d 784, 1986 Wyo. LEXIS 649 (Wyo. 1986).

Quoted in Rissler & McMurry Co. v. State, 917 P.2d 1157, 1996 Wyo. LEXIS 87 (Wyo. 1996).

Cited in Platte Dev. Co. v. State, Envtl. Quality Council, 966 P.2d 972, 1998 Wyo. LEXIS 158 (Wyo. 1998).

Law reviews. — See article, "Federal Mineral Reservations," X Land & Water L. Rev. 1 (1975).

See article, "The Surface Mining Control and Reclamation Act of 1977: An Overview of Reclamation Requirements and Implementation," XIII Land & Water L. Rev. 703 (1978).

For case note, "Mining Law — Are Surface Lessees 'Surface Owners' Entitled to Protection of Consent and Bonding Provisions of Wyoming's Environmental Quality Act? Belle Fourche Pipeline Co. v. State, 766 P.2d 537, 1988 Wyo. LEXIS 175 (Wyo. 1988)," see XXV Land & Water L. Rev. 447 (1990).

Library References. — American Law of Mining, 2nd Edition §§ 175.14, 200.02 (Matthew Bender).

§ 35-11-407. Water impoundments.

(a) In any plan for the creation of a permanent water impoundment the applicant must adequately demonstrate that:

(i) The size of the impoundment, contouring and revegetation, if any, are suitable for its intended purpose and use;

(ii) Final grading will provide adequate safety and access for proposed water users;

(iii) The impoundment dam construction will be so designed to insure permanent stability and to prevent safety hazards.

History:

Laws 1975, ch. 198, § 1; W.S. 1957, § 35-502.24:1.

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

Severability. — Section 4, ch. 198, Laws 1975, reads: "If any portion of this act is declared invalid by a court of competent jurisdiction, such decision shall be limited to the portions found invalid, and shall not affect or invalidate the remaining portions of this act, which shall remain in full force and effect."

§ 35-11-408. Permit transfer.

A permit holder desiring to transfer his permit shall apply to the administrator. The potential transferee shall file with the administrator a statement of qualifications to hold a permit as though he were the original applicant for the permit and shall further agree to be bound by all of the terms and conditions of the original permit. The administrator shall recommend approval or denial of the transfer to the director. No transfer of a permit will be allowed if the current permit holder is in violation of this act, unless the transferee agrees to bring the permit into compliance with the provisions of this act.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.25; Laws 1992, ch. 60, § 3.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

§ 35-11-409. Permit revocation.

(a) The director shall revoke a mining permit if at any time he determines that the permit holder intentionally misstated or failed to provide any fact that would have resulted in the denial of a mining permit and which good faith compliance with the policies, purposes, and provisions of this act would have required him to provide.

(b) Unless an emergency exists, and except as otherwise provided in this act, the revocation of a permit shall become effective upon thirty (30) days' notice to the operator. In an emergency, a special meeting of the council may cause a revocation to become effective upon receipt of notice by the permit holder.

(c) When an inspection carried out pursuant to the enforcement of this act reveals that a pattern of violations by any surface coal mine operator of any requirements of this act or any permit conditions required by this act has existed, and that these violations were caused by the unwarranted failure of the operator to comply with these requirements or permit conditions, or that these violations are willfully caused by the operator, the director shall issue an order to the operator to show cause why the permit should not be suspended or revoked. Opportunity for a public hearing before the council shall be provided. If a hearing is requested the director shall inform all interested parties of the time and place of the hearing. Upon failure of the operator to show cause why the permit should not be suspended or revoked, the council shall suspend or revoke the permit.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.26; Laws 1978, ch. 33, § 2.

Meaning of "this act." — For the definition of "this act," referred to throughout this section, see § 35-11-103(a)(xiii).

§ 35-11-410. License to mine for minerals; application.

(a) A license to mine is issued for the duration of the mining operation on the permit area unless sooner revoked or suspended as provided herein. No mining operation of any kind may be commenced or conducted without a license to mine.

(b) Any operator desiring to engage in a mining operation shall make a written application to the administrator on forms furnished by the administrator for a license to mine. A license is required for each mining operation for which a separate mining permit is issued. The application shall contain or be accompanied by:

(i) The name and address of the applicant;

(ii) A copy of the mining permit for the lands which are to be affected by the proposed mining operation, and if the applicant is other than the permit holder, a copy of the instrument of permission from the permit holder granting to the applicant the rights thereto;

(iii) If the applicant for the license is other than the permit holder, a statement that the applicant has never had any permit issued by the administrator revoked, or license issued by the board revoked, or bond posted to comply with the act forfeited for intentional and substantial violation of the provisions of this act;

(iv) The location and number of acres of the area to be affected by the proposed mining operation for the first year of operation if less than the full extent of the permit area;

(v) The estimated dates of commencement and termination of the proposed mining operation;

(vi) A fee of twenty-five dollars ($25.00).

(c) The administrator shall promptly review the license application and if he finds the application in order and consistent with the terms of the permit and any other provisions of this act, the administrator will determine the size of the bond to be posted for the purpose of insuring reclamation of the lands affected during the first year of operation and upon receipt of said bond will promptly issue the license.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.27.

Meaning of "this act." — For the meaning of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Cited in Board of Trustees v. Spiegel, 549 P.2d 1161, 1976 Wyo. LEXIS 191 (Wyo. 1976).

§ 35-11-411. Annual report.

(a) An operator shall file an annual report with the administrator on or within thirty (30) days prior to the anniversary date of each permit. The report shall include:

(i) The name and address of the operator and the permit number;

(ii) A report in such detail as the administrator shall require supplemented with maps, cross sections, aerial photographs, photographs, or other material indicating:

(A) The extent to which the mining operations have been carried out;

(B) The progress of all reclamation work;

(C) The extent to which expectations and predictions made in the original or any previous reports have been fulfilled, and any deviation therefrom, including but not limited to the quantity of overburden removed, the quantity of minerals removed, and the number of acres affected.

(iii) A revised schedule or timetable of operations and reclamation and an estimate of the number of acres to be affected during the next one (1) year period.

(b) Upon receipt of the annual report the administrator shall make such further inquiry as shall be deemed necessary. If the administrator objects to any part of the report or requires further information he shall notify the permittee as soon as possible and shall allow a reasonable opportunity to provide the required information, or take such action as shall be necessary to remove the objection.

(c) As soon as possible after the receipt of the annual report the administrator shall conduct an inspection of the site of the operation. A report of this inspection shall be made a part of the permittee's annual report and a copy shall be delivered to the operator.

(d) Within sixty (60) days after receipt of the annual report, inspection report and other required materials, if the administrator finds the annual report in order and consistent with the reclamation plan as set forth in the permit, or as amended to adjust to conditions encountered during mining and reclamation operations as provided by law, the director shall determine the size of the bond to be posted for the purpose of insuring reclamation of the lands affected during the ensuing year.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.28;
Laws 1992, ch. 60, § 3.

§ 35-11-412. License revocation or suspension.

(a) The director shall revoke an operator's license:

(i) If at any time he becomes aware of the existence of any fact, reason, or condition that would have caused him to deny an application for a mining permit whether or not such condition existed at the time of the application;

(ii) If he determines that the operator intentionally misstated or failed to provide any fact that would have resulted in the denial of a license and which good faith compliance with the policies, purposes and provisions of this act would have required him to provide.

(b) The director may suspend the license if he determines the operator is in substantial violation of the terms of the license or of the provisions of this act. The suspension shall be lifted when the

violations have been corrected to the director's satisfaction. No suspension shall be unreasonably prolonged.

(c) Unless an emergency exists, the revocation or suspension of a license shall become effective upon thirty (30) days notice to the applicant. In the case of an emergency, the director may cause such revocation or suspension to become effective immediately upon receipt of notice.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.29; Laws 1975, ch. 198, § 2.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

§ 35-11-413. Special license to explore for minerals by dozing.

A special license to explore for minerals by dozing may be issued by the administrator for a one (1) year period without a permit.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.30; Laws 1975, ch. 198, § 2.

Law reviews. — See article, "Federal Mineral Reservations," X Land & Water L. Rev. 1 (1975).

§ 35-11-414. Special license to explore for minerals by dozing; application; standards; fee; bond; denial; appeal.

(a) Any person desiring to engage in mineral exploration by dozing shall apply to the administrator for a special license. The application shall be in accordance with rules and regulations adopted pursuant to the standards set forth in subsection (b) of this section, by the council upon recommendation by the director after consultation with the administrator and advisory board, and shall be accompanied by a fee of twenty-five dollars ($25.00).

(b) The council shall establish rules and regulations pursuant to the following reclamation standards for exploration by dozing:

(i) Backfilling the topsoil disturbed by dozing to its approximate original contour;

(ii) Revegetation of the land affected by dozing, including species to be used;

(iii) Timetables for the accomplishment of the above reclamation program.

(c) After reviewing the application for special license to explore by dozing the administrator shall set the amount of the bond necessary to insure complete reclamation and issue the special license to explore.

(d) The administrator may deny the special license to explore if he believes the application is in violation of the purpose of this act.

(e) The decision of the administrator may be appealed through the director to the council.

(f) All special licenses to explore issued by the administrator shall be reviewed by the council at their next regularly scheduled meeting.

(g) A bond posted under the terms of this section shall be released upon completion of the exploration, by dozing, the reclamation program, and an inspection by the administrator. Failure to comply with the provisions of this section will result in forfeiture of the bond.

(h) If the proposed exploration by dozing will substantially affect forty (40) or more acres in any four (4) contiguous sixteenth sections, the application shall conform to the reclamation standards and requirements governing surface mining, and the provisions of this section shall not apply.

(j) Any abandoned drill hole shall be subject to the reclamation provisions of subsection 30-96.16(e) [repealed] of the statutes.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.31; Laws 1974, ch. 14, § 1; 1975, ch. 198, § 2; 1992, ch. 60, § 3.

Editor's notes. — Section 30-96.16, W.S. 1957, including subsection (e) thereof, referred to in subsection (j) of this section, was repealed by Laws 1977, ch. 140, § 2. For present similar provision, see § 35-11-404(c)(v).

There is no subsection (i) in this section as it appears in the printed acts.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

§ 35-11-415. Duties of operator.

(a) Every operator to whom any permit or license is issued shall comply with all requirements of this act, the rules and regulations promulgated hereunder, and reclamation plans and other terms and conditions of any permit or license.

(b) The operator, pursuant to an approved surface mining permit and mining plan and reclamation plan, or any approved revisions thereto, shall:

(i) Conspicuously post and maintain at each entrance to the operation, a sign which clearly shows the name, address and telephone number of the operator, the name of his local authorized agent, and the permit number of his operation;

(ii) Conduct all surface mining and reclamation activities within the permit area in conformity with his approved plan;

(iii) Protect the removed and segregated topsoil from wind and water erosion, and from acid or toxic materials, and preserve such in a usable condition for sustaining vegetation when restored in reclamation, or if topsoil is virtually nonexistent or is not capable of sustaining vegetation, then subsoil, which is available and suitable, shall be removed, segregated, and preserved in a like manner as may be required in the approved reclamation plan;

(iv) Cover, bury, impound, contain or otherwise dispose of toxic acid forming, or radioactive material or any material determined by the administrator to be hazardous to health and safety, or which constitutes a threat of pollution to surface or subsurface water as may be required in the approved reclamation plan;

(v) Conduct contouring operations to return the land to the use set out in the reclamation plan;

(vi) Backfill or grade, and replace topsoil, or approved subsoil, which has been segregated and preserved as may be required in the approved reclamation plan;

(vii) Replace, as nearly as possible, native or superior self regenerating vegetation on land affected, as may be required in the approved reclamation plan;

(viii) Prevent, throughout the mining and reclamation operation, and for a period of five (5) years after the operation has been terminated, pollution of surface and subsurface waters on the land affected by the institution of plantings and revegetation, the construction of drainage systems and treatment facilities including settling ponds and the casing, sealing of boreholes, shafts, and wells so that no pollution is allowed to drain untreated into surface or subsurface water in accordance with state or federal water quality standards, whichever are higher, as may be required in the approved reclamation plan;

(ix) Reclaim the affected land as mining progresses in conformity with the approved reclamation plan;

(x) For surface coal mining operations, preserve throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors if these areas are classified within a permit. This paragraph does not alter the authority granted under any other section of this act with respect to requirements for preserving throughout the mining and reclamation process the essential hydrologic functions of the minesite, or associated offsite areas, of other mining operations;

(xi) For surface coal mining operations, insure that explosives are used only in accordance with existing state and federal law and the rules and regulations promulgated by the council, which shall include but are not limited to provisions to:

(A) Provide adequate advance written notice to local governments and residents who might be affected by the use of these explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident within one-half (½) mile of the proposed blasting site and by providing daily notice to the resident or occupiers in these areas prior to any blasting;

(B) Maintain for a period of at least three (3) years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blast;

(C) Limit the types of explosives and detonating equipment, the size, timing and frequency of blasts based upon the physical conditions of the site so as to prevent:

(I) Injury to persons;

(II) Damage to public and private property outside the permit area;

(III) Adverse impacts on any underground mine;

(IV) A change in the course, channel or availability of ground or surface water outside the permit area.

(D) Require that all blasting operations be conducted by trained and competent persons as certified by the administrator;

(E) Provide that upon the request of a resident or owner of a man-made dwelling or structure within one-half (½) mile of any portion of the permitted area the applicant or permittee shall conduct a preblasting survey of these structures and submit the survey to the administrator and a copy to the resident or owner making the request. The area of the survey shall be decided by the administrator and shall include provisions as the United States secretary of the interior shall promulgate.

(xii) For surface coal mining operations, replace in accordance with state law the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution or interruption proximately resulting from the surface coal mine operation.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.32; Laws 1978, ch. 33, § 2; 1980, ch. 64, § 2.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Law reviews. — For comment, "State Participation in Federal Policy Making for the Yellowstone Ecosystem: A Meaningful Solution or Business as Usual?" see XXI Land & Water L. Rev. 397 (1986).

Library References. — American Law of Mining, 2nd Edition § 175.14 (Matthew Bender).

§ 35-11-416. Protection of the surface owner.

(a) In those instances in which the surface owner is not the owner of the mineral estate proposed to be mined by mining operations a permit shall not be issued without the execution of a bond or undertaking to the state, whichever is applicable, for the use and benefit of the surface owner or owners of the land, in an amount sufficient to secure the payment for any damages to the surface estate, to the crops and forage, or to the tangible improvements of the surface owner. This amount shall be determined by the administrator and shall be commensurate with the reasonable value of the surrounding land, and the effect of the overall operation of the landowner. This bond is in addition to the performance bond required for reclamation by this act. As damage is determined it shall be paid. Financial loss resulting from disruption of the surface owner's operation shall be considered as part of the damage. A bond for surface damage shall not be required when the agreement negotiated between the surface owner and the mineral owner or developer waives any requirement therefor. Payment of damages shall be paid annually unless otherwise agreed to by the surface owner and the operator.

(b) An owner of real property and who holds a valid adjudicated water right and who obtains all or part of his supply of water for domestic, agricultural, industrial, recreational, or other legitimate use from a surface or an underground source other than a subterranean stream having a permanent distinct known channel may maintain an action against an operator to recover damages for pollution, diminution, or interruption of such water supply resulting from surface, in situ mining or underground mining.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.33; Laws 1974, ch. 14, § 1; 1975, ch. 198, §§ 2, 3; 1979, ch. 96, § 2.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Long-term lessee of land or holder of right-of-way easement is not "surface landowner" or "surface owner" entitled to the protection of the statutory provisions requiring consent of a "surface landowner" and the posting of a bond to protect the "surface owner or owners." Belle Fourche Pipeline Co. v. State, 766 P.2d 537, 1988 Wyo. LEXIS 175 (Wyo. 1988), reh'g denied, 1989 Wyo. LEXIS 26 (Wyo. Jan. 9, 1989).

Law reviews. — See article, "Federal Mineral Reservations," X Land & Water L. Rev. 1 (1975).

For case note, "Mining Law — Are Surface Lessees 'Surface Owners' Entitled to Protection of Consent and Bonding Provisions of Wyoming's Environmental Quality Act? Belle Fourche Pipeline Co. v. State, 766 P.2d 537, 1988 Wyo. LEXIS 175 (Wyo. 1988)," see XXV Land & Water L. Rev. 447 (1990).

§ 35-11-417. Bonding provisions.

(a) The purpose of any bond required to be filed with the administrator by the operator shall be to assure that the operator shall faithfully perform all requirements of this act and comply with all rules and regulations of the board made in accordance with the provisions of this act.

(b) All bonds shall be signed by the operator as principal, by a good and sufficient corporate surety licensed to do business in the state, and be made payable to the state of Wyoming. At the discretion of the director, the record mineral owner of the land to be mined may also be required to join as principal.

(c) The amount of any bond to be filed with the administrator prior to commencing any mining shall be:

(i) For an initial bond the amount equal to the estimated cost of reclaiming the affected land disturbed and restoring, as defined in W.S. 35-11-103(f)(iii), any groundwater disturbed by in situ mining during the first year of operation under each permit. The estimated cost shall be based on the operator's cost estimate submitted with the permit plus the administrator's estimate of the additional cost to the state of bringing in personnel and equipment should the operator fail or the site be abandoned. In no event shall the bond be less than ten thousand dollars ($10,000.00), except for limited mining operations authorized and bonded under W.S. 35-11-401(e) or any noncoal mine the affected land of which, excluding roads, is ten (10) acres or less, in which case the bond amount shall be set by the administrator with approval of the director to cover the cost of reclamation, and in no event less than two hundred dollars ($200.00) per acre, for affected land;

(ii) For renewal bonds the amount equal to the estimated cost of reclaiming the land to be disturbed during that renewal period, and the estimated cost of completing reclamation of unreleased lands and groundwater disturbed during prior periods of time. The estimated cost shall be based on the operator's cost estimate, which shall include any changes in the actual or estimated cost of reclamation of unreleased affected lands, plus the administrator's estimate of the additional cost to the state of bringing in personnel and equipment should the operator fail or the site be abandoned. In no event shall the bond be less than ten thousand dollars ($10,000.00), except for limited mining operations authorized and bonded under W.S. 35-11-401(e) or any noncoal mine the affected land of which, excluding roads, is ten (10) acres or less, in which case the bond amount shall be set by the administrator with approval of the director to cover the cost of reclamation, and in no event less than two hundred dollars ($200.00) per acre, for affected land.

(d) The council may promulgate rules and regulations for a self-bonding program for mining operations under which the administrator may accept the bond of the operator itself without separate surety when the operator demonstrates to the satisfaction of the director the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond this amount. This subsection shall not become operative until the council has promulgated rules and regulations for the self-bonding program which require that the protection provided by self-bonding shall be consistent with the objectives and purposes of this act.

(e) When the reclamation plan for any affected land has been completed, the administrator may recommend to the director the release of up to seventy-five percent (75%) of the bond required for that affected land. The remaining portion of the bond shall be not less than ten thousand dollars ($10,000.00), and shall be held for a period of at least five (5) years after the date of reduction to assure proper revegetation and restoration of groundwater. The retained portion of the bond may be returned to the operator at an earlier date if a release signed by the surface owner and approved by the administrator and director is obtained.

(f) If the area of land or groundwater under permit to be disturbed is increased, then the amount of bond shall be increased to cover the added cost of reclaiming all affected lands or groundwater.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.34; Laws 1974, ch. 14, § 1; 1978, ch. 33, § 2; ch. 49, § 1; 1979, ch. 96, § 2; 1980, ch. 66, § 1; 1981, ch. 68, § 1; ch. 165, § 1; 1992, ch. 60, § 3; 2013, ch. 44, § 1.

The 2013 amendment, effective July 1, 2013, substituted "limited" for "sand and gravel, pumice, scoria or jade", added "operations authorized and bonded under W.S. 35-11-401(e), added "noncoal", and deleted "surface coal mines" in the third sentence in

(c)(i) and (c)(ii).

Editor's notes. — The reference to § 35-11-103(f)(iii), in paragraph (c)(i), read as § 35-11-103(a)(iii) in the printed acts but was renumbered to accurately reflect the contents of § 35-11-103.

Meaning of "this act." — For the definition of "this act," referred to in subsections (a) and (d), see § 35-11-103(a)(xiii).

Application to preexisting operations. — Both § 35-11-403(a)(ii) and subsection (c)(ii) of this section authorize the administrator to require a bond to ensure the reclamation of buildings and facilities existing prior to the enactment of this chapter. Universal Equip. Co. v. State, 839 P.2d 967, 1992 Wyo. LEXIS 152 (Wyo. 1992).

§ 35-11-418. Cash or securities in lieu of bond.

In lieu of a bond, the operator or its principal may deposit federally insured certificates of deposit payable to the Wyoming department of environmental quality, or cash or government securities, or irrevocable letters of credit issued by a bank organized to do business in the United States, or all four.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.35; Laws 1974, ch. 14, § 1; 1980, ch. 66, § 1.

§ 35-11-419. Bond cancellation.

Such bond may be cancelled by the surety only after ninety (90) days notice to the director, and upon receipt of the director's written consent, which may be granted only when the requirements of the bond have been fulfilled.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.36.

§ 35-11-420. Cancellation of surety's license; substitution.

If the license to do business in Wyoming of any surety upon a bond filed pursuant to this act is suspended or revoked by any state authority then the operator, within thirty (30) days after receiving notice thereof, shall substitute a good and sufficient corporate surety licensed to do business in the state. Upon failure of the operator to make substitution of surety within a reasonable period of time, not to exceed sixty (60) days, the director shall suspend the permit of the operator to conduct operations upon the land described in the permit until proper substitution has been made.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.37.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

§ 35-11-421. Bond forfeiture proceedings.

(a) If the director determines that a performance bond should be forfeited because of any violation of this act, he shall, with the approval of the council, make formal request of the attorney general to begin bond forfeiture proceedings.

(b) The attorney general shall institute proceedings to forfeit the bond of any operator by providing written notice to the surety and to the operator that the bond will be forfeited unless the operator makes written demand to the council within thirty (30) days after his receipt of notice, requesting a hearing before the council. If no demand is made by the operator within thirty (30) days of his receipt of notice, then the council shall order the bond forfeited.

(c) The council shall hold a hearing within thirty (30) days after the receipt of the demand by the operator. At the hearing, the operator may present for the consideration of the council statements, documents and other information with respect to the alleged violation. At the conclusion of the hearing, the council shall either withdraw the notice of violation or enter an order forfeiting the bond.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.38.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Surety is permitted, under doctrine of legal subrogation, to replace defunct operator and to ask for a bond forfeiture hearing for the purpose of determining damages, if any, and to assert policy defenses. Allied Fid. Ins. Co. v. Environmental Quality Council, 753 P.2d 1038, 1988 Wyo. LEXIS 52 (Wyo. 1988).

§ 35-11-422. Forfeited bond inadequate; suit to recover reclamation costs.

If the forfeited bond is inadequate to cover the costs of the final reclamation program, the attorney general shall bring suit to recover the cost of the reclamation where recovery is deemed possible.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.39.

§ 35-11-423. Release of bonds.

(a) No bond shall be finally released until the reclamation program has been completed and approved by the administrator. The director may retain a portion of the bond for at least five (5) years as provided in W.S. 35-11-417, or for so long thereafter as necessary to assure proper revegetation of the reclaimed areas, as provided for in the operator's reclamation plan.

(b) The retained portion of the bond may be returned to the operator at an earlier date if a release signed by the surface owner and approved by the administrator is obtained.

(c) When the operator has completed successfully all surface mining and reclamation activities, he may request release of the retained bond. Upon receipt of the notification and request and within sixty (60) days, the administrator shall inspect and evaluate the reclamation work and report his findings to the director. If the director finds the reclamation meets the requirements of this act, he shall notify the operator and order the state treasurer to release that portion of the final bond. The state treasurer shall then return the bond, cash or securities constituting that portion of the bond so retained. If the director does not approve of the reclamation performed by the operator, he shall notify the operator by registered mail within a reasonable time after the request is filed. The notice shall state the reasons for denial and shall recommend corrective actions. Upon correction of the noted deficiency, the director shall order the state treasurer to release the bond, cash or securities constituting that portion of the bond so retained.

(d) The council shall promulgate rules and regulations governing the release of bonds for surface coal mining operations in compliance with P.L. 95-87 [30 U.S.C. § 1201 et seq.] as that law is worded on August 3, 1977, which shall be controlling notwithstanding other provisions of W.S. 35-11-417 and 35-11-423 to the contrary.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.40; Laws 1978, ch. 33, § 2; 1980, ch. 64, § 2.

Editor's notes. — Public Law 95-87, referred to near the middle of subsection (d), appears as 30 U.S.C. § 1201 et seq.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

§ 35-11-424. Deposit of fees and forfeitures.

(a) All forfeitures collected under the provisions of this act shall be deposited with the state treasurer in a separate account for reclamation purposes.

(b) All fees shall be deposited with the state treasurer in the general fund.

(c) All fines and penalties collected under this act shall be paid to the state treasurer and credited as provided in W.S. 8-1-109.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.41; Laws 1992, ch. 91, § 7(a); 2005, ch. 157, § 2; ch. 231, § 1.

The 2005 amendments. — The first 2005 amendment, by ch. 157, § 2, rewrote (c), which contained obsolete provisions.

Laws 2005, ch. 157, § 3, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 26, 2005.

The second 2005 amendment, by ch. 231, § 1, effective July 1, 2005, substituted "a separate account" for "an account within the trust and agency fund" in (a).

See the conflicting legislation note. This section is set out incorporating amendments by both 2005 acts.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Conflicting legislation. — Laws 2005, ch. 231, § 3, provides: "The provisions of this act shall supersede the provisions of any other bill enacted into law during the 2005 general session which amends or references accounts or funds to the extent any other enactment is inconsistent with the establishment of the funds and accounts created under this act. The state auditor shall account for any fund or account created in any other legislation enacted in the 2005 general session in accordance with generally accepted accounting principles (GAAP) as promulgated by the governmental accounting standards board (GASB) and in accordance with this act."

Law reviews. — See article, "The Surface Mining Control and Reclamation Act of 1977: An Overview of Reclamation Requirements and Implementation," XIII Land & Water L. Rev. 703 (1978).

Am. Jur. 2d, ALR and C.J.S. references. — Liability for reclamation fees under § 402 of Surface Mining Control and Reclamation Act (30 USCS § 1232), 117 ALR Fed 377.

§ 35-11-425. Designation of areas unsuitable for surface coal mining.

(a) Any person having an interest which is or may be adversely affected may petition the council to have an area designated as unsuitable for surface coal mining operations, or to have a designation terminated. The petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten (10) months after receipt of the petition the council shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time and location of the hearing. After having filed a petition and before the hearing, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty (60) days after the hearing, the council shall issue and furnish to the petitioner and any other party to the hearing, a written decision with reasons regarding the petition. The hearing need not be held if all petitioners reach agreement prior to the requested hearing and withdraw their request.

(b) If petitioned, the council will review the particular area and:

(i) Shall designate it as an area unsuitable for all or certain types of surface coal mining operations if it is determined that reclamation pursuant to the requirements of this act is not technologically and economically feasible; and

(ii) May designate it as an area unsuitable for surface coal mining if the coal mining operation will:

(A) Be incompatible with existing state or local land use plans or programs; or

(B) Affect fragile or historic lands in which these operations could result in significant damage to important historic, cultural, scientific and esthetic values and natural systems; or

(C) Affect renewable resource lands in which these operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and these lands to include aquifers and aquifer recharge areas; or

(D) Affect natural hazard lands in which these operations could substantially endanger life and property; these lands to include areas subject to frequent flooding and areas of unstable geology.

(c) Prior to designating any land areas as unsuitable for surface coal mining operations, the administrator shall prepare a detailed statement on:

(i) The potential coal resources of the area;

(ii) The demand for coal resources; and

(iii) The impact of this designation on the environment, economy and supply of coal.

(d) The above process will include proper notice, opportunities for public and agency participation including land use planning bodies and a public hearing prior to designation or redesignation, pursuant to this section.

(e) Any designation shall not prevent the mineral exploration pursuant to this act of any area so designated.

(f) The requirements of this section shall not apply to lands on which surface coal mining operations were being conducted on August 3, 1977 or under a permit issued pursuant to this act, or where substantial legal and financial commitments in these operations were in existence prior to January 4, 1977.

(g) This section shall not become effective until approval of a state program pursuant to P.L. 95-87 [30 U.S.C. § 1201 et seq.].

(h) This section shall operate independently of all other sections of the act except as to the application of the Wyoming Administrative Procedure Act.

History:
Laws 1978, ch. 33, § 1; 1980, ch. 64, § 2.

Editor's notes. — Public Law 95-87, referred to in subsection (g), appears as 30 U.S.C. § 1201 et seq.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Wyoming Administrative Procedure Act. — See § 16-3-101(a), (b)(xi).

Law reviews. — For comment, "State Participation in Federal Policy Making for the Yellowstone Ecosystem: A Meaningful Solution or Business as Usual?" see XXI Land & Water L. Rev. 397 (1986).

§ 35-11-426. In situ mineral mining permits and testing licenses.

(a) Any person desiring to engage in situ mineral mining or research and development testing is governed by this act.

(b) All provisions of this act applicable to a surface coal mining operation, as defined in W.S. 35-11-103(e)(xx), shall apply to coal in situ operations, regardless of whether such operations are connected with existing surface or underground coal mines, including research and development testing licenses, in addition to the requirements of W.S. 35-11-427 through 35-11-436.

History:
Laws 1979, ch. 96, § 1; 1980, ch. 64, § 2; 1996, ch. 53, § 1.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

§ 35-11-427. In situ mining permit; permit required; authority of land quality division exclusive.

Application for an in situ mining permit shall be made to the director. The director shall designate the land quality administrator as his representative on all matters concerning the application and all communications concerning review of and final action on the application for land, air and water quality divisions and solid waste management. Nothing herein shall be construed to limit the authority of the director on making the final decision on the permit application. No in situ mining operation shall be commenced or conducted unless a valid mining permit has been issued to the operator. Construction and completion of wells may be authorized prior to issuance of a mining permit or a research and development license pursuant to W.S. 35-11-404(g).

History:
Laws 1979, ch. 96, § 1.

§ 35-11-428. In situ mining permit; requirements for application; contents of application.

(a) Application for an in situ mining permit shall meet the requirements of W.S. 35-11-406(a)(i) through (vi) and (viii) through (xiv), and shall contain a description of the proposed permit area including the following information relating to the applicable in situ technology:

(i) Soils, vegetation, wildlife and surface hydrologic information consistent with the extent and nature of the proposed surface disturbance including descriptions of the soil, indigenous wildlife, natural gamma radiation background for lands to be impacted by radioactive materials, the vegetative cover, meteorological information and a description of any surface water and adjudicated water rights within the proposed permit area or on adjacent lands;

(ii) Geologic and groundwater hydrologic information including:

(A) A description of the general geology including geochemistry and lithology of the permit area;

(B) A characterization of the production zone and aquifers that may be affected including applicable hydrologic and water chemistry data to describe the projected effects of the mining activities.

(iii) A mine plan and a reclamation plan containing the information required by W.S. 35-11-406(b)(ii), (iv) and (viii) through (xix) and:

(A) A description of the mining techniques;

(B) A statement of the past, present and proposed postreclamation use of the land, groundwater and surface water;

(C) A site facility description of the typical design criteria relevant to environmental protection;

(D) A contour map which locates proposed equipment, facilities and appurtenances necessary to insure environmental protection;

(E) An assessment of impact to water resources on adjacent lands that may reasonably be expected and the steps that will be taken to mitigate the impact;

(F) Plans and procedures for environmental surveillance and excursion detection, prevention and control programs;

(G) Procedures for land reclamation including preparation procedures, proposed seeding lists and methods, drainage reestablishment details, post-mining contour map, methods to be used to conduct post-mining radiological evaluations and the methods for mitigating any significant subsidence which may occur as a result of the mining operation;

(H) Procedures for groundwater restoration; and

(J) Estimated costs of reclamation computed in accordance with established engineering principles.

History:
Laws 1979, ch. 96, § 1.

Editor's notes. — There is no subparagraph (a)(iii)(I) or subsection (b) in this section as it appears in the printed acts.

§ 35-11-429. In situ mining permit; contents of permit.

(a) Every permit shall:

(i) Require the operator to give verbal notice of an excursion to the administrator as soon as practical after the excursion is confirmed, followed by reasonable written notice;

(ii) Authorize the administrator to terminate or modify the mining operation if an excursion cannot be controlled or mitigated within the constraints specified in the permit;

(iii) Authorize the council upon the recommendation of the director to modify water quality criteria used for groundwater restoration when information made available after issuance of the permit warrants a modification;

(iv) Prohibit any significant change in mining technique, method of operation, recovery fluid used, mining and reclamation plans or other activities that would jeopardize reclamation or protection of any waters of the state unless a permit revision has been approved by the director pursuant to this act;

(v) Contain other conditions and requirements established by the director to employ the best practicable technology in carrying out this act.

History:
Laws 1979, ch. 96, § 1; 1992, ch. 60, § 3.

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

§ 35-11-430. Duties of in situ mining operator; records; annual report.

(a) The operator shall submit an annual report containing the general categories of environmental protection and reclamation information pursuant to W.S. 35-11-411.

(b) The operator shall maintain records at the mine site of all information resulting from monitoring activities required in the permit. The records shall state:

(i) The date, place, time and method of sampling and the personnel responsible for sampling;

(ii) The date on which analysis was performed and the personnel who performed the analysis;

(iii) Analytical techniques used; and

(iv) The results of the analysis.

History:
Laws 1979, ch. 96, § 1.

§ 35-11-431. Research and development license; renewal; application.

(a) A special license to conduct research and development testing may be issued by the administrator for a one (1) year period without a permit and may be renewed annually. An application for a research and development testing license shall be accompanied by a fee of twenty-five dollars ($25.00) and shall include:

(i) The information required by W.S. 35-11-406(a)(i) through (vi), (viii) and (x);

(ii) A description of the nature and scope of the testing activity, of general groundwater hydrology and general geology including the production zone;

(iii) A statement of the present and proposed postreclamation use of the land;

(iv) A reclamation plan which includes the method for groundwater restoration, a statement of the type of vegetation and manner of proposed revegetation or other surface treatment of the affected area and an estimate of the costs of reclamation;

(v) A timetable for the accomplishment of the reclamation plan;

(vi) All requirements of W.S. 35-11-406(j) and (k); and

(vii) Such other information as the administrator deems necessary or as good faith compliance with the provisions of this act requires.

History:
Laws 1979, ch. 96, § 1; 1996, ch. 53, § 1.

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

§ 35-11-432. Research and development license; grounds for denial; appeal.

The administrator may deny the special license to conduct research and development testing if he believes the application violates the purpose of this act. The decision of the administrator may be appealed through the director to the council.

History:
Laws 1979, ch. 96, § 1.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

§ 35-11-433. Research and development license; bond required; release or forfeiture; review of license.

(a) If a special license to conduct research and development testing is granted, the administrator shall require the licensee to provide a bond in an amount necessary to insure complete reclamation.

(b) A bond posted under the terms of this section shall be released upon completion of the reclamation program and an inspection by the administrator. Failure to comply with this act shall result in forfeiture of the bond.

History:
Laws 1979, ch. 96, § 1.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

§ 35-11-434. Research and development license; notice of incomplete application; when application deemed complete.

The administrator shall notify an applicant within ninety (90) days of submission of the application whether or not it is complete. If an application is incomplete, the administrator shall state in writing to the applicant the additional substantive information required.

History:
Laws 1979, ch. 96, § 1.

§ 35-11-435. Records to be filed on completion; abandoned drill holes.

(a) Upon completion of reclamation and abandonment by the operator, the operator shall record with the state engineer's office the location and nature of aquifers that have been affected by the in situ operation.

(b) Any abandoned drill hole shall be subject to the provisions of W.S. 35-11-404.

History:
Laws 1979, ch. 96, § 1.

§ 35-11-436. Existing in situ mining permits.

Any operator who possesses an in situ mining permit and license to mine shall have a period of one (1) year within which to show compliance with the requirements of W.S. 35-11-426 through 35-11-436.

History:
Laws 1979, ch. 96, § 1.

§ 35-11-437. Enforcement for surface coal mining operations.

(a) The director or his designated authorized representative shall issue a cessation order covering that portion of the operation relevant to the violation or hazard and impose any necessary affirmative obligations if:

(i) On the basis of an inspection, it is determined that a condition or practice exists, or violation is occurring, which creates an imminent danger to the public or which is causing or may reasonably be expected to cause significant, imminent environmental harm to land, air or water resources; or

(ii) Any violation of this article, land quality division regulations or permit conditions has not been abated within the time specified in the notice for abatement described in subsection (b) of this section, which period shall not exceed ninety (90) days.

(b) The director or his designated authorized representative shall issue a notice fixing a reasonable time for abatement and impose any necessary affirmative obligations if:

(i) On the basis of an inspection, it is determined that a permittee is in violation of this article, land quality division regulations or any permit conditions; and

(ii) A cessation order is not required under subsection (a) of this section.

(c) Any notice or order issued pursuant to this section may be affirmed, modified, vacated or terminated by:

(i) The director or his authorized representative; or

(ii) The council, if the operator or any person having an interest which is or may be adversely affected files a petition for review within thirty (30) days of the receipt of the notice or order. The council shall order any necessary investigation and provide a public hearing, if requested. Any public hearing shall be conducted as a contested case proceeding in accordance with the Wyoming Administrative Procedure Act.

(d) The director or, in his absence, the administrator shall affirm, modify, vacate or terminate any notice or order issued pursuant to this section which results in or requires cessation of mining within forty-eight (48) hours of its issuance. If cessation is affirmed, the operator shall be notified of the decision and be afforded an opportunity to request a hearing within ten (10) days of the decision. If a hearing is requested, the director shall fix a time and place for hearing before the council within five (5) calendar days of the request. The council shall affirm, modify or set aside the director's decision within forty-eight (48) hours following the adjournment of the hearing.

(e) Any notice or order issued pursuant to this section may be temporarily stayed pending review by the council if requested by the operator. Any request for a stay shall contain a detailed statement giving reasons for granting the stay. The council shall issue a decision granting or denying the stay in accordance with rules and regulations promulgated by the council.

(f) At the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) as determined by the council to have been reasonably incurred by the person for or in connection with his participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court or the council deems proper.

This subsection shall apply only to contested case proceedings or subsequent judicial review proceedings under the provisions of this act relating to the regulation of surface coal mining and reclamation operations in accordance with P.L. 95-87 [30 U.S.C. § 1201 et seq.], as that law is worded on August 3, 1977. For payments from the department:

(i) Repealed by Laws 1994, ch. 4, §§ 1, 2.

(ii) The contribution of a person who did not initiate a proceeding shall be separate and distinct from the contribution made by a person initiating the proceeding.

(iii) Repealed by Laws 1994, ch. 4, §§ 1, 2.

(g) Repealed by Laws 1994, ch. 4, § 2.

History:
Laws 1980, ch. 64, § 1; 1993, ch. 154, § 1; 1994, ch. 4, §§ 1, 2.

Federal reference. — Public Law 95-87, referred to in the second sentence in the introductory paragraph of subsection (f), appears as 30 U.S.C. § 1201 et seq.

Meaning of "this act." — For the definition of "this act," referred to in the second sentence in the introductory paragraph of subsection (f), see § 35-11-103(a)(xiii).

Wyoming Administrative Procedure Act. — See § 16-3-101(a), (b)(xi).

Permit reviews are proceedings related to the enforcement of the act. — Nonprofit citizen conservation organization was eligible for award of attorney fees when the organization challenged a permit review decision by the department of environmental quality and the challenge resulted in a settlement agreement, as department of environmental quality became a party when the conservation organization opposed the department's review decision, and because permit reviews are proceedings related to the enforcement scheme of the Wyoming environmental quality act. Powder River Basin Resource Council v. Wyoming Envtl. Quality Council, 869 P.2d 435, 1994 Wyo. LEXIS 24 (Wyo. 1994).

Standing in federal action. — Although plaintiff's suit against the state alleging that Wyoming's attorney's fees provision violated federal Surface Mining Control and Reclamation Act, 30 USCS § 1270(a)(2), was ripe when filed and not barred by the Eleventh Amendment of the U. S. Constitution, plaintiff lost standing because of the Wyoming supreme court's decision in 1994 ordering defendant to pay plaintiff's attorney's fees, since at that point plaintiff lost the injury on which its standing was originally based. Powder River Basin Resource Council v. Babbitt, 54 F.3d 1477, 1995 U.S. App. LEXIS 8899 (10th Cir. Wyo. 1995).

ARTICLE 5. SOLID WASTE MANAGEMENT

Law reviews. — For comment, "Hazardous Waste Cleanup in Wyoming: Legal Tools Available to the Private Citizen," see XIX Land & Water L. Rev. 395 (1984).

For case note, "Hazardous Waste — The Supreme Court's Interpretation of RCRA: An Inequitable Result. KFC Western, Inc. v. Meghrig, 516 U.S. 479, 116 S. Ct. 1251, 134 L. Ed. 2d 121, 1996 U.S. LEXIS 1955 (1996)," see XXXII Land & Water L. Rev. 699 (1997).

Am. Jur. 2d, ALR and C.J.S. references. — 61C Am. Jur. 2d Pollution Control §§ 1134 to 1269.

State and local regulation of private landowner's disposal of solid waste on own property, 37 ALR4th 635.

Relief available in citizen's suit under 42 USC § 6972 for violation of federal requirements relating to solid or hazardous waste, 71 ALR Fed 181.

39A C.J.S. Health and Environment §§ 45, 129, 133 to 157.

Library References. — American Law of Mining, 2nd Edition § 172.03 (Matthew Bender).

§ 35-11-501. Duties of the administrator of the solid and hazardous waste management division.

(a) In addition to the other powers and duties enumerated in this act, the director of the department through the administrator of the solid and hazardous waste management division shall coordinate the activities of all state agencies concerned with solid waste management and disposal. The administrator shall advise and consult with any person or municipality with respect to provisions of technical assistance in solid waste management technology, including collection, storage and disposal.

(b) The administrator of the solid and hazardous waste management division shall enforce and administer this article and the rules, regulations and standards promulgated under this article.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.42; Laws 1992, ch. 60, § 3.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Applied in Town of Torrington v. Envtl. Quality Council, 557 P.2d 1143, 1976 Wyo. LEXIS 234 (Wyo. 1976).

Law reviews. — For comment on solid waste management provisions of the Wyoming Environmental Quality Act of 1973, see IX Land & Water L. Rev. 133 (1974).

§ 35-11-502. Solid waste management facilities permits; term; renewals.

(a) No person, except when authorized under the permit system established pursuant to this act, shall:

(i) Locate, construct, operate or close a solid waste management facility; or

(ii) Modify the design, construction or operation of a solid waste management facility.

(b) No permit for a solid waste management facility shall be transferred without prior written approval of the director. A permit for a solid waste management facility may be transferred only to a person qualified to obtain and hold bonds or other financial assurances required and who meets the management and technical capability requirements under the rules and regulations promulgated pursuant to this act.

(c) After the effective date of this act no person, except upon a variance from paragraphs (i) through (iv) of this subsection granted by the director upon recommendation of the administrator after public hearing and upon written findings that the variance will not injure or threaten to injure the public health, safety or welfare, shall locate or construct a solid waste management disposal facility larger than one (1) acre within:

(i) One (1) mile of the boundaries of an incorporated city or town;

(ii) One (1) mile of a public school except with the written consent of the school district board of trustees or one (1) mile of an occupied dwelling house except with the written consent of the owner;

(iii) One-half (½) mile of the center line of the right-of-way of a state or federal highway unless screened from view as approved by the department; or

(iv) One-half (½) mile of a water well permitted or certificated for domestic or stock watering purposes except with written consent of the owner of the permit or certificate.

(d) No person shall accumulate solid waste at a permitted solid waste management facility in excess of a quantity which can be transferred, treated, processed, stored or disposed of within ninety (90) days however, if the solid waste must be transferred more than two hundred (200) miles, then one hundred eighty (180) days.

(e) The administrator shall notify the applicant within sixty (60) days of submission of the application whether or not it is complete. If the administrator deems the application incomplete, he shall so advise and state in writing to the applicant the information required. All items not specified as incomplete at the end of the first sixty (60) day period shall be deemed complete for the purposes of this subsection.

(f) If the applicant resubmits an application or further information, the administrator shall review the application or additional information within sixty (60) days of each submission and advise the applicant in writing if the application or additional information is complete.

(g) After the application is determined complete, the applicant shall give written notice of the application to the county where the applicant plans to locate the facility and to any municipalities which may be affected by the facility. The applicant shall simultaneously cause to be published once a week for two (2) consecutive weeks in a newspaper of general circulation within the county where the applicant plans to locate the facility notice of the proposed location, method and length of operation, and such other information as the council may require by rule and regulation. In addition, the council may by rule require an applicant for a proposed permit or for amendment to an existing permit to notify other affected persons of the application and any other information required by the council.

(h) The administrator shall review the application and unless the applicant requests a delay advise the applicant in writing within ninety (90) days from the date of determining the application is complete, that a proposed permit is suitable for publication under subsection (j) of this section, that the application is deficient or that the application is denied. All reasons for deficiency or denial shall be stated in writing to the applicant. All items not specified as being deficient at the end of the

first ninety (90) day period shall be deemed complete for the purposes of this subsection. If the applicant submits additional information in response to any deficiency notice, the administrator shall review such additional information within thirty (30) days of submission and advise the applicant in writing if a proposed permit is suitable for publication under subsection (j) of this section, that the application is still deficient or that the director has denied the application.

(j) The applicant shall give written notice of the proposed permit to the governing board of any county where the applicant plans to locate the facility and to any governing board of municipalities which may be affected by the facility. The applicant shall simultaneously cause notice of the proposed permit to be published in a newspaper of general circulation within the county where the applicant plans to locate the facility. The notice shall be published once a week for two (2) consecutive weeks commencing within fifteen (15) days after being notified by the administrator that the application is suitable for publication. The notice shall contain information regarding the identity of the applicant, the location of the proposed operation, the method and length of the operation, the location at which information about the application may be obtained, and the location and final date for filing objections to the application. In addition, the council may by rule require an applicant for a proposed permit or for amendment of an existing permit to notify other affected persons as authorized under subsection (g) of this section.

(k) Any interested person has the right to file written objections to the proposed permit with the director within thirty (30) days after the last publication of the notice given pursuant to subsection (j) of this section. If substantial written objections are filed, a public hearing shall be held within twenty (20) days after the final date for filing objections unless a different period is deemed necessary by the council. The council or director shall publish notice of the time, date and location of the hearing in a newspaper of general circulation in the county where the applicant plans to locate the facility once a week for two (2) consecutive weeks immediately prior to the hearing. The hearing shall be conducted as a contested case in accordance with the Wyoming Administrative Procedure Act, and right of judicial review shall be afforded as provided in that act.

(m) The director shall render a decision on the proposed permit within thirty (30) days after completion of the notice period if no hearing is requested. If a hearing is held, the council shall issue findings of fact and a decision on the proposed permit within thirty (30) days after the final hearing. The director shall issue or deny the permit no later than fifteen (15) days from receipt of any findings of fact and decision of the environmental quality council.

(n) Notwithstanding the requirements of subsections (f) through (m) of this section, the council shall promulgate rules to establish an alternate permitting procedure for low volume or low hazard solid waste treatment, transfer, processing and storage facilities. The rules shall identify classes or categories of solid waste treatment, transfer, processing and storage facilities which may be permitted using the alternate permitting procedure. The alternate procedure may provide, as determined by the council:

(i) For a single public notice by the applicant, unless the application or permit is contested. If the application or permit is contested the provisions of the Wyoming Administrative Procedure Act regarding public notice shall control;

(ii) That public notice shall be limited to notification of interested parties within the area served by the facility or the area where the facility is located;

(iii) For a single review by the department to determine completeness and technical adequacy, which shall be completed by the department within thirty (30) days of receipt of an initial or revised application; and

(iv) For issuance of a final permit upon completion of all alternate procedure notice and review requirements, provided that any such permit shall be subject to appeal under the provisions of this act.

(o) Effective July 1, 2012, the term for a new or renewed municipal solid waste landfill permit shall be for the lifetime of the solid waste landfill, through closure, not to exceed twenty-five (25) years.

(p) Effective July 1, 2012, for any existing municipal solid waste landfill permit, the next renewal permit shall be converted to a lifetime municipal solid waste permit.

(q) If, during the operation of the municipal solid waste landfill, the life of the municipal solid waste landfill is anticipated to exceed the term specified in the permit, the operator shall:

(i) Submit a municipal solid waste landfill permit amendment which shall include updates on any necessary provisions of the permit;

(ii) No later than three (3) years prior to the expiration of the lifetime municipal solid waste landfill permit, submit permit renewal information as required by the department. The municipal solid waste landfill permit may be renewed for another lifetime period, not to exceed twenty-five (25) years.

(r) Notice and opportunity for hearing for an amended municipal solid waste landfill permit shall be as provided for a new municipal solid waste landfill permit under this section.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.43; Laws 1989, ch. 148, § 2; 1992, ch. 60, § 3; 1993, ch. 130, § 1; 1995, ch. 135, § 1; 1996, ch. 14, § 1; 2011, ch. 110, § 2.

The 2011 amendment, added (o) through (r).

Laws 2011, ch. 110, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 2, 2011.

Editor's notes. — There is no subsection (i) or (l) in this section as it appears in the printed acts.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Wyoming Administrative Procedure Act. — See § 16-3-101(a), (b)(xi).

Statutory notice of requirements for establishing new solid waste disposal. — A municipality has the statutory notice of this section that it cannot establish a new solid waste disposal without prior approval and before establishment must be analyzed for adequacy. Town of Torrington v. Envtl. Quality Council, 557 P.2d 1143, 1976 Wyo. LEXIS 234 (Wyo. 1976).

Waste disposal site held "new site." — Where second waste disposal site was on same tract of land as first site but was more than a quarter of a mile away and was reached by a different highway, second site was a "new site" within the meaning of this section. Town of Torrington v. Envtl. Quality Council, 557 P.2d 1143, 1976 Wyo. LEXIS 234 (Wyo. 1976).

Stated in Rissler & McMurray Co. v. Environmental Quality Council (In re Bessemer Mt.), 856 P.2d 450, 1993 Wyo. LEXIS 123 (Wyo. 1993).

Cited in Board of Trustees v. Spiegel, 549 P.2d 1161, 1976 Wyo. LEXIS 191 (Wyo. 1976).

§ 35-11-503. Authority to promulgate rules and regulations for solid waste management facilities and for the management of hazardous wastes.

(a) The director, upon recommendation from the administrator after consultation with the water advisory board, is authorized to recommend that the council promulgate rules, regulations, standards and permit systems for solid waste management facilities in order to protect human health and the environment. The rules, regulations, standards and permit systems shall govern the management of any waste, including liquid, solid, or semisolid waste, which is managed within the boundary of any solid waste management facility, and:

(i) Shall provide requirements as to facility location, design, construction, operation, environmental monitoring, cost effective corrective actions for active facilities, closure, notices of public record, management and technical capabilities of the applicant and post-closure care as necessary to promote the purposes of this act;

(ii) Shall provide requirements for bonding or financial assurance to assure that solid waste management facilities will be constructed, operated and closed in accordance with the purposes and provisions of this act and the rules and regulations promulgated pursuant to this act;

(iii) Within ten (10) months after the effective date of this act the council shall adopt rules and regulations to implement this act and shall provide such reasonable time as may be necessary, but in no event to exceed twenty-four (24) months after the effective date of this act, for owners and operators of solid waste management facilities to comply with the rules, regulations, standards or permits;

(iv) Shall establish categories of solid waste management facilities based on waste type, volume, facility ownership, facility operation or other facility characteristics. Standards and requirements for each category may vary as are necessary to promote the purposes of this act;

(v) Shall provide for consistency and equivalency with rules and regulations adopted by the United States environmental protection agency under authority of Subtitle C of the Resource Conservation and Recovery Act, P.L. 94-580, as amended, for those facilities subject to such federal requirements, provided that:

(A) The director after consultation with the administrator may petition the council to promulgate rules and regulations more stringent than federal rules if adequate cause exists to determine that circumstances specific to the state compel adoption of more stringent rules to adequately protect the public health and environment of the state;

(B) The imposition of the rules under this paragraph is consistent and equivalent with the

imposition of rules by the United States environmental protection agency, except that the director after consultation with the administrator may petition the council to determine for individual permits or orders that adequate cause exists for permit conditions or orders more stringent than federal regulations;

(C) Nothing in this paragraph authorizes the promulgation of rules which are not otherwise authorized in this act.

(b) To the extent not already provided by subsection (a) of this section and W.S. 35-11-504 and notwithstanding W.S. 35-11-424, the director shall, pursuant to this section or by rule, require applicants for commercial radioactive waste management facility permits to do the following:

(i) Upon the filing of the application, pay a fee to be determined by the director, based upon the estimated cost of investigating, reviewing and processing of the application. Unused fees under this subsection shall be refunded to the applicant;

(ii) No less than ten (10) months prior to submission of an application for a commercial radioactive waste management facility permit, submit a notice of intent to file a permit application and a nonrefundable regulatory agency support fee in the amount of one hundred thousand dollars ($100,000.00);

(iii) Upon receipt of a permit and the filing of each annual report thereunder, pay an annual inspection and monitoring fee to be determined by the director, based upon the estimated costs of inspecting the facility and monitoring compliance with the permit terms. Unused funds shall be credited against the next annual inspection and monitoring fee;

(iv) Upon receipt of a permit, establish a long term remediation and monitoring trust for the benefit of the department in an amount sufficient to conduct perpetual monitoring and maintenance of the permitted facility and to remediate the release of any waste or waste constituent in violation of the approved post-closure plan. The long term remediation and monitoring trust may be initially funded by a letter of credit, cash or sufficient bond excepting self-bonds. The letter of credit, cash or bond shall be reduced by an amount equal to the per ton fee levied and paid to the trust during the prior year, provided:

(A) Facilities or portions thereof which the United States government is required by law to accept ownership and assume responsibility for perpetual monitoring, maintenance, and remediation shall not be required to establish a long term remediation and monitoring trust;

(B) Monies actually paid into the long term remediation and monitoring trust on a per ton basis shall be a credit against funds otherwise payable pursuant to W.S. 35-12-113(g)(i); and

(C) All expenses incurred by the department to conduct perpetual monitoring and maintenance of the permitted facility shall be paid by the permittee. The department may contract for temporary professional services to monitor and maintain the permitted facility and to assist in rulemaking.

(v) Reduce, to the extent determined by the director to be technically and economically reasonable, the toxicity of any waste managed at the facility; and

(vi) Follow post-closure land uses established for the facility by the director.

(c) Unless and until the council adopts rules pursuant to subsection (a) of this section, for commercial radioactive waste management facilities or a particular classification of commercial radioactive waste management facilities, the director shall rely upon the performance criteria and standards of title 10, part 40, appendix A, and title 40, part 192, subpart D of the Code of Federal Regulations, as of January 1, 1991, as guidance for determining whether an application complies with the act. Nothing in this subsection shall be construed to limit the director's authority to impose permit requirements or conditions or the council's authority to promulgate rules, consistent with this act, which are more stringent than the federal regulations referenced.

(d) The council shall, upon recommendation from the director and the administrators of the air, water and solid and hazardous waste divisions, promulgate rules and regulations which are:

(i) Necessary for the state to obtain authorization of its hazardous waste management regulatory program to operate in lieu of the federal hazardous waste program administered under subtitle C of the Resource Conservation and Recovery Act, P.L. 94-580, as amended, provided that the council may not adopt rules requiring imposition of administrative penalties for hazardous waste violations; and

(ii) Subject to the limitations on stringency of paragraph (a)(v) of this section, consistent with, and equivalent to rules and regulations adopted by the United States environmental protection

agency under authority of subtitle C of the Resource Conservation and Recovery Act, P.L. 94-580, as amended.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.44; Laws 1989, ch. 148, § 2; 1992, ch. 60, § 3; ch. 88, § 1; 1994, ch. 82, § 2; 1995, ch. 139, § 1; 2004, ch. 130, § 1.

The 2004 amendment, in (c), substituted "subsection (a)" for "paragraph (a)" in the first sentence, and "or" for "on" in the last sentence.

Laws 2004, ch. 130, § 4, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 19, 2004.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Resource Conservation and Recovery Act. — Subtitle C of the federal Resource Conservation and Recovery Act, referred to in the introductory language of subsection (a)(v) and in subsections (d)(i) and (d)(ii), appears as 42 U.S.C. §§ 6921 through 6939e.

Conflicting legislation. — Laws 2004, ch. 130, § 3, provides: "Any other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

Rules for establishment of solid waste sites not required. — There is no requirement that with respect to solid waste sites there must be rules and regulations for their establishment. This section provides only for rules pertaining to operation, not establishment of solid waste sites. Town of Torrington v. Envtl. Quality Council, 557 P.2d 1143, 1976 Wyo. LEXIS 234 (Wyo. 1976).

Law reviews. — For case note, "State Sovereignty— Back to the Future: The Supreme Court Reaffirms State Sovereignty in Cooperative Federalism Solutions to Environmental Problems. New York v. United States, 505 U.S. 144, 112 S. Ct. 2408, 120 L. Ed. 2d 120, 1992 U.S. LEXIS 3693 (1992)," see XXIX Land & Water L. Rev. 117 (1994).

§ 35-11-504. Bonding for solid waste management facilities.

(a) The council, by rules and regulations, shall establish bonding or financial assurance requirements for solid waste management facilities to assure there are adequate sources of funds to provide for cost effective:

(i) Closure costs, post-closure inspection and maintenance costs, and environmental monitoring and control costs, including but not limited to costs for:

(A) Removal and disposal of buildings, fences, roads and other facility developments, and reclamation of affected lands;

(B) Construction of any waste cover or containment system required as a condition of any facility permit;

(C) Removal and off-site treatment or disposal of any wastes that are being stored or treated;

(D) Decontamination, dismantling and removal of any waste storage, treatment or disposal equipment or vessels;

(E) Operating any environmental monitoring systems or pollution control systems that are required as a condition of any facility permit or by order of the director; and

(F) Conducting, only for disposal facilities, periodic post-closure inspections of cover systems, surface water diversion structures, monitor wells or systems, pollutant detection and control systems, and performing maintenance activities to correct deficiencies that are discovered.

(ii) In the event of any discharge of pollution to the air, land or to waters of the state which is in violation of a permit, standard, rule or requirement established under the provisions of this act, the estimated costs of remedying or abating the violation or damages caused by the violation;

(iii) The bond established under paragraph (i) of this subsection shall be available during the operating life and throughout the post-closure care period of the solid waste management facility to abate or remedy any violation of a permit, standard, rule or requirement established under the provisions of this act.

(b) The amount of any bond or financial assurance requirement shall be established by the director in accordance with procedures contained in rules and regulations of the council, but shall not be less than an amount sufficient to satisfy the purposes specified in subsection (a) of this section.

(c) Rules and regulations of the council promulgated to implement the bonding or financial assurance requirements of this section shall exempt any solid waste management facility:

(i) Owned or operated by a municipality provided that the facility is a participating facility under W.S. 35-11-515(o)(iii);

(ii) Owned and operated by the person disposing of solid waste generated at the facility who annually demonstrates to the director compliance with the financial responsibility requirements

of the Resource Conservation and Recovery Act, P.L. 94-580, as amended as of January 1, 1989 [42 U.S.C. § 6901 et seq.];

(iii) Which is also subject to bonding or financial assurance requirements under article 2, 3 or 4 of this act if the director determines that the bond or financial assurances under article 2, 3 or 4 satisfy the requirements of this section;

(iv) Which is subject to bonding or financial assurance requirements under W.S. 30-5-104(d)(i)(D) or 30 U.S.C. § 226(g) as amended as of January 1, 1989; or

(v) Owned or operated by an electric utility disposing of solid waste generated by an electric generation facility pursuant to a permit or license issued by the department, provided that the exemption may be revoked by the council upon petition of the director for a period of time established by the council to secure remedial action in the event of any discharge of pollution to the air, land or to waters of the state which is in violation of a permit, standard, rule or requirement established under the provisions of this act.

(d) The council shall provide rules for the establishment of a self-bonding program to be used if such a program will provide protection consistent with the objectives and purposes of article 5 of the act. In any such program, rules of the council shall provide for a timely reappraisal of pledged assets, require evidence of a suitable agent to receive service of process, assure that pledged assets are not already pledged for other projects, provide that pledged assets reside continuously in the state of Wyoming and provide for determination of the suitability of pledged assets.

(e) In lieu of a bond, the operator may deposit federally insured certificates of deposit payable to the Wyoming department of environmental quality, cash, government securities, or irrevocable letters of credit issued by a bank organized to do business in the United States, or all four (4).

(f) Any bond may be cancelled by the surety only after ninety (90) days written notice to the director, and upon receipt of the director's written consent, which may be granted only when the requirements of the bond have been fulfilled.

(g) If the license to do business in Wyoming of any surety upon a bond filed pursuant to this act is suspended or revoked by any state authority then the operator, within thirty (30) days after receiving notice thereof, shall substitute a good and sufficient corporate surety licensed to do business in the state. Upon failure of the operator to make substitution of surety within a reasonable period of time, not to exceed sixty (60) days, the director shall suspend the permit of the operator to accept solid wastes until proper substitution has been made.

(h) Bond forfeiture proceedings shall occur only after the department provides notice to the operator and surety pursuant to W.S. 35-11-701 that a violation exists and the council has approved the request of the director to begin forfeiture proceedings.

(j) With the approval of the council the director may:

(i) Expend forfeited funds to remedy and abate the circumstances with respect to which the bond was provided; and

(ii) Expend funds from the account under W.S. 35-11-424 to remedy and abate any immediate danger to human health, safety and welfare.

(k) If the forfeited bond or other financial assurance instrument is inadequate to cover the costs to carry out the activities specified in subsection (a) of this section, or in any case where the department has expended account monies under subsection (j) of this section, the attorney general shall bring suit to recover the cost of performing the activities where recovery is deemed possible.

(m) When the director determines that the violation has been remedied or the damage abated, the director shall release that portion of the bond or financial assurance instrument being held under paragraph (a)(ii) of this section. When the director determines that closure activities have been successfully completed at any solid waste management facility, the director shall release that portion of the bond or financial assurance instrument being held to guarantee performance of activities specified in subparagraphs (a)(i)(A) through (E) of this section. For solid waste management facilities other than landfills for the disposal of municipal wastes, the remaining portion of the bond or financial assurance instrument shall be held for a period of not less than five (5) years after the date of facility closure, or so long thereafter as necessary to assure proper performance of any post-closure activities specified in subparagraph (a)(i)(F) of this section. For municipal solid waste management facilities, the period shall be the minimum necessary to comply with P.L. 94-580. The retained portion of the bond or other financial assurance instrument may be returned to the operator at an earlier date if the director determines that the facility has been adequately stabilized and that environmental monitoring or control systems have demonstrated that the

facility closure is protective of public health and the environment consistent with the purposes of this act.

(n) No supplemental bond or financial assurance shall be required of any facility, mine, permit or license subject to the bond or financial assurance requirements of article 2, 3 or 4 of this act, to meet the requirements of this section, for any solid waste management facility used solely for the management of wastes generated within the boundary of the permitted facility or mine operation by the facility or mine owner or operator, or from a mine mouth electric power plant or coal drier.

History:
Laws 1989, ch. 148, § 1; 1992, ch. 60, § 3; 1993, ch. 114, § 2; 1994, ch. 36, § 1; 1995, ch. 24, § 1; 1996, ch. 60, § 1; 2005, ch. 231, § 1; 2008, ch. 116, § 1.

The 2005 amendment, effective July 1, 2005, deleted "trust and agency" preceding "account" in (j)(ii) and (k).

The 2008 amendment, substituted "P.L. 94-580" for "P.L. 94-584" in (m).

Laws 2008, ch. 116, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 13, 2008.

Editor's notes. — There is no subsection (i) or (l) in this section as it appears in the printed acts.

Laws 1989, ch. 205, § 1, also enacted a § 35-11-504, which has been renumbered as § 35-11-508. Laws 1989, ch. 78, § 1, also enacted a § 35-11-504, which has been renumbered as § 35-11-509.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Conflicting legislation. — Laws 2005, ch. 231, § 3, provides: "The provisions of this act shall supersede the provisions of any other bill enacted into law during the 2005 general session which amends or references accounts or funds to the extent any other enactment is inconsistent with the establishment of the funds and accounts created under this act. The state auditor shall account for any fund or account created in any other legislation enacted in the 2005 general session in accordance with generally accepted accounting principles (GAAP) as promulgated by the governmental accounting standards board (GASB) and in accordance with this act."

Resource Conservation and Recovery Act. — The federal Resource Conservation and Recovery Act (P.L. 94-580) referred to in subsection (c)(ii), and in the next-to-last sentence in subsection (m), appears as 42 U.S.C. § 6901 et seq.

§ 35-11-505. Existing regulations remain in effect.

The Wyoming solid waste management rules and regulations, promulgated by the council in 1975 and amended in 1980, shall remain in effect until amended, repealed or otherwise revised by the council.

History:
Laws 1989, ch. 148, § 1.

Editor's notes. — Laws 1989, ch. 78, § 1, also enacted a § 35-11-505, which has been renumbered as § 35-11-510.

§ 35-11-506. Applications subject to penalty of perjury.

All applications submitted pursuant to this chapter shall be signed under oath subject to penalty of perjury by the applicant if an individual, by at least one (1) principal if the application is for a partnership or joint venture, or by at least two (2) principal officers if the application is for a corporation.

History:
Laws 1989, ch. 148, § 1.

Cross references. — As to perjury in judicial, legislative or administrative proceedings, see § 6-5-301.

Editor's notes. — Laws 1989, ch. 78, § 1, also enacted a § 35-11-506, which has been renumbered as § 35-11-511.

§ 35-11-507. [Repealed.]

Repealed by Laws 1990, ch. 102, § 1.

§ 35-11-508. Recycling and processing requirements for commercial solid waste management facilities.

(a) In recognition of the need to minimize unnecessary uses of the land for solid waste management, to allow for an effective ability for state oversight, regulation and inspection of solid

wastes intended to be managed in the state and to conserve natural resources in accord with the policy and purpose of this act, commercial solid waste management facilities shall conform to the following operating practices:

(i) Solid wastes shall be screened by the facility operator in a manner approved by the director to assure to the maximum practical extent that wastes prohibited from disposal at the facility are not managed or disposed of at the facility. Management or disposal of any prohibited waste by a facility shall be cause for the council to issue a cessation order preventing continued receipt of solid wastes at the facility. The order shall remain in effect until the director approves a revised waste screening plan submitted by the facility operator which the director deems sufficient to prevent receipt of wastes prohibited from disposal at the facility;

(ii) Solid wastes shall be processed within the state to facilitate inspections of processing by the department, and removal and recovery of useful components of the waste stream as required by this section, using processes found to be acceptable in rules and regulations promulgated by the council including but not limited to grinding, shredding, incineration or composting;

(iii) Rules and regulations of the council shall establish minimum acceptable removal and recovery rates for useful components of the solid waste stream. Such rates may be established for the facility as a whole, or may differ for different components of the solid waste stream;

(iv) Following adoption by the council of rules and regulations to implement this section, disposal of useful components of the solid waste stream shall be prohibited at any land disposal facility in the state;

(v) Residues remaining following processing, separation and reclamation of useful components of the solid waste stream shall be treated, stored or disposed in compliance with the requirements of this act.

(b) For purposes of this section useful components of the solid waste stream include but are not limited to energy, glass, ferrous and nonferrous metals, paper products and organic matter.

(c) Compliance with the requirements of this section for commercial solid waste management facilities does not limit any other requirements which may be applicable to such facilities under the act, nor any applicable local rule or ordinance.

History:
Laws 1989, ch. 205, § 1; W.S. 1977, § 35-11-504.

Editor's notes. — This section was enacted as § 35-11-504. As Laws 1989, ch. 148, also enacted a § 35-11-504, this section has been renumbered as § 35-11-508. See, also, §§ 35-11-509 and 35-11-513 and notes thereto.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

§ 35-11-509. Lead acid batteries; land disposal prohibited.

(a) No person shall place a used lead acid battery in mixed municipal solid waste, discard or otherwise dispose of a lead acid battery except by delivery to an automotive battery retailer or wholesaler, to a collection or recycling facility authorized under the laws of Wyoming, or to a secondary lead smelter permitted by the environmental protection agency.

(b) No automotive battery retailer shall dispose of a used lead acid battery except by delivery to the agent of a battery wholesaler, to a battery manufacturer for delivery to a secondary lead smelter permitted by the environmental protection agency, to a collection or recycling facility authorized under the laws of Wyoming or to a secondary lead smelter permitted by the environmental protection agency.

(c) Each battery improperly disposed of shall constitute a separate violation.

(d) Each violation of this section is a misdemeanor subject to a fine not to exceed one hundred dollars ($100.00).

History:
Laws 1989, ch. 78, § 1; W.S. 1977, § 35-11-504.

Editor's notes. — This section was enacted as § 35-11-504. As Laws 1989, ch. 148, also enacted a § 35-11-504, this section has been renumbered as § 35-11-509. See, also, § 35-11-508 and notes thereto.

§ 35-11-510. Lead acid batteries; collection for recycling.

(a) A person selling lead acid batteries at retail or offering lead acid batteries for retail sale in the state shall:

(i) Accept, at the point of transfer, in a quantity at least equal to the number of new batteries purchased per year, used lead acid batteries from customers, if offered by customers; and

(ii) Post written notice which shall be at least eight and one-half (8 ½) inches by eleven (11) inches in size and shall contain the universal recycling symbol and the following language:

(A) It is illegal to discard a motor vehicle battery or other lead acid battery;

(B) Recycle your used batteries; and

(C) State law requires us to accept used motor vehicle batteries or other lead acid batteries for recycling in exchange for new batteries purchased.

History:
Laws 1989, ch. 78, § 1; W.S. 1977, § 35-11-505.

Editor's notes. — This section was enacted as § 35-11-505. As Laws 1989, ch. 148, also enacted a § 35-11-505, this section has been renumbered as § 35-11-510.

There is no subsection (b) in this section as it appears in the printed acts.

§ 35-11-511. Automotive battery retailers required to post notice; penalty.

The department shall produce, print and distribute the notices required by W.S. 35-11-510 to all places where lead acid batteries are offered for sale at retail. Failure to post the required notice shall subject the establishment to a fine of one hundred dollars ($100.00).

History:
Laws 1989, ch. 78, § 1; W.S. 1977, § 35-11-506.

Cross references. — As to creation of state department of environmental quality, see § 35-11-104.

Editor's notes. — This section was enacted as § 35-11-506. As Laws 1989, ch. 148, also enacted a § 35-11-506, this section has been renumbered as § 35-11-511.

§ 35-11-512. Lead acid battery wholesalers.

Any person selling new lead acid batteries at wholesale shall accept, at the point of transfer, in a quantity at least equal to the number of new batteries purchased per year, used lead acid batteries from customers, if offered by customers. A person accepting batteries in transfer from an automotive battery retailer shall be allowed a period not to exceed one hundred twenty (120) days to remove batteries from the retail point of collection.

History:
Laws 1989, ch. 78, § 1; W.S. 1977, § 35-11-507.

Editor's notes. — This section was enacted as § 35-11-507. As Laws 1989, ch. 148, also enacted a § 35-11-507, this section has been renumbered as § 35-11-512.

§ 35-11-513. Penalties.

Violations of W.S. 35-11-510 and 35-11-512 are misdemeanors subject to a penalty of up to seven hundred fifty dollars ($750.00).

History:
Laws 1989, ch. 78, § 1; W.S. 1977, § 35-11-508.

Editor's notes. — This section was enacted as § 35-11-508. As Laws 1989, ch. 205, enacted a § 35-11-504, which was renumbered as § 35-11-508 (see § 35-11-508 and notes thereto), this section has been renumbered as § 35-11-513.

§ 35-11-514. Approval of commercial solid waste management, commercial incineration and disposal facilities.

(a) No construction shall commence of, nor shall any wastes be accepted or received at, any commercial solid waste management facility, or any commercial waste incineration or disposal facility subject to regulation under W.S. 35-12-102(a)(vii) unless the facility has been approved by resolution of the board of county commissioners of the county where the proposed facility is to be located. The county commissioners shall hold one (1) or more public hearings before making their

decision. The county commissioners shall publish notice of each hearing in a newspaper of general circulation in the area of the proposed facility once each week for at least two (2) consecutive weeks prior to the hearing. The board of county commissioners may authorize a proposed facility upon considering that the facility:

(i) Is necessary and meets industrial, socioeconomic or municipal needs for additional capacity to manage wastes;

(ii) Reduces industry or municipal reliance on waste management methods which would be less suitable for the protection of the environment or public health than would be possible by the proposed facility; and

(iii) Employs the best available technology to protect public health, safety and the environment, and is located so as to ensure maximum protection of public health, safety and the environment as compared to other alternative methods and locations.

(b) Nothing in this section shall be construed as exempting any commercial solid waste management facility, or any commercial waste incineration or disposal facility from any other provision of this act or the Industrial Development and Information Siting Act [chapter 12 of this title].

History:
Laws 1992, ch. 68, § 1.

"this act," referred to in subsection (b), see § 35-11-103(a)(xiii).

Meaning of "this act." — For the definition of

§ 35-11-515. Account created for the guarantee of costs for closure and post-closure care for municipally owned or operated solid waste disposal facilities.

(a) There is created an expendable trust account to provide a guarantee that adequate monies will be available to close and conduct post-closure monitoring at municipal solid waste disposal facilities, in compliance with the requirements of this article and applicable federal law. Monies shall be paid into and from the account in accordance with this section. Interest earned on investments from the account shall be credited back to the account.

(b) Any municipal solid waste disposal facility shall be eligible to participate in the account but shall not be required to participate. Participating facilities shall be eligible for the guarantees provided in subsection (c) of this section. Nonparticipating facilities shall not be eligible for the guarantees provided in subsection (c) of this section. Nonparticipating facilities may either separately or together, take necessary action to comply with state or federal closure and post-closure regulations.

(c) Participating facilities are exempt from any requirement under W.S. 35-11-504(c) pertaining to financial assurance requirements for closure and post-closure care of municipal solid waste disposal facilities. The state hereby guarantees, for purposes of compliance with subtitle D of the Resource Conservation and Recovery Act, P.L. 94-580 [42 U.S.C. § 6941 et seq.], and W.S. 35-11-504(a)(i), that the closure and post-closure care requirements of participating facilities will be satisfied by the provisions of this section.

(d) Each participating facility shall:

(i) Once every four (4) years prepare a closure and post-closure cost estimate in accord with rules of the council; or

(ii) Agree to use a standard closure and post-closure cost estimate prepared by the director.

(e) Each participating facility shall once every four (4) years calculate the remaining usable solid waste disposal capacity available at the facility, expressed in years. The procedures for calculating remaining capacity shall be prescribed by the director, after consultation with representatives of the participating facilities.

(f) Each participating facility shall pay annually into the account a premium, the sum of which at facility closure will equal no less than three percent (3%) of the sum of the closure and post-closure costs estimates specified in subsection (d) of this section.

(g) At any time following the proper certification of facility closure in compliance with rules of the council, a participating facility owner may apply to the director to receive a refund of the closure guarantee costs which have been paid into the account on behalf of the facility.

(h) At any time following the proper certification of the conclusion of the post-closure period in

compliance with rules of the council, a participating facility owner may apply to the director to receive a refund of the post-closure guarantee costs which have been paid into the account on behalf of the facility.

(j) The council is authorized to adopt rules governing payment requirements, expenditures from the account, notifications by owners, disclosures of information, and any other administrative matter associated with the account. Rules of the council shall prescribe that participating facilities electing to cease participating in the account, or applying for refunds under subsection (g) or (h) of this section, shall be entitled to a refund limited to ninety percent (90%) of the actual contribution paid by the facility, less any expenditures paid from the account on behalf of the facility which have not been recovered under subsection (m) of this section.

(k) The director shall use the account to perform closure or post-closure maintenance activities at any participating facility, if the facility owner is unable to carry out those responsibilities. The director, subject to appeal to the council, shall determine the amounts of any expenditures from the account.

(m) The attorney general shall file suit to recover any funds expended under subsection (k) of this section.

(n) Nothing in this section shall relieve any owner or operator of a solid waste management facility of the requirement to comply with applicable closure or post-closure requirements of this act. No third party cause of action is created by this section. Existence of the account does not limit the liability of any owner of a municipal solid waste disposal facility for damages or costs which may occur as the result of any failure to close, or conduct post-closure maintenance, in compliance with this act.

(o) For the purpose of this section:

(i) "Account" means the account created by subsection (a) of this section;

(ii) "Municipal solid waste disposal facility" means a solid waste landfill or land disposal facility which is owned or operated by a municipality and which receives any solid wastes, including garbage, trash and sanitary waste in septic tanks, derived from households and nonhazardous industrial waste;

(iii) "Participating facility" means a municipal solid waste disposal facility which elects to participate and is participating in the account in accordance with the requirements of this section.

History:
Laws 1993, ch. 114, § 1; 1994, ch. 36, § 1; 2005, ch. 231, § 1.

The 2005 amendment, effective July 1, 2005, deleted "within the trust and agency fund" in (a).

Editor's notes. — There is no subsection (i) or (l) in this section as it appears in the printed acts.

Resource Conservation and Recovery Act. — Subtitle D of the federal Resource Conservation and Recovery Act, referred to in the second sentence in subsection (c), appears as 42 U.S.C. § 6941 et seq.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Conflicting legislation. — Laws 2005, ch. 231, § 3, provides: "The provisions of this act shall supersede the provisions of any other bill enacted into law during the 2005 general session which amends or references accounts or funds to the extent any other enactment is inconsistent with the establishment of the funds and accounts created under this act. The state auditor shall account for any fund or account created in any other legislation enacted in the 2005 general session in accordance with generally accepted accounting principles (GAAP) as promulgated by the governmental accounting standards board (GASB) and in accordance with this act."

§ 35-11-516. Regulation of hazardous waste generators and transporters.

(a) Each person who generates or transports hazardous waste in an amount which would otherwise subject the person to regulation under subtitle C of the Resource Conservation and Recovery Act, P.L. 94-580 [42 U.S.C. § 6921 et seq.], shall comply with the following requirements:

(i) Each generator shall:

(A) Keep adequate records of quantities, composition and disposition of the hazardous waste generated;

(B) Adequately label any containers used for the storage, transport or disposal of hazardous waste;

(C) Use appropriate containers for hazardous waste;

(D) Furnish information as may be required on the general chemical composition and

hazardous properties of hazardous waste to persons transporting, treating, storing or disposing the waste;

(E) Use the national hazardous waste shipping manifest system, and employ any other reasonable means to assure that the hazardous waste generated is shipped to and arrives at the designated, authorized hazardous waste treatment, storage or disposal facility;

(F) Submit reports to the department at least once every two (2) years setting out:

(I) The quantities and nature of hazardous waste generated during the year;

(II) The disposition of all hazardous waste reported under this subsection;

(III) The efforts undertaken during the year to reduce the volume and hazardous characteristics of hazardous waste generated; and

(IV) The changes in volume and hazardous characteristics of waste actually achieved during the year reported in comparison with previous years.

(G) Certify, on the shipping manifest required under this subsection, that:

(I) The generator of the hazardous waste has a program in place to reduce the volume or quantity and hazardous characteristics of the waste to the degree determined by the generator to be economically practicable; and

(II) The proposed method of treatment, storage or disposal is that practicable method currently available to the generator that satisfies current regulatory requirements and which minimizes the present and future threat to human health and the environment.

(ii) Each transporter shall:

(A) Keep adequate records of hazardous waste transported, its source and delivery points;

(B) Transport hazardous waste only if it is properly labeled and manifested; and

(C) Transport hazardous waste only to the hazardous waste treatment, storage or disposal facility which the shipper designates on the manifest form, to be a facility holding a permit issued by the United States environmental protection agency, an authorized state or the department.

(b) The council shall, upon recommendation from the director, promulgate rules and regulations to implement the requirements of this section applicable to generators and transporters of hazardous waste, and to fuels produced from hazardous waste and mixtures of hazardous waste and other materials. The rules shall be no more and no less stringent than corresponding rules which have been adopted by the United States environmental protection agency to implement sections 3002 and 3003 of subtitle C of the Resource Conservation and Recovery Act. [42 U.S.C. § 6921 et seq.].

History:
Laws 1994, ch. 82, § 1.

Resource Conservation and Recovery Act. — Subtitle C of the federal Resource Conservation and Recovery Act, referred to in the introductory language of subsection (a) and in the second sentence in subsection (b), appears as 42 U.S.C. § 6921 et seq.

§ 35-11-517. Fees applicable to hazardous waste treatment, storage and disposal facility operators.

(a) The department shall implement a permit fee system and schedule of fees which are applicable to hazardous waste treatment, storage and disposal facilities.

(b) Permit fees shall be collected from applicants for permits for any facility subject to subsection (a) of this section, and annually from those existing facilities for the duration of the operating, closure and post-closure permit period. The fees for applicants for permits and the annual fees for inspection and enforcement shall be based on the facility type and size. The department shall develop a fee structure which, to the extent feasible, equitably apportions the department's estimated costs of implementing the requirements of this act applicable to the facilities, which is based on measurable goals, and which is sufficient to recover the amount reviewed by the joint appropriations interim committee and appropriated by the legislature for implementing the hazardous waste treatment, storage and disposal permitting program. The fee amount shall be sufficient to provide adequate enforcement of compliance with the hazardous waste requirements of this act, as required in section 3006(b) of the Resource Conservation and Recovery Act, 42 U.S.C. 6926(b). The department shall prepare a biennium report for review by the joint minerals, business

and economic development interim committee by October 31 of the year prior to the Wyoming legislative budget session.

(c) Fees shall cover all reasonable direct and indirect costs including the costs of:

(i) Reviewing and acting upon any permit application, including applications for major permit amendments;

(ii) Implementing and enforcing permits; and

(iii) Carrying out permit and inspection-related functions performed by the department.

(d) The fees collected by the department pursuant to this section shall be deposited in a separate account, and shall be subject to appropriation by the legislature to the department solely for permitting, conducting inspections under and enforcing the requirements of this act governing facilities subject to subsection (a) of this section.

(e) The department shall give written notice of the amount of the fee to be assessed and the basis for the assessment to the facility owner. The owner may appeal the assessment to the council within forty-five (45) days after receipt of the written notice. The appeal shall be based only upon the allegation that the particular assessment is erroneous or excessive and shall not be based upon the entire fee schedule adopted under this section. The contested case procedures of the Wyoming Administrative Procedure Act shall apply to any appeal under this subsection.

(f) If any part of the assessment is not appealed it shall be paid to the department upon receipt of the written notice.

(g) The department in developing a fee schedule shall take into account the financial resources of small businesses as defined by the United States small business administration.

(h) Nothing in this section shall be construed to limit or modify any requirement of W.S. 35-11-503(b) with respect to fees for commercial radioactive waste management facility permits.

(j) This section shall not become effective until authorization of a state program pursuant to subtitle C of the Resource Conservation and Recovery Act, P.L. 94-580. [42 U.S.C. § 6921 et seq.].

History:
Laws 1994, ch. 82, § 1; 2005, ch. 231, § 1.

The 2005 amendment, effective July 1, 2005, deleted "within the earmarked revenue fund" in (d).

Editor's notes. — There is no subsection (i) in this section as it appears in the printed acts.

Meaning of "this act." — For the meaning of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Resource Conservation and Recovery Act. — Subtitle C of the federal Resource Conservation and Recovery Act, referred to in subsection (j), appears as 42 U.S.C. § 6921 et seq.

Wyoming Administrative Procedure Act. — See § 16-3-101(a), (b)(xi).

Conflicting legislation. — Laws 2005, ch. 231, § 3, provides: "The provisions of this act shall supersede the provisions of any other bill enacted into law during the 2005 general session which amends or references accounts or funds to the extent any other enactment is inconsistent with the establishment of the funds and accounts created under this act. The state auditor shall account for any fund or account created in any other legislation enacted in the 2005 general session in accordance with generally accepted accounting principles (GAAP) as promulgated by the governmental accounting standards board (GASB) and in accordance with this act."

§ 35-11-518. Prior federal court orders and administrative orders.

(a) The department may become a party to, or assume the rights and duties of the federal government for, any federal court order which has been issued pursuant to subtitle C of the Resource Conservation and Recovery Act, P.L. 94-580 [42 U.S.C. § 6921 et seq.], prior to the effective date of the authorization of the state hazardous waste program under that subtitle. Any person subject to a prior federal court order issued pursuant to subtitle C of the Resource Conservation and Recovery Act, shall not be subject to any additional, conflicting or more restrictive remedial or corrective action order or requirement under this act with respect to the hazardous waste management unit, solid waste management unit or area of concern that is the subject of the federal court order, unless required to comply with new requirements adopted under the Resource Conservation and Recovery Act. If the department becomes a party to, or assumes the rights and duties of the federal government for, any prior federal court order, the department shall be governed by, and subject to, the dispute resolution procedures of the federal court which retains jurisdiction for the order and may, within those procedures and under the law governing the federal order, seek any remedy, change, amendment or other relief relating to the order.

(b) The department may issue an administrative order which is equivalent to any federal

administrative order which has been issued pursuant to subtitle C of the Resource Conservation and Recovery Act, prior to the effective date of the authorization of the state hazardous waste program under that subtitle. The limitations regarding stringency contained in subsection (a) of this section apply to orders issued under this subsection. Following the issuance of any order under this subsection, any disputes concerning implementation of the order shall be resolved by appeal to the council as provided by this act. Any person aggrieved or adversely affected in fact by a final decision of the council is entitled to judicial review in accordance with the Wyoming Administrative Procedure Act.

History:
Laws 1994, ch. 82, § 1.

Meaning of "this act." — For the meaning of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Resource Conservation and Recovery Act. — The federal Resource Conservation and Recovery Act, referred to in this section, appears as 42 U.S.C. § 6901 et seq.

Wyoming Administrative Procedure Act. — See § 16-3-101(a), (b)(xi).

§ 35-11-519. Hazardous waste corrective action requirements.

Corrective action requirements applicable to any hazardous waste management facility shall be consistent with, and equivalent to, corrective action requirements contained in rules and regulations adopted by the United States environmental protection agency under authority of subtitle C of the Resource Conservation and Recovery Act, P.L. 94-580 [42 U.S.C. § 6921 et seq.], as amended by the hazardous and solid waste amendments of 1984, P.L. 98-616, and as they may be hereafter amended.

History:
Laws 1994, ch. 82, § 1.

Cross references. — For provisions of an act for voluntary remediation of contaminated sites, see article 16 of this chapter.

Editor's notes. — Laws 2000, ch. 13, § 3, repealed Laws 1999, ch. 204, § 1, which had amended this section effective July 1, 2001, by adding (b) through (g), redesignating the existing provisions as (a), and inserting "which came into existence on or after July 1, 1973" following "waste management facility" in (a).

Resource Conservation and Recovery Act. — The federal Resource Conservation and Recovery Act, referred to in this section, appears as 42 U.S.C. § 6901 et seq.

§ 35-11-520. Termination of state regulation of hazardous waste generators and transporters; procedures.

(a) The department shall report to the legislature any reduction in federal hazardous waste grant funds supplied to the state under section 3011 of the Resource Conservation and Recovery Act (42 U.S.C. 6931), which results in the need for additional state funds, exclusive of fees under W.S. 35-11-517, to administer W.S. 35-11-516 through 35-11-520.

(b) The provisions of W.S. 35-11-516 through 35-11-519 shall not be effective one hundred eighty (180) days after the adjournment of the legislative session next following the submission of a report under subsection (a) of this section, unless the legislature appropriates the additional funds required. The expiration of the state program pursuant to this subsection shall be subject to the following:

(i) The annual fee collected by the department under W.S. 35-11-517 shall be remitted to the facility owner on a prorated basis upon termination of regulation by the state under this section;

(ii) The department shall vacate any order issued to any generator or transporter to enforce any provision of W.S. 35-11-516 through 35-11-519;

(iii) The state attorney general may continue to prosecute any action based on alleged violations of W.S. 35-11-516 through 35-11-519 which was filed prior to the adjournment of the legislative session referred to in subsection (b) of this section.

History:
Laws 1994, ch. 82, § 1.

§ 35-11-521. Grants for municipal solid waste landfill monitoring.

(a) Subject to the availability of funds, the director shall provide grants toward the costs of performing activities specified in subsection (b) of this section to local governmental entities who

own or are responsible for any municipal solid waste landfill, for any project where a work plan has been submitted to the department for work performed or initiated after July 1, 2005.

(b) Grant funding under this section may be provided at existing or closed municipal solid waste landfills for the following activities:

(i) Conducting surface or subsurface geophysical studies to determine proper monitor system placement and to provide an indication of the presence or absence of groundwater beneath and adjacent to the landfill;

(ii) Preparing plans for installation of systems to monitor or detect releases of subsurface pollutants from landfills;

(iii) Installing new monitor systems or upgrading existing monitor systems to meet standards for the systems established by the department under this article; and

(iv) Collecting and analyzing samples from monitor systems installed under paragraph (iii) of this subsection, for a period of time sufficient to determine if there have been releases of subsurface pollutants from the landfill for any landfill which ceased receipt of solid wastes before September 13, 1989.

(c) Grants for eligible costs under subsection (b) of this section may be awarded:

(i) For up to fifty percent (50%) of the eligible costs; or

(ii) For up to seventy-five percent (75%) of eligible costs for applicants meeting the following criteria:

(A) Municipalities with a population of less than one thousand three hundred (1,300) or which are located within a county where the three (3) year average of the total local government share of state sales and use tax per capita is less than seventy percent (70%) of the statewide per capita average; or

(B) Counties, solid waste disposal districts, joint powers boards, and special purpose districts located within a county with a total assessed valuation of less than two and one-half percent (2.5%) of the state's total assessed valuation.

History:

Laws 2006, ch. 101, § 1; 2009, ch. 170, § 1.

The 2009 amendment, effective July 1, 2009, deleted "according to the latest federal decennial census" following "one thousand three hundred (1,300)" in (c)(ii)(A).

Editor's notes. — Laws 2009, ch. 170, § 3, provides: "(a) No authority to issue any license based upon population shall be diminished by application of this act until the 2010 federal decennial census has been conducted and officially released by the bureau of census.

"(b) No distribution of funding shall be diminished or increased based upon application of this act until the 2010 federal decennial census has been conducted and officially released by the bureau of census. To the extent any entity's share of funding would be reduced or increased by application of this act before that time, the distribution of funds shall be administered in accordance with the provisions of law prior to the amendment or repeal of such law by this act."

Appropriations. — Laws 2006, ch. 101, §§ 2, 3, 4 provide:

"Section 2.There is appropriated from the general fund to the department of environmental quality seven million nine hundred seventy thousand dollars ($7,970,000.00) for the purpose of providing monitoring grants under this act. Notwithstanding W.S. 9-4-207(a), any unexpended funds appropriated under this section shall not revert to the general fund at the end of the biennium.

"Section 3.

"(a)There is appropriated from the general fund to the department of environmental quality one million three hundred thousand dollars ($1,300,000.00) or as much thereof as is necessary for the purpose of providing planning grants to assist participating local governmental entities in the preparation of integrated solid waste management plans under W.S. 35-11-1902. The department shall provide planning grants to local governmental entities pursuant to W.S. 35-11-1902(c), subject to the appropriation amount as follows:

"(i)An amount not to exceed fifty percent (50%) of estimated plan preparation costs shall be provided to the local governmental entity preparing an integrated solid waste management plan for a planning area encompassing a single local governmental entity;

"(ii)An amount not to exceed seventy percent (70%) of estimated plan preparation costs shall be provided to the local governmental entity preparing an integrated solid waste management plan for a planning area encompassing two (2) local governmental entities;

"(iii)An amount not to exceed ninety percent (90%) of estimated plan preparation costs shall be provided to the local governmental entity preparing an integrated solid waste management plan for a planning area encompassing three (3) or more local governmental entities.

"Section 4.There are authorized two (2) additional full-time positions to the department of environmental quality for the purposes of implementing this act. There is appropriated from the general fund to the department of environmental quality three hundred twenty thousand five hundred dollars ($320,500.00) or as much thereof as is necessary to fund these two (2) positions. A request from the department of environmental quality shall be included in the 2009-2010 biennium standard budget request for purposes of continuing funding of this program and these positions."

Effective dates. — Laws 2006, ch. 101, § 5(b), makes section 4 of the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 24, 2006. Sections 2 and 3 of the act are effective July 1, 2006.

§ 35-11-522. Grant criteria; submission and review of grant applications; recommendation from water and waste advisory board; grant awards.

(a) Following public notice and hearing before the water and waste advisory board, the department shall adopt criteria for awarding grants under W.S. 35-11-521.

(b) When funds are available, applications for grants under W.S. 35-11-521 shall be submitted in a form approved by the department. The department shall review all grant applications, determine the eligibility of projects in accordance with W.S. 35-11-521 and provide recommendations for grant funding to the water and waste advisory board.

(c) Following a public hearing, the water and waste advisory board shall provide recommendations for grant awards to the director.

(d) The director shall award grants in consideration of recommendations provided by the water and waste advisory board.

(e) Repealed by Laws 2011, ch. 110, § 3.

History:

Laws 2006, ch. 101, § 1; 2011, ch. 110, § 3.

The 2011 amendment, repealed former (e), which read: "By June 30, 2010, the department shall evaluate all available groundwater monitor data from municipal solid waste disposal facilities and shall provide a report to the joint minerals, business and economic development interim committee describing the extent to which such facilities cause or contribute to pollution of groundwater. The report shall contain an estimate of the statewide groundwater remediation cost obligation faced by local governmental owners of such facilities and shall recommend one (1) or more means to fund those costs."

Laws 2011, ch. 110, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 2, 2011.

Appropriations. — Laws 2006, ch. 101, §§ 2, 3, 4 provides:

"Section 2. There is appropriated from the general fund to the department of environmental quality seven million nine hundred seventy thousand dollars ($7,970,000.00) for the purpose of providing monitoring grants under this act. Notwithstanding W.S. 9-4-207(a), any unexpended funds appropriated under this section shall not revert to the general fund at the end of the biennium.

"Section 3. (a) There is appropriated from the general fund to the department of environmental quality one million three hundred thousand dollars ($1,300,000.00) or as much thereof as is necessary for the purpose of providing planning grants to assist participating local governmental entities in the preparation of integrated solid waste management plans under W.S. 35-11-1902. The department shall provide planning grants to local governmental entities pursuant to W.S. 35-11-1902(c), subject to the appropriation amount as follows:

"(i) An amount not to exceed fifty percent (50%) of estimated plan preparation costs shall be provided to the local governmental entity preparing an integrated solid waste management plan for a planning area encompassing a single local governmental entity;

"(ii) An amount not to exceed seventy percent (70%) of estimated plan preparation costs shall be provided to the local governmental entity preparing an integrated solid waste management plan for a planning area encompassing two (2) local governmental entities;

"(iii) An amount not to exceed ninety percent (90%) of estimated plan preparation costs shall be provided to the local governmental entity preparing an integrated solid waste management plan for a planning area encompassing three (3) or more local governmental entities.

"Section 4. There are authorized two (2) additional full-time positions to the department of environmental quality for the purposes of implementing this act. There is appropriated from the general fund to the department of environmental quality three hundred twenty thousand five hundred dollars ($320,500.00) or as much thereof as is necessary to fund these two (2) positions. A request from the department of environmental quality shall be included in the 2009 2010 biennium standard budget request for purposes of continuing funding of this program and these positions."

Laws 2011, ch. 110, § 4, provides:

"Section 4. (a) Funds appropriated under 2006 Wyoming Session Laws, Chapter 101, not awarded or encumbered by the director for purposes of that act prior to June 30, 2011, shall be available to the department for the purposes of conducting priority assessments, evaluating high priority municipal solid waste landfills and refining clean-up cost estimates for those sites. These sites may include orphaned, abandoned, closed and operating landfills that have indications of more serious groundwater contamination as identified in the report submitted under W.S 35-11-522.

"(b) To complete work under subsection (a) of this section, the amount the department may expend shall not exceed one million seven hundred fifty thousand dollars ($1,750,000.00) of the appropriation under 2006 Wyoming Session Laws, Chapter 101."

Effective dates. — Laws 2006, ch. 101, § 5, makes sections 1 and 4 of the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 24, 2006. Sections 2 and 3 are effective July 1, 2006.

§ 35-11-523. Annual report.

(a) Effective January 1, 2012, every operator shall file an annual report with the administrator on or within thirty (30) days prior to the anniversary date of each lifetime permit. The report shall include:

(i) The facility name, the name and address of the operator and the permit number;

(ii) A report in such detail as the administrator shall require supplemented with maps, cross sections, aerial photographs, photographs or other material indicating:

(A) The extent to which the landfill operations have been carried out;

(B) The progress of all landfill work;

(C) The extent to which regulatory requirements, expectations and predictions made in the original permit or any previous annual reports have been fulfilled, and any deviation there from, including but not limited to the capacity of landfill used, the results of any environmental monitoring, any remediation required or completed and the remaining usable municipal solid waste landfill capacity.

(iii) A revised schedule or timetable of landfill operations and an estimate of the available capacity to be affected during the next one (1) year period.

(b) Upon receipt of the annual report the administrator shall make such further inquiry as deemed necessary. If the administrator objects to any part of the report or requires further information he shall notify the operator as soon as possible and shall allow a reasonable opportunity to provide the required information, or take such action as necessary to resolve the objection.

(c) Within forty-five (45) days after the receipt of the annual report the administrator shall conduct an inspection of the landfill. A report of this inspection shall be made a part of the operator's annual report and a copy shall be delivered to the operator.

(d) Within sixty (60) days after receipt of the annual report, inspection report and other required materials, if the administrator finds the annual report in order and consistent with the landfill operation plan and solid waste management plan as set forth in the permit, or as amended to adjust to conditions encountered during landfill operations as provided by law, the director shall determine if any adjustment is necessary to the size of the bond required pursuant to W.S. 35-11-504.

History:
Laws 2011, ch. 110, § 1.

Effective dates. — Laws 2011, ch. 110, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 2, 2011

§ 35-11-524. Municipal solid waste landfill assessments; priority list; monitoring.

(a) The department shall conduct an assessment of the needs for municipal solid waste landfill monitoring and the necessity for any remediation on leaking municipal solid waste landfills in Wyoming.

(b) The department shall establish a priority list for municipal solid waste landfills that need remediation. The criteria used to establish this priority list shall be developed and reviewed with the water and waste advisory board. The criteria shall include, but not be limited to the:

(i) Type of leachate;

(ii) Volume of leachate;

(iii) Proximity of the leachate to the nearest surface or ground water;

(iv) Ability of the responsible municipality to remediate the contamination;

(v) The nature of contaminants in surface or ground water affected by the municipal solid waste landfill, including whether a contaminant is naturally occurring or manmade; and

(vi) Maximum contaminant levels.

(c) For high priority sites identified on the list established under subsection (b) of this section, the department shall work with the local managers of the high priority municipal solid waste landfills to gather data necessary for the report due under subsection (d) of this section.

(d) The department shall submit to the joint minerals, business and economic development interim committee:

(i) No later than December 31, 2012, an initial report describing an assessment of the clean-up costs at the high priority municipal solid waste landfills;

(ii) No later than June 30, 2013, and annually thereafter, a report including, but not limited to:

(A) Monitoring results;

(B) Remediation results;

(C) The assessment of the clean-up costs at municipal solid waste landfills, including high, medium and low priority landfills;

(D) Estimated high priority sites to be addressed in the coming year;

(E) Orphan landfill sites information and data as required pursuant to W.S. 35-11-525(e).

History:
Laws 2011, ch. 110, § 1.

Effective dates. — Laws 2011, ch. 110, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 2, 2011

§ 35-11-525. Orphan landfill sites.

(a) The director may expend funds contained within the account for remediation of orphan landfill sites and the performance of any other activity as defined in this article.

(b) As used in this section, "orphan landfill site" means:

(i) A landfill where the department determines:

(A) There is no viable party responsible for causing or contributing to the landfill site; and

(B) The landfill site is not the result of activities conducted on the site after September 13, 1989.

(ii) A landfill site, where the department determines that the person responsible for the landfill cannot be identified;

(iii) A landfill site where the department must take prompt action to prevent hazards to human health or the environment where a responsible party fails to act promptly.

(c) To the extent funds are available, the department may expend funds from the account to conduct orphan landfill site evaluations and testing, evaluate remedial measures, select remediation requirements and construct, install, maintain and operate systems to remedy contamination in accordance with a remediation work plan prescribed by the director for the orphan landfill site.

(d) Revenue to the account shall include any monies which may be deposited in the account for use in identification, characterization, prioritization, remediation and monitoring of orphan landfill sites. The liability of the state to fulfill the requirements of this section is limited to the amount of funds available in the account.

(e) The department shall provide a report to the joint appropriations interim committee and the joint minerals, business and economic development interim committee. The report shall be included in the report required under W.S. 35-11-524(d) and shall include:

(i) The work completed on the identification, characterization, prioritization, remediation and monitoring of orphan landfill sites within the state;

(ii) The estimated funding need for the identification, characterization, prioritization, remediation and monitoring of orphan landfill sites within the state for:

(A) The next year or the next biennium, as applicable; and

(B) The next ten (10) years.

(f) In any case under paragraph (b)(iii) of this section where the department expends funds to remediate or contain contamination resulting from a landfill, and where the department has identified a responsible party, the responsible party shall reimburse the department in an amount equal to two (2) times the expenditure from the account. The attorney general shall bring suit to recover the reimbursement amount required in this subsection where recovery is deemed possible.

(g) For purposes of this section, "account" means the account created under W.S. 35-11-515(a).

History:
Laws 2011, ch. 110, § 1.

Effective dates. — Laws 2011, ch. 110, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 2, 2011

§ 35-11-526. Performance based design and performance based evaluation in consideration and approval of engineered containment systems as part of municipal solid waste landfill permits.

(a) A person submitting an application for a permit pursuant to W.S. 35-11-502 which contains a performance based design for a municipal solid waste landfill that does not incorporate an engineered containment system utilizing a composite liner and leachate collection system, shall submit a report with the application. The report shall contain the applicant's findings as to the proposed performance based design's compliance with applicable state and federal laws and regulations. The report shall contain scientific and engineering data supporting the implementation of the proposed design.

(b) In reviewing scientific and engineering data related to a permit application and report containing a performance based design which does not incorporate an engineered containment system utilizing a composite liner and leachate collection system, the administrator shall prepare a detailed performance evaluation based on applied scientific and engineering data that adheres to W.S. 35-11-527. The administrator shall determine in the performance evaluation whether to validate or invalidate the performance based design or an alternative performance based standard for landfill design contained in the permit application. The administrator shall base the performance based evaluation on acceptable applied scientific and engineering data and an analysis of that data using statistical procedures, including statistical power, when applicable.

(c) The applicant or other interested party may appeal the administrator's determination contained in a performance based evaluation of a permit pursuant to W.S. 35-11-502. If the council determines that the performance based evaluation does not accurately or adequately identify and evaluate all the data and criteria required under this section and W.S. 35-11-527, the council shall direct the administrator to reevaluate his determination. A decision by the council that the performance based evaluation is accurate and adequate shall be a final decision of the agency pursuant to the Wyoming Administrative Procedure Act.

History:
Laws 2011, ch. 147, § 1.

Editor's note. — Laws 2011, ch. 147, § 1, enacted this section as § 35-11-523. It has been redesignated as § 35-11-526 at the direction of the Legislative Service Office.

Effective dates. — Laws 2011, ch. 147, § 3, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 3, 2011.

§ 35-11-527. Performance based design evaluation criteria for municipal solid waste landfill units.

(a) New municipal solid waste landfill units and lateral expansions approved by the administrator under W.S. 35-11-502 and 35-11-526 shall be constructed:

(i) In accordance with a performance based design approved by the administrator in a performance based evaluation pursuant to W.S. 35-11-526. Any performance based design approved must ensure that the concentration values for pollutants listed in the National Primary Drinking Water Regulations, 40 C.F.R. Part 141, will not be exceeded in the uppermost aquifer at the relevant point of compliance as determined under subsection (c) of this section; or

(ii) With an engineered containment system that utilizes a composite liner and a leachate collection system that is designed and constructed to maintain less than a thirty (30) centimeter depth of leachate over the liner.

(b) When approving a design that complies with paragraph (a)(i) of this section, in addition to the requirements of W.S. 35-11-526 the administrator shall consider other relevant factors, including, but not limited to:

(i) The hydrogeologic characteristics of the facility and surrounding land;

(ii) The climatic factors of the area; and

(iii) The physical and chemical characteristics and volume of the leachate.

(c) The relevant point of compliance specified by the administrator for the allowable concentration values for pollutants under paragraph (a)(i) of this section shall be no more than one hundred fifty (150) meters from the waste management unit boundary and shall be located on land owned

by the owner of the municipal solid waste landfill. In determining the relevant point of compliance, the administrator shall consider at least the following factors:

(i) The hydrogeologic characteristics of the facility and surrounding land;

(ii) The physical and chemical characteristics and volume of the leachate;

(iii) The quantity, quality and direction of flow of ground water in the area;

(iv) The proximity and withdrawal rate of ground water users;

(v) The availability of alternative sources of drinking water supplies;

(vi) The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water and whether the ground water is currently used or reasonably expected to be used for drinking water;

(vii) Public health, safety and welfare effects; and

(viii) Practicable capability of the owner or operator.

History:
Laws 2011, ch. 147, § 1.

Editor's note. — Laws 2011, ch. 147, § 1, enacted this section as § 35-11-524. It has been redesignated as § 35-11-527 at the direction of the Legislative Service Office.

Effective dates. — Laws 2011, ch. 147, § 3, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 3, 2011.

§ 35-11-528. Municipal solid waste facilities cease and transfer program created; criteria for grants and loans; loan terms; availability of other state funding sources.

(a) There is created the municipal solid waste facilities cease and transfer program. Grants and loans under the program shall be awarded by the state loan and investment board. The program shall be administered by the solid and hazardous waste division of the department of environmental quality with the input of the waste and water advisory board as provided in W.S. 35-11-528 through 35-11-531.

(b) Grants and loans shall be made from the municipal solid waste facilities cease and transfer accounts for all cease and transfer activities as provided in this section and by rule and regulation of the board. Grants and loans shall be made for:

(i) Capping of a closed landfill;

(ii) Other closure related expenses including engineering, geological and other professional services;

(iii) Construction or acquisition of appropriate solid waste transfer facilities and equipment, including acquisition of real property.

(c) Total costs of cease and transfer activities for a municipal solid waste facility shall be determined by the department in consultation with the local municipal solid waste facility operator. Grants shall be awarded in an amount determined by the state loan and investment board after consultation with the department and pursuant to the criteria contained in subsection (d) of this section. A municipal solid waste facility which is ceasing operations shall be eligible to receive loans for the costs of cease and transfer activities not funded by a grant pursuant to subsection (e) of this section.

(d) Grants and loans for cease and transfer activities shall be awarded in an amount determined by the state loan and investment board not to exceed seventy-five percent (75%) of the total cost of all cease and transfer activities of the municipal solid waste facility. The state loan and investment board shall base its determination of the percentage of grants and loans awarded for cease and transfer projects under the program on an equitable distribution of available funds among eligible municipal solid waste landfills and rules and regulations adopted pursuant to W.S. 35-11-530. To be eligible for funding under the program the following criteria shall be met:

(i) The local operator enters into a written agreement with the department to meet all regulatory obligations under the program;

(ii) The local operator implements and revises the community's solid waste management plan as necessary to comply with all regulatory obligations;

(iii) The local operator ceases disposal of all municipal solid waste streams at the closed municipal solid waste facility;

(iv) The local operator conforms to the requirements of W.S. 35-11-532;

(v) The local operator:

(A) Ceases disposal into units and facilities regulated under this article which do not have engineered containment systems or do not conform to performance based design standards; or

(B) Obtains department approval, that shall include a time period determined appropriate by the department for operation, to:

(I) Transfer and dispose municipal solid waste into permitted units and facilities regulated by the department which do not have engineered containment systems or do not conform to performance based design standards, for the purpose of closing the facility that is transferring municipal solid waste; and

(II) Increase the rate at which municipal solid waste is accepted for disposal into permitted units and facilities regulated by the department which do not have engineered containment systems or do not conform to performance based design standards, for the purpose of promoting the early closure of the receiving facility or facilities. If the department grants approval under this subparagraph the receiving facility shall not be allowed to enlarge or extend the life of its facility except in furtherance of becoming a facility with an engineered containment system or conforming to performance based design standards.

(e) Loans may be made under the program at zero interest rate, up to an annual interest rate equal to the average prime interest rate as determined in accordance with this subsection. Loans provided under the program shall be adequately collateralized as determined by the state loan and investment board. Principal and interest payments shall be deposited in the budget reserve account. The state loan and investment board shall establish interest rates to be charged for loans under the program, but the interest rate shall not exceed an annual interest rate equal to the average prime interest rate as determined by the state treasurer. To determine the average prime interest rate, the state treasurer shall average the prime interest rate for at least seventy-five percent (75%) of the thirty (30) largest banks in the United States. The interest rate shall be adjusted on January 1 of each year. Interest rates shall be established in recognition of the repayment abilities and needs of the local municipal solid waste facility operator eligible for loans under the program. The state loan and investment board shall establish loan amortization schedules, terms and conditions for each loan approved based on an applicant's need, financial condition of the landfill operator or the entity responsible for solid waste funding, the projected life of the transfer facility and the ability of that entity to repay the loan in a timely manner.

(f) Participation in the program shall not restrict funding for a municipal solid waste facility from any other program created or supported by the state.

(g) Funds under the program shall not be expended on:

(i) Salaries or benefits for employees of the municipal solid waste facility;

(ii) Long-term monitoring at a closed municipal solid waste facility or a closed cell of a still operating municipal solid waste facility;

(iii) Operational costs of municipal solid waste facilities.

History:

Laws 2013, ch. 194, § 1; 2014, ch. 52, § 1.

The 2014 amendment, rewrote (d)(v) which formerly read: "The local operator ceases disposal into units and facilities regulated under this article which do not have engineered containment systems or do not conform to performance based design standards."

Laws 2014, ch. 52, § 2, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution. Approved March 10, 2014.

Editor's notes. — Laws 2013, ch. 194, § 2, directs: "(a) Notwithstanding any other provision of law, there is appropriated one million dollars ($1,000,000.00) from the funds appropriated to the municipal solid waste landfill account by 2011 Wyoming Session Laws, Chapter 88, Section 354, to the municipal solid waste facilities cease and transfer grant account for the purposes of this act.

"(b) Notwithstanding any other provision of law, there is appropriated five hundred thousand dollars ($500,000.00) from the funds appropriated to the municipal solid waste landfill account by 2011 Wyoming Session Laws, Chapter 88, Section 354, to the municipal solid waste facilities cease and transfer loan account for the purposes of this act.

"(c) There is appropriated fifty thousand dollars ($50,000.00) from the general fund to the office of state lands and investments for the administration of the municipal solid waste landfill cease and transfer program. Notwithstanding any other provision of law, this appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on June 30, 2014.

"(d) There is appropriated one hundred fifty thousand dollars ($150,000.00) from the general fund to the department of environmental quality to fulfill the purposes of this act. Notwithstanding any other provision of law, this appropriation shall not be trans-

ferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on June 30, 2014."

Effective dates. — Laws 2013, ch. 194, § 3 makes this act effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution. Approved March 13, 2013.

§ 35-11-529. Municipal solid waste facilities cease and transfer accounts created; authorized expenditures from the accounts.

(a) There is created the municipal solid waste cease and transfer grant account. Monies from the account shall be awarded for grants to fund approved activities pursuant to W.S. 35-11-528. Interest earned by this account shall be deposited in the budget reserve account. Notwithstanding W.S. 9-2-1008, 9-2-1012(e) and 9-4-207(a), funds deposited in this account shall not revert without further action of the legislature.

(b) There is created the municipal solid waste cease and transfer loan account. Monies from the account shall be awarded for loans to fund approved activities pursuant to W.S. 35-11-528. Interest earned by this account shall be deposited in the budget reserve account. Notwithstanding W.S. 9-2-1008, 9-2-1012(e) and 9-4-207(a), funds deposited in this account shall not revert without further action of the legislature.

History:
Laws 2013, ch. 194, § 1.

§ 35-11-530. Rules and regulations.

(a) The state loan and investment board in consultation with the department of environmental quality shall promulgate rules and regulations necessary to administer the municipal solid waste facility cease and transfer program. Those rules shall include:

(i) Criteria for eligibility under the program based on W.S. 35-11-528(d);

(ii) Specific cease and transfer activities which are eligible for funding under the program;

(iii) Application form and procedure under the program;

(iv) Criteria for grant and loan prioritization based on:

(A) Funding availability;

(B) Cost efficiencies achieved by allocation of resources;

(C) Opportunities for increased cost sharing between cease and transfer actions at multiple leaking municipal solid waste facilities;

(D) Timeliness of cease and transfer actions in reducing risk to public health, safety and welfare or the environment;

(E) Remaining life of the existing municipal solid waste facility;

(F) Whether the proposed actions are a cost-effective alternative in accordance with the integrated solid waste management plan approved for the municipal solid waste facility;

(G) Whether the proposed action is reasonable and appropriate for the current and projected volumes of all solid waste for the area served by the facility;

(H) Whether the proposal contains recycling and other forms of waste diversion as a component of the proposed facilities and management practices; and

(J) The likelihood that the cease and transfer actions will reduce or eliminate the threat posed to public health, safety and welfare or the environment by continuing releases.

History:
Laws 2013, ch. 194, § 1.

Editor's notes. — There is no subsection (b) or subparagraph (a)(iv)(I) in this section as it appears in the printed acts.

§ 35-11-531. General permit for cease and closure for small landfills; rulemaking authority.

(a) The department shall develop a general permit in accordance with W.S. 35-11-801(d) for closing municipal solid waste landfills with a total surface area of less than thirty (30) acres, and shall provide assistance to municipalities in the general permitting process. The general permit shall comply with federal requirements for municipal solid waste landfill closure and post-closure.

(b) The department shall provide assistance for permitting municipal solid waste transfer facility activities at closing municipal solid waste landfills with a total surface area of less than thirty (30) acres.

(c) The department shall promulgate rules and regulations necessary to achieve the purposes of this section.

(d) The department shall report to the joint minerals, business and economic development interim committee on or before July 1, 2014 on the assistance provided under subsections (a) and (b) of this section.

History:
Laws 2013, ch. 194, § 1.

§ 35-11-532. Municipal solid waste facility operator financial responsibility; penalties.

(a) Municipal solid waste facility operators shall ensure continued revenue or funding streams sufficient to provide for all foreseeable costs of the facility, including but not limited to the full costs of:

(i) Operations;

(ii) Monitoring;

(iii) Recycling, composting and other diversion activities;

(iv) Closure; and

(v) Post-closure activities.

(b) On or before January 1, 2014 and at least once every four (4) years thereafter, municipal solid waste facility operators shall submit to the department written documentation demonstrating compliance with subsection (a) of this section.

(c) Municipal solid waste facility operators shall employ accounting principles pursuant to the Uniform Municipal Fiscal Procedures Act, W.S. 16-4-101 through 16-4-125, which recognize liabilities associated with:

(i) Closure and post-closure costs; and

(ii) The long-term cost of waste disposal compared to recycling, composting or other diversion activities.

(d) Compliance with this section shall be a prerequisite for eligibility for any state grant and loan program available to a municipal solid waste facility and state funding for solid waste landfill monitoring and remediation.

History:
Laws 2013, ch. 194, § 1; 2015, ch. 47, § 1.

The 2015 amendment, rewrote the introductory language of (c).

Laws 2015, ch. 47, § 3, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 25, 2015.

§ 35-11-533. Municipal solid waste landfill remediation program created; purpose.

(a) There is created the municipal solid waste landfill remediation program. The program shall be administered by the solid and hazardous waste division of the department of environmental quality with the input of the waste and water advisory board as provided in W.S. 35-11-533 through 35-11-537.

(b) The legislature recognizes the threat to the public health, safety, welfare and the environment caused by pollution to soil and water from leaking municipal solid waste landfills. The purpose of this program is to take state primacy of the municipal solid waste landfill remediation program and to provide funding to take remediation actions at eligible leaking municipal solid waste landfills.

History:
Laws 2013, ch. 158, § 1.

Editor's notes. — Laws 2013, ch. 158, enacted this section as § 35-11-528. The section is set out as subsequently renumbered by the legislative service office.

Laws 2013 ch. 158, § 3, directs: "Monies appropri-

ated to the municipal solid waste landfill account by 2011 Wyoming Session Laws, Chapter 88, Section 354, and all other monies deposited or designated for that account shall be deposited in the municipal solid waste landfill remediation account created by this section."

§ 35-11-534. Program criteria; requirements for local operator.

(a) The department shall contract with entities, including contractors and local operators, to provide monitoring and remediation activities, including but not limited to groundwater remediation and monitoring, methane mitigation and monitoring and landfill capping, at eligible leaking municipal solid waste landfills. The department shall oversee and fund up to seventy-five percent (75%) of the cost of the investigation of contamination, the design and installation of monitoring and remediation systems and the operation and maintenance of monitoring and remediation systems for up to ten (10) years. The department may operate and maintain a system for a longer period of time in consideration of site specific circumstances. The period of time during which the department shall have responsibility for the monitoring and remediation activities at a leaking municipal solid waste landfill shall be communicated to the local operator prior to installation of the monitoring and remediation systems.

(b) The department shall contract for monitoring and remediation activities under the program at leaking municipal solid waste landfills based upon the priority list of landfills developed pursuant to W.S. 35-11-524 and other factors as provided in W.S. 35-11-536(a)(iv). The department shall update the priority list of leaking landfills requiring monitoring and remediation activities periodically as conditions warrant and may consider all relevant factors when developing and updating the priority list.

(c) To be eligible for enrollment under the program, the local operators of a leaking municipal solid waste landfill shall:

(i) Enter into a written agreement with the department to meet all regulatory obligations under the program;

(ii) Implement and revise the community's solid waste management plan as necessary to comply with all regulatory obligations;

(iii) Cease disposal of all waste streams at a leaking closed facility or the leaking portion of an operating facility which is undergoing remediation activities pursuant to department rules and regulations and the written agreement between the department and the local operator;

(iv) Cease disposal into units and facilities regulated under this article which do not have engineered containment systems or do not conform to performance based design standards;

(v) Agree to provide funding from any available funding source for at least twenty-five percent (25%) of the total costs of monitoring and remediation under the program;

(vi) Control the source of releases of pollution so as to reduce or eliminate further releases from the leaking municipal solid waste landfill;

(vii) Ensure continued revenue or funding streams sufficient to provide for all foreseeable costs of solid waste facilities under the control of the local operator or political subdivision, including but not limited to the full costs of:

(A) Operations;

(B) Monitoring;

(C) Recycling, composting and other diversion activities;

(D) Closure; and

(E) Post-closure activities.

(viii) Employ accounting principles in managing all solid waste facilities under the control of the local operator or political subdivision, pursuant to the Uniform Municipal Fiscal Procedures Act, W.S. 16-4-101 through 16-4-125, which recognize liabilities associated with:

(A) Closure and post-closure costs; and

(B) The long-term cost of waste disposal compared to recycling, composting or other diversion activities.

(d) In carrying out monitoring and remediation activities under the program the department has the right to construct and maintain any structure, monitor well, recovery system or any other reasonable and necessary item associated with taking remediation and monitoring actions.

(e) The department shall notify the affected public of all confirmed releases requiring a plan for remediation, and upon request, provide or make available to the interested public information concerning the nature of the release and the remediation actions planned or taken.

(f) The department shall delegate and authorize a local operator to conduct or oversee monitoring and remediation under the program pursuant to a written agreement between the department and the local operator acknowledging that the local operator shall adhere to all regulatory requirements of the program in conducting monitoring and remediation activities. The department shall approve the local operator's monitoring and remediation plan prior to authorizing the local operator to conduct or oversee the monitoring and remediation program. The department shall take all actions necessary to ensure that a local operator granted authority to conduct or oversee monitoring and remediation activities under this subsection complies with all regulatory requirements of the program.

History:
Laws 2013, ch. 158, § 1; 2015, ch. 47, § 1.

The 2015 amendment, rewrote the introductory language of (c)(viii), which formerly read: "Employ generally accepted accounting principles in managing all solid waste facilities under the control of the local operator or political subdivision, including the recognition of liabilities associated with."

Laws 2015, ch. 47, § 3, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 25, 2015.

Editor's notes. — Laws 2013, ch. 158, enacted this section as § 35-11-529. The section is set out as subsequently renumbered by the legislative service office.

§ 35-11-535. Municipal solid waste landfill remediation account; authorized expenditures from the account.

(a) There is created the municipal solid waste landfill remediation account. The department shall use monies from the municipal solid waste landfill remediation account as appropriated by the legislature for the administration of the program. Interest earned by this account shall be deposited in the general fund. Notwithstanding W.S. 9-2-1008, 9-2-1012(e) and 9-4-207(a), funds deposited in this account shall not revert without further action of the legislature.

(b) For a leaking municipal solid waste landfill to be eligible for use of monies in the account, the owner or operator of the site shall comply with all requirements of the program and regulations of the council adopted pursuant to W.S. 35-11-536.

(c) In addition to expenditures from the account authorized by W.S. 35-11-534(a), the department shall issue a credit in an amount not to exceed the local operator's twenty-five percent (25%) share required by W.S. 35-11-534(c)(v) of the total cost of eligible remediation and monitoring activities provided in W.S. 35-11-534(a), for past remediation and monitoring expenses incurred by the local operator as specified in this subsection. The department shall issue credits under this subsection for costs incurred by a local operator for remediation and monitoring activities from the account if:

(i) A work plan for the remediation and monitoring activities was submitted to and approved by the department;

(ii) The remediation and monitoring activities were initiated after July 1, 2006;

(iii) The local operator of a municipal solid waste landfill provides the department with an accurate accounting of the costs of remediation and monitoring activities conducted at the municipal solid waste landfill after July 1, 2006 and the department determines that those remediation and monitoring activities would be eligible for funding if they had been performed under the program;

(iv) The local operator conducts additional remediation and monitoring activities at the leaking municipal solid waste landfill which are eligible for funding under W.S. 35-11-534(a) on or after July 1, 2013; and

(v) A credit issued under this subsection shall not exceed an amount equal to seventy-five percent (75%) of the cost incurred by the local operator for eligible remediation and monitoring activities after July 1, 2006.

(d) Repealed by Laws 2015, ch. 47 § 2.

History:
Laws 2013, ch. 158, § 1; 2015, ch. 47, §§ 1, 2.

The 2015 amendment, rewrote the introductory language of (c), which formerly read: "Pursuant to subsection (d) of this section, in addition to expenditures from the account authorized by W.S. 35-11-534(a), the department shall reimburse costs incurred by a local operator who performed remediation and monitoring activities from the account if"; substituted "initiated after July 1, 2006" for "initiated between after July 1, 2006 and December 31, 2012"; rewrote (c)(iii); added (c)(v); repealed (d), pertaining to authorized reimbursements; and made related changes.

Laws 2015, ch. 47, § 3, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 25, 2015.

Editor's notes. — Laws 2013, ch. 158, enacted this section as § 35-11-530. The section is set out as subsequently renumbered by the legislative service office.

§ 35-11-536. Rules and regulations.

(a) The council shall promulgate rules and regulations necessary to administer the program after recommendation from the director of the department, the administrator of the solid and hazardous waste division and the water and waste advisory board. The rules shall include but shall not be limited to rules and regulations which:

(i) Provide for landfill monitoring and remediation system design, construction, installation and monitoring standards which shall be no less stringent than federal requirements;

(ii) Specify the requirements for delegating installation or modification inspection authority including but not limited to requirements for contractors and local operators;

(iii) Establish a procedure or procedures for reporting any release from a municipal solid waste landfill;

(iv) Include provisions under which priorities for remediation actions shall be established in addition to the priority list created pursuant to W.S. 35-11-524. Those priorities shall be established considering, but not limited to, the following factors:

(A) Funding availability;

(B) Cost efficiencies achieved by allocation of resources;

(C) Opportunities for increased cost sharing between monitoring and remediation actions at multiple leaking municipal solid waste landfills;

(D) Timeliness of remediation in reducing risk to public health, safety and welfare or the environment;

(E) The likelihood that the remedy will reduce or eliminate the threat posed to public health, safety and welfare or the environment by continuing releases; and

(F) Whether the facility has completed closure and transfer actions at the leaking municipal solid waste facility. Priority shall be given to solid waste facilities which have completed closure and transfer actions.

(v) Require records for compliance with repairs and upgrades to be maintained for the operational life of the landfill remediation and monitoring system;

(vi) Create requirements for participation in the program and for the return of the facility to local control pursuant to W.S. 35-11-534(a); and

(vii) Specify standards for restoration of the environment.

History:
Laws 2013, ch. 158, § 1.

Editor's notes. — Laws 2013, ch. 158, enacted this section as § 35-11-531. The section is set out as subsequently renumbered by the legislative service office.

There is no subsection (b) in this section as it appears in the printed acts.

§ 35-11-537. Restoration standard.

Any owner or operator, the department or other person taking a corrective action shall restore the environment to a condition and quality consistent with standards established in rules and regulations.

History:
Laws 2013, ch. 158, § 1.

Editor's notes. — Laws 2013, ch. 158, enacted this section as § 35-11-532. The section is set out as subsequently renumbered by the legislative service office.

ARTICLE 6. VARIANCES

Library references. — American Law of Mining, 2nd Edition § 172.03 (Matthew Bender).

§ 35-11-601. Applications; authority to grant; hearing; limitations; renewals; judicial review; emergencies.

(a) Any person who owns or is in control of any real or personal property, any plant, building, structure, process or equipment may apply to the administrator of the appropriate division for a variance from any rule, regulation, standard or permit promulgated under this act. A variance may be granted upon notice and hearing. The administrator shall give public notice of the request for a variance in the county in which such real or personal property, plant, building, structure, process or equipment is in existence for which the variance is sought. The notice shall designate who has applied for the variance and the nature of the variance requested and the time and place of hearing and shall be published in a newspaper of general circulation in said county once a week for four (4) consecutive weeks prior to the date of the hearing. The cost of publication shall be paid by the person applying for the variance. The administrator of the division shall promptly investigate the request, consider the views of the persons who may be affected by the grant of the variance, and all facts bearing on the request, and make a decision with the approval of the director within sixty (60) days from the date the hearing for a variance is held.

(b) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution, or mining operation involved, it shall continue in effect only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the director may prescribe.

(c) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the director is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(d) A variance may be granted by the council from standards established by the council for sulfur oxide emissions, if the council determines that the state of the technology for removal of sulfur oxides from the stack gasses is insufficiently advanced to achieve the objective level without causing undue economic hardship on the owner of the facility or the consumer of the product produced by the facility or if the council determines that the developing technology offers promise that superior equipment might, in the near future, be available which would render presently available equipment obsolete and that the best interests of the state would be served by the issuance of the variance. In considering such a variance, the council must consider the health and well being of the citizens in the vicinity of the facility and the effect upon livestock and agricultural production in the area. In no event shall the variance permit emissions less stringent than existing federal standards covering the emission of sulfur oxides. Each application for a variance will be issued on a case by case basis considering the state of the technology at the time of each application.

(e) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subsections (b), (c) and (d) of this section, it shall be for not more than one (1) year.

(f) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint by an aggrieved party is made to the director on account of the variance, no renewal thereof shall be granted, unless following public hearing on the complaint on due notice, the council finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the variance.

(g) Any variance or renewal thereof granted by the director pursuant to this section shall become final unless within thirty (30) days after date of notice as provided in subsection (a) of this section an aggrieved party as defined by this act in writing may request a hearing before the council. Upon the filing of such a request for a hearing, the variance shall be stayed pending the council's final determination thereon.

(h) If, after a hearing held pursuant to this section, the council finds that a variance is required, it shall affirm or modify the order previously issued by the director or issue an appropriate order for variance as it deems necessary. If, after a hearing held pursuant to this section, the council finds that there is no need for a variance, it shall rescind the issuance of a variance.

(j) In connection with any hearing held pursuant to this section, the council has the power and upon application by any aggrieved party, it has the duty to compel the attendance of witnesses, and the production of evidence on behalf of all parties.

(k) Any aggrieved party adversely affected by a variance or renewal of same or the denial of same may obtain judicial review thereof in the manner prescribed by the Wyoming Administrative Procedure Act [§§ 16-3-101 through 16-3-115].

(m) Failure to comply with the conditions imposed by any variance shall be cause for modification or termination of the variance by the director.

(n) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of W.S. 35-11-115 to any person or property.

(o) Nothing in this section shall be construed to permit an application for a water variance. The application for water permits must be made solely under the provisions of W.S. 35-11-302.

(p) Nothing in this act or regulations under this act shall be construed to permit an application for a variance which would result in less stringent land use or environmental controls or regulations of surface coal mining and reclamation operations than authorized by P.L. 95-87, as that law is worded on August 3, 1977, or the federal regulations promulgated pursuant thereto.

(q) In order to encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, residential or public use (including recreational facilities), the director, with approval by the secretary of the interior, may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated by the council under this act. Such departures may be authorized if:

(i) The experimental practices are potentially more or at least as environmentally protective, during and after mining operations, as those required by promulgated standards;

(ii) The mining operations approved for particular land-use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and

(iii) The experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards.

(r) The secretary of interior, acting through the office of surface mining reclamation and enforcement, shall assist the state in the development of a state program for surface coal mining and reclamation operations which meet the requirements of this act and P.L. 95-87, and at the same time, reflect local requirements and local environmental and agricultural conditions.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.45; Laws 1975, ch. 198, § 2; 1980, ch. 64, § 2; 1992, ch. 60, § 3.

Editor's notes. — There is no subsection (i) or (l) in this section as it appears in the printed acts.

Federal reference. — P.L. 95-87, referred to in subsections (p) and (r), appears mainly as 30 U.S.C. § 1201 et seq.

Meaning of "this act." — For the definition of "this act," referred to throughout this section, see § 35-11-103(a)(xiii).

All permits under this chapter allow variances, with exception of water quality permits. United States Steel Corp. v. Wyoming Envtl. Quality Council, 575 P.2d 749, 1978 Wyo. LEXIS 270 (Wyo. 1978).

Basic reason for this distinction is that it is required to bring the state provisions into compliance with the federal regulations, which only provide for "schedules of compliance" — not variances. United States Steel Corp. v. Wyoming Envtl. Quality Council, 575 P.2d 749, 1978 Wyo. LEXIS 270 (Wyo. 1978).

Prohibition of water variances not unconstitutional. — A prohibition of water variances does not violate art. 1, § 7, Wyo. Const., in that it is an exercise of absolute and arbitrary power; does not deny due process by denying a fair opportunity to challenge applicable water quality standards; and does not deny equal protection of the laws by discriminating between water and other pollutant dischargers. United States Steel Corp. v. Wyoming Envtl. Quality Council, 575 P.2d 749, 1978 Wyo. LEXIS 270 (Wyo. 1978).

Given various means by which a corporation could present its views as to a water turbidity standard, including opportunity to participate in the promulgation process and to assure that there was procedural compliance, opportunity to obtain judicial review, if it was affected in fact by the rule adopted, and opportunity to seek the amendment or repeal of the rule, the corporation's rights to procedural due process were not infringed by the prohibition of water variances under subsection (o) of this section. United States Steel Corp. v. Wyoming Envtl. Quality Council, 575 P.2d 749, 1978 Wyo. LEXIS 270 (Wyo. 1978).

There are rational reasons to distinguish between water and other pollutant dischargers, including: the different nature of the natural resources; the difference in the number of pollutant dischargers within each class; and the difference in the extent of damage which can result from the various discharges. United States Steel Corp. v. Wyoming Envtl. Quality Council, 575 P.2d 749, 1978 Wyo. LEXIS 270 (Wyo. 1978).

Cited in Board of Trustees v. Spiegel, 549 P.2d 1161, 1976 Wyo. LEXIS 191 (Wyo. 1976).

Am. Jur. 2d, ALR and C.J.S. references. — Validity, construction and application of variance provisions in state and local air pollution control laws and regulations, 66 ALR4th 711.

ARTICLE 7. COMPLAINTS

Library references. — American Law of Mining, 2nd Edition § 172.03 (Matthew Bender).

§ 35-11-701. Complaint; investigations; conference; cease and desist order; hearing; referee.

(a) If the director or the administrators have cause to believe that any persons are violating any provision of this act or any rule, regulation, standard, permit, license, or variance issued pursuant hereto, or in case any written complaint is filed with the department alleging a violation, the director, through the appropriate administrator, shall cause a prompt investigation to be made.

(b) For surface coal mining operations, in the instance of a written complaint by any person which provides a reasonable basis to believe that a violation of article 4 of this act, or of any rule, regulation, standard, order, license, variance or permit issued thereunder, exists, the investigation shall include a prompt inspection. In such event the director shall notify the person when the inspection is proposed to be carried out and the person shall be allowed to accompany the inspector during the inspection, subject to reasonable control by the inspector. The operator shall have a duty to exercise reasonable care for the person's safety only if his presence is known. However, this duty shall not include the duty to inspect the premises to discover dangers which are unknown to the operator, nor giving warning or protection against conditions which are known or should be obvious to the person. The operator or his designee shall be allowed to be present for any such inspection.

(c) For other than those violations specified under subsection (b) of this section, if, as a result of the investigation, it appears that a violation exists, the administrator of the proper division may, by conference, conciliation and persuasion, endeavor promptly to eliminate the source or cause of the violation:

(i) In case of failure to correct or remedy an alleged violation, the director shall cause to be issued and served upon the person alleged to be responsible for any such violation a written notice which shall specify the provision of this act, rule, regulation, standard, permit, license, or variance alleged to be violated and the facts alleged to constitute a violation thereof, and may require the person so complained against to cease and desist from the violation within the time the director may determine;

(ii) Any order is final unless, not later than ten (10) days after the date the notice is served, the person or persons named therein request, in writing, a hearing before the council. Upon the filing of a request the order complained of shall be stayed pending the council's final determination thereon;

(iii) If after a hearing held pursuant to this section, the council finds that a violation has occurred, it shall affirm or modify such order previously issued, or issue an appropriate order or orders for the prevention, abatement or control of the violation involved or for the taking of other corrective action. If, after a hearing on an order contained in a notice, the council finds that no violation has occurred, it shall rescind the order. Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation shall cease and may prescribe timetables for action. Nothing contained in this subsection shall be construed as preventing any person from applying for a variance as provided in W.S. 35-11-601;

(iv) At any hearing before the council, it may designate a person to be a referee and may authorize the referee to receive evidence, administer oaths, examine witnesses and issue subpoenas requiring the testimony of witnesses and the production of evidence and to make reports and recommendations with respect thereto. Any final determination based on the evidence received by any referee shall be made solely by the council.

(d) Nothing in this section shall be interpreted to in any way limit or contravene any other remedy available under this act, nor shall this section be interpreted as a condition precedent to any other enforcement action under this act.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.46; Laws 1975, ch. 198, § 2; 1980, ch. 64, § 2; 1995, ch. 28, § 2.

Meaning of "this act." — For the definition of "this act," referred to throughout this section, see § 35-11-103(a)(xiii).

"Order" referred to in subsection (c)(ii) and (iii) is cease and desist order and not simply a written notice of violation. People v. Fremont Energy Corp., 651 P.2d 802, 1982 Wyo. LEXIS 386 (Wyo. 1982).

No review of written notice of violation under section. — There is no provision in this section for a review by the environmental quality council of the allegations contained in a written notice of violation issued pursuant to subsection (c)(i), because § 35-11-901 provides the alleged violator with a review of the allegation prior to the assessment of any penalty. People v. Fremont Energy Corp., 651 P.2d 802, 1982 Wyo. LEXIS 386 (Wyo. 1982).

Administrative remedies of section not prerequisite to action under § 35-11-901. — The state is not required to exhaust any of the administrative remedies set forth in this section before commencing a civil action under § 35-11-901 to collect penalties for violating this chapter. People v. Fremont Energy Corp., 651 P.2d 802, 1982 Wyo. LEXIS 386 (Wyo. 1982).

Doctrines of exhaustion of administrative remedies and primary jurisdiction inapplicable. — Neither the doctrine of exhaustion of administrative remedies nor the doctrine of primary jurisdiction are applicable in an action seeking penalties from an energy corporation for violation of the Wyoming Environmental Quality Act. People v. Fremont Energy Corp., 651 P.2d 802, 1982 Wyo. LEXIS 386 (Wyo. 1982).

Emissions Outside Routine Operations. — In determining a proposed facility's potential to emit sulfur dioxide, emissions from cold starts and malfunctions did not have to be considered because they were not routine operations; moreover, they would be regulated as excess emissions if they exceeded the limit in the air quality permit. Sierra Club v. Wyo. Dep't of Envtl. Quality, 2011 WY 42, 251 P.3d 310, 2011 Wyo. LEXIS 44 (Wyo. 2011).

Applied in Town of Torrington v. Envtl. Quality Council, 557 P.2d 1143, 1976 Wyo. LEXIS 234 (Wyo. 1976).

Cited in Roberts Constr. Co. v. Vondriska, 547 P.2d 1171, 1976 Wyo. LEXIS 176 (Wyo. 1976); Board of Trustees v. Spiegel, 549 P.2d 1161, 1976 Wyo. LEXIS 191 (Wyo. 1976).

Law reviews. — For comment, "Wyoming's Governmental Claims Act: Sovereign Immunity with Exceptions — A Statutory Analysis," see XV Land & Water L. Rev. 619 (1980).

For article, "Administrative Law, Wyoming Style," see XVIII Land & Water L. Rev. 223 (1983).

Am. Jur. 2d, ALR and C.J.S. references. — Citizen's action under 33 USC § 1365(a)(1) for violation of effluent standards or limitations under Federal Water Pollution Control Act (33 USC § 1251 et seq.) or orders with respect thereto, 68 ALR Fed 701.

Relief available in citizen's suit under 42 USC § 6972 for violation of federal requirements relating to solid or hazardous waste, 71 ALR Fed 181.

ARTICLE 8. PERMITS

Am. Jur. 2d, ALR and C.J.S. references. — What constitutes "issuing or denying" permit for discharge of pollutants within meaning of § 509(b)(1)(F) of the Federal Water Pollution Control Act (33 USC § 1369(b)(1)(F)) which authorizes judicial review of such action by administrator of environmental protection agency, 67 ALR Fed 365.

What constitutes "discharge of dredged or fill material" into navigable waters, so as to be subject to permit requirements under § 404(a) of Federal Water Pollution Control Act (33 USC § 1344(a)), 72 ALR Fed 703.

Application of § 165 of Clean Air Act (42 USC § 7475), pertaining to preconstruction requirements for prevention of significant deterioration, to particular emission sources, 86 ALR Fed 255.

Library References. — American Law of Mining, 2nd Edition § 172.03 (Matthew Bender).

§ 35-11-801. Issuance of permits and licenses.

(a) When the department has, by rule or regulation, required a permit to be obtained it is the duty of the director to issue such permits upon proof by the applicant that the procedures of this act and the rules and regulations promulgated hereunder have been complied with. In granting permits, the director may impose such conditions as may be necessary to accomplish the purpose of this act which are not inconsistent with the existing rules, regulations and standards. An administrator shall not issue permits and may issue a license under this act only as specifically authorized in this act.

(b) Except as otherwise provided in this act the director shall take final action on any application for permit or extension thereof within sixty (60) days after receipt of same unless public notice or hearing is required by state or federal statute.

(c) Except as provided in subsection (e) of this section, a permit to construct is required before

construction or modification of any industrial facility capable of causing or increasing air or water pollution in excess of standards established by the department is commenced.

(d) General permits shall be issued solely in accordance with procedures set forth by regulation adopted by the council. Procedures for the issuances of general permits shall include public notice and an opportunity for comment. All department authorizations to use general permits under this section shall be available for public comment for thirty (30) days. Any aggrieved party may appeal the authorization as provided in this act.

(e) Except for sources required to have a permit before construction or modification under the applicable requirements of W.S. 35-11-203 and sources specified by the director, if an applicant for an air quality permit for an oil or gas exploration or production well, with its associated equipment, has submitted a timely and complete application for a permit to construct or modify within ninety (90) days of the first date of production of the oil and gas operation, the applicant's failure to have a permit shall not be a violation of this section. An applicant complies with this section if the applicant demonstrates to the administrator of the air quality division that the oil and gas exploration or production activity qualifies as a nonmajor source. The application shall contain, at a minimum, a demonstration that the applicant will apply the best available control technology to the oil and gas production and exploration activity.

(f) As used in subsection (e) of this section, "first date of production" means the date permanent production equipment is in place and product is consistently flowing to sales lines, gathering lines or storage tanks. Production occurring during well completion activities which is routed to temporary production equipment is considered to occur prior to the first date of production. If extended periods of time pass between zone completions but production from initially completed zones is consistently flowing to permanent production equipment, the first date of production is the date when production from the initial zones began consistently flowing to the permanent production equipment, even though more zones will be completed later.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.47; Laws 1975, ch. 198, § 2; 1992, ch. 60, § 3; ch. 70, § 2; 2012, ch. 109, § 1; 2015, ch. 66, § 1.

The 2012 amendment, added (d).

Laws 2012, ch. 109, § 2, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 23, 2012.

The 2015 amendment, effective July 1, 2015, in (c), added the exception at the beginning; and added (e) and (f).

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Emissions Outside Routine Operations. — In determining a proposed facility's potential to emit sulfur dioxide, emissions from cold starts and malfunctions did not have to be considered because they were not routine operations; moreover, they would be regulated as excess emissions if they exceeded the limit in the air quality permit. Sierra Club v. Wyo. Dep't of Envtl. Quality, 2011 WY 42, 251 P.3d 310, 2011 Wyo. LEXIS 44 (Wyo. 2011).

Cited in Wyo. Dep't of Envtl. Quality v. Wyo. Outdoor Council, 2012 WY 135, 2012 Wyo. LEXIS 141 (Oct 19, 2012).

§ 35-11-802. Refusal to grant permits; applicant's rights.

If the director refuses to grant any permit under this act, the applicant may petition for a hearing before the council to contest the decision. The council shall give a public notice of such hearing. At such hearing, the director and appropriate administrator shall appear as respondent and the rules of practice and procedure adopted by the council pursuant to this act and the Wyoming Administrative Procedure Act [§§ 16-3-101 through 16-3-115] shall apply. The burden of proof shall be upon the petitioner. The council must take final action on any such hearing within thirty (30) days from date of hearing.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.48.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Evidence outside the record was properly considered. — Evidence outside the record was properly considered by the Wyoming Environmental Quality Council with regard to the use of best available control technology in a proposed facility. The Council is not limited to reviewing the administrative record prior to issuing an air quality permit but instead conducts a contested case hearing at which all parties are afforded the opportunity to present new evidence. Sierra Club v. Wyo. Dep't of Envtl. Quality, 2011 WY 42, 251 P.3d 310, 2011 Wyo. LEXIS 44 (Wyo. 2011).

Cited in Wyo. Dep't of Envtl. Quality v. Wyo. Outdoor Council, 2012 WY 135, 2012 Wyo. LEXIS 141 (Oct 19, 2012).

Law reviews. — For article, "Wyoming's Groundwater Laws: Quantity and Quality Regulation," see XXIV Land & Water L. Rev. 39 (1989).

§ 35-11-803. Single permit for activities covered by more than one article.

(a) The director may grant a single permit for a facility or activity regulated under more than one (1) article of this act provided that there is compliance with all rules, standards and public participation requirements provided by the individual articles of this act.

(b) The council may adopt unified rules which encompass activities covered by more than one (1) article of this act.

History:
Laws 1993, ch. 79, § 1.

Meaning of "this act." — For the definition of "this act," referred to throughout this section, see § 35-11-103(a)(xiii).

ARTICLE 9. PENALTIES

Law reviews. — For case note, "Hazardous Waste — The Supreme Court's Interpretation of RCRA: An Inequitable Result. KFC Western, Inc. v. Meghrig, 516 U.S. 479, 116 S. Ct. 1251, 134 L. Ed. 2d 121, 1996 U.S. LEXIS 1955 (1996)," see XXXII Land & Water L. Rev. 699 (1997).

Am. Jur. 2d, ALR and C.J.S. references. — Private entity's status as owner or operator under § 107(a)(1, 2) of Comprehensive Environmental Response, Compensation, and Liability Act (42 USCS § 9607(a)(1, 2) (CERCLA), 140 ALR Fed 181.

What constitutes "facility" within meaning of § 101(9) of the Comprehensive, Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. § 9601(9)), 147 ALR Fed 469.

Equitable considerations in allocating response costs to owner or occupant of previously contaminated facility in action pursuant to § 113(f) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)(42 U.S.C. § 9613(f), 148 ALR Fed 203.

39A C.J.S. Health and Environment §§ 139 to 157.

Library References. — American Law of Mining, 2nd Edition § 172.03 (Matthew Bender).

§ 35-11-901. Violations of provisions; penalties.

(a) Any person who violates, or any director, officer or agent of a corporate permittee who willfully and knowingly authorizes, orders or carries out the violation of any provision of this act, or any rule, regulation, standard or permit adopted hereunder or who violates any determination or order of the council pursuant to this act or any rule, regulation, standard, permit, license or variance is subject to a penalty not to exceed ten thousand dollars ($10,000.00) for each violation for each day during which violation continues, a temporary or permanent injunction, or both a penalty and an injunction subject to the following:

(i) Except that any person who violates any provision of article 2 of this chapter or any provision of the state hazardous waste program authorized pursuant to the Resource Conservation Recovery Act, Subtitle C, 42 U.S.C. § 6901 [6921] et seq., as amended, or any rule, regulation, standard or permit adopted pursuant to those provisions, or who violates any determination or order of the council pursuant to article 2 of this chapter or the state hazardous waste program is subject to a penalty not to exceed ten thousand dollars ($10,000.00) for each violation for each day during which the violation continues, a temporary or permanent injunction, or both a penalty and an injunction; and

(ii) Penalties and injunctive relief under this subsection are to be determined by a court of competent jurisdiction in a civil action, provided that nothing herein shall preclude the department from negotiating stipulated settlements involving the payment of a penalty, implementation of compliance schedules or other settlement conditions in lieu of litigation.

(b) through (h) Repealed by Laws 1995, ch. 28, § 4.

(j) Any person who willfully and knowingly violates, or any director, officer or agent of a corporate permittee who willfully and knowingly authorizes, orders or carries out the violation of any provision of this act or any rule, regulation, standard, permit, license, or variance or limitations adopted hereunder or who willfully violates any determination or order of the council or court

issued pursuant to this act or any rule, regulation, standard, permit or limitation issued under this act shall be fined not more than twenty-five thousand dollars ($25,000.00) per day of violation, or imprisoned for not more than one (1) year, or both. For a subsequent conviction for a violation of this act, the person shall be subject to a fine of not more than fifty thousand dollars ($50,000.00) per day of violation, imprisonment for not more than two (2) years, or both. For multiple violations, penalties may be assessed up to the maximum amount specified in this subsection for each day of each separate violation.

(k) Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this act, shall upon conviction, be fined not more than ten thousand dollars ($10,000.00) per day for each violation or imprisoned for not more than one (1) year, or both.

(m) through (q) Repealed by Laws 1995, ch. 28, § 4.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.49; Laws 1974, ch. 14, §§ 1, 2; 1975, ch. 198, § 2; Laws 1980, ch. 64, § 2; 1982, ch. 73, § 2; 1994, ch. 82, § 2; 1995, ch. 28, §§ 2, 4.

Cross references. — As to penalty for contamination of streams or lakes by manufacturing or industrial works, see § 35-4-202.

As to injunctions, see Rule 65, W.R.C.P.

Editor's notes. — There is no subsection (i) or (l) in this section as it appears in the printed acts.

Subtitle C of the Resource Conservation Recovery Act, referred to in paragraph (a)(i), is codified at 42 U.S.C. § 6921 et seq.

Meaning of "this act." — For the definition of "this act," referred to throughout this section, see § 35-11-103(a)(xiii).

Section provides review of written notice of violation. — There is no provision in § 35-11-701 for a review by the environmental quality council of the allegations contained in a written notice of violation issued pursuant to § 35-11-701(c)(i), because this section provides the alleged violator with a review of the allegation prior to the assessment of any penalty. People v. Fremont Energy Corp., 651 P.2d 802, 1982 Wyo. LEXIS 386 (Wyo. 1982).

Administrative remedies not prerequisite to action under section. — The state is not required to exhaust any of the administrative remedies set forth in § 35-11-701 before commencing a civil action under this section to collect penalties for violating this chapter. People v. Fremont Energy Corp., 651 P.2d 802, 1982 Wyo. LEXIS 386 (Wyo. 1982).

Department of environmental quality may proceed at any time after discovering violation of this chapter to seek enforcement of this chapter by seeking penalties for its violation in a civil action before a court as provided in this section. People v. Fremont Energy Corp., 651 P.2d 802, 1982 Wyo. LEXIS 386 (Wyo. 1982).

Doctrines of exhaustion of administrative remedies and primary jurisdiction inapplicable. — Neither the doctrine of exhaustion of administrative remedies nor the doctrine of primary jurisdiction are applicable in an action seeking penalties from an energy corporation for violation of this chapter. People v. Fremont Energy Corp., 651 P.2d 802, 1982 Wyo. LEXIS 386 (Wyo. 1982).

Owners of pipelines which discharge oil into state waters are liable regardless of fault for damages and for the civil penalties set out in this section. People v. Platte Pipe Line Co., 649 P.2d 208, 1982 Wyo. LEXIS 368 (Wyo. 1982).

Action, initiated prior to statutory enactment, dismissed. — A gas station operator charged with violating §§ 35-11-301 and 35-11-901 was entitled to have his action dismissed and his supersedeas bond released where an appeal of the damage decision against him was pending when these sections were enacted. V-1 Oil Co. v. People, 799 P.2d 1199, 1990 Wyo. LEXIS 125 (Wyo. 1990).

Applied in Nickelson v. People, 607 P.2d 904, 1980 Wyo. LEXIS 239 (Wyo. 1980); Stalkup v. State Dep't of Envtl. Quality, 838 P.2d 705, 1992 Wyo. LEXIS 123 (Wyo. 1992).

Law reviews. — For case note, "Environmental Law — Strict Liability for Oil Spills in Wyoming. People v. Platte Pipe Line Company, 649 P.2d 208, 1982 Wyo. LEXIS 368 (Wyo. 1982)," see XVIII Land & Water L. Rev. 805 (1983).

For comment, "The Use of Opinion Testimony for Valuing Real Property in an Eminent Domain Suit," see XIX Land & Water L. Rev. 43 (1984).

For comment, "Hazardous Waste Cleanup in Wyoming: Legal Tools Available to the Private Citizen," see XIX Land & Water L. Rev. 395 (1984).

For comment, "Putting Polluters in Jail: The Imposition of Criminal Sanctions on Corporate Defendants Under Environmental Statutes," see XX Land & Water L. Rev. 93 (1985).

For comment, "State Participation in Federal Policy Making for the Yellowstone Ecosystem: A Meaningful Solution or Business as Usual?" see XXI Land & Water L. Rev. 397 (1986).

Am. Jur. 2d, ALR and C.J.S. references. — Recovery in trespass for injury to land caused by airborne pollutants, 2 ALR4th 1054.

State and local government control of pollution from underground storage tanks, 11 ALR5th 388.

Application of statute of limitations in private tort actions based on injury to persons or property caused by underground flow of contaminants, 11 ALR5th 438.

What constitutes "suit" triggering insurer's duty to defend environmental claims — state cases, 48 ALR5th 355.

§ 35-11-902. Surface coal mining operations; violations of provisions; penalties.

(a) Notwithstanding W.S. 35-11-901, violations by surface coal mining operations of article 4 of this act, or of any rule, regulation, standard, order, license, variance or permit issued thereunder, shall be governed by this section.

(b) Any person who violates, or any director, officer or agent of a corporate permittee who willfully and knowingly authorizes, orders or carries out the violation of any provision of article 4 of this act for surface coal mining operations, or any rule, regulation, standard, license, variance or permit issued thereunder, or who violates any determination or order of the council pursuant to article 4 of this act for surface coal mining operations is subject to either a penalty not to exceed ten thousand dollars ($10,000.00) for each day during which a violation continues, or, for multiple violations, a penalty not to exceed five thousand dollars ($5,000.00) for each violation for each day during which a violation continues, a temporary or permanent injunction, or both a penalty and an injunction. Penalties and injunctive relief under this subsection may be recovered in a civil action.

(c) All notices for abatement and cessation orders shall be reported to the director. The director shall:

(i) Issue a notice of assessment, if a cessation order was issued;

(ii) Make a determination as to whether a notice of assessment will be issued if a notice for abatement was issued.

(d) Upon issuance of a notice of abatement or cessation order, the director shall inform the operator of the proposed amount of the penalty within thirty (30) days. The amount shall be determined in accordance with rules and regulations promulgated by the council. The person charged with the penalty shall have fifteen (15) days to request a conference with the director for informal disposition of any dispute over either the amount of the penalty or the occurrence of the violation.

(e) If a conference is held and after the director has determined that a violation did occur and the amount of the penalty is warranted, the person charged with the penalty shall, within fifteen (15) days, either:

(i) Pay the proposed penalty in full; or

(ii) Petition the council for review of either the amount of the penalty or the fact of the violation, submitting a bond equal to the proposed amount of the penalty at the time of filing the petition. The bond shall be conditioned for the satisfaction of the penalty in full, or as modified by the council, if the director's determination as to the occurrence of the violation and the assessment of a penalty is affirmed. The petition is effective when the bond is approved by the council. If the bond is not approved, the person charged with the penalty has ten (10) days to forward the proposed amount to the council for placement in an escrow account to make the petition effective.

(f) If a conference is not requested, the person charged with the penalty has thirty (30) days to take the action required under subsection (d) of this section.

(g) After a petition is effective, the council shall hold a hearing, which shall be conducted as a contested case proceeding under the Wyoming Administrative Procedure Act. The council shall either:

(i) Determine the occurrence of the violation and the amount of penalty which is warranted for the purpose of ordering that the penalty be paid; or

(ii) Determine that no violation occurred, or that the amount of the penalty shall be reduced. If such a determination is made, either through administrative or judicial review, the director shall within thirty (30) days remit the appropriate amount to the person, if any deposit has been made, with interest at the rate of six percent (6%), or at the prevailing United States department of treasury rate, whichever is greater. Failure to file an effective petition shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(h) Any person aggrieved or adversely affected in fact by a final decision of the council pursuant to this section is entitled to judicial review in accordance with the Wyoming Administrative Procedure Act.

(j) Any person who willfully and knowingly violates, or any director, officer or agent of a corporate permittee who willfully and knowingly authorizes, orders or carries out the violation of any provision of article 4 of this act with respect to surface coal mining, or any rule, regulation, standard, permit, license, or variance or limitations adopted thereunder, or who willfully violates

any determination or order of the council or court issued pursuant to this section, shall be fined not more than twenty-five thousand dollars ($25,000.00) per day of violation, imprisoned for not more than one (1) year, or both. For a subsequent conviction for a violation of article 4 of this act with respect to surface coal mining, the person shall be subject to a fine of not more than fifty thousand dollars ($50,000.00) per day of violation, imprisonment for not more than two (2) years, or both. For multiple violations, penalties may be assessed up to the maximum amount specified in this subsection for each day of each separate violation.

(k) Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under article 4 of this act for surface coal mining operations, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under article 4 of this act for surface coal mining operations shall, upon conviction be subject to a fine of not more than ten thousand dollars ($10,000.00), imprisonment for not more than one (1) year, or both.

(m) Any person who shall, except as permitted by law, willfully resist, prevent, impede or interfere with the director, any administrator or any of their agents in the performance of their duties in the regulation of surface coal mining operations under article 4 of this act shall be subject to a fine of not more than five thousand dollars ($5,000.00), imprisonment for not more than one (1) year, or both.

(n) Any operator of a surface coal mining operation who fails to correct a violation within the period permitted for its correction, or after a final order or decision issues requiring correction when either the department or a court has relieved the operator from the abatement requirements of the notice or order, shall be assessed a civil penalty of not less than seven hundred fifty dollars ($750.00) for each day during which the failure or violation continues.

(o) Any person who is injured in his person or property through the violation, by any operator, of any rule, regulation, order or permit issued pursuant to article 4 of this act as it provides for the regulation of surface coal mining and reclamation in accordance with the requirements of P.L. 95-87 may bring an action for damages, including reasonable attorney and expert witness fees, only in the judicial district in which the surface coal mining operation complained of is located.

History:
Laws 1995, ch. 28, § 1.

Editor's notes. — There is no subsection (i) or (l) in this section as it appears in the printed acts.

Former § 35-11-902, relating to civil or criminal remedies, was renumbered by Laws 1995, ch. 28, § 3 as § 35-11-904.

Meaning of "this act." — For the meaning of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Federal Reference. — P.L. 95-87, referred to in subsection (o), appears mainly as 30 U.S.C. § 1201 et seq.

Wyoming Administrative Procedure Act. — See § 16-3-101(a), (b)(xi).

§ 35-11-903. Violations of provisions of act causing damage to wildlife; recoveries; causes of action.

(a) Any person who violates this act, or any rule or regulation promulgated thereunder, and thereby causes the death of fish, aquatic life or game or bird life is, in addition to other penalties provided by this act, liable to pay to the state, an additional sum for the reasonable value of the fish, aquatic life, game or bird life destroyed. Any monies so recovered shall be placed in the game and fish fund.

(b) Except as provided in W.S. 35-11-902(o), nothing in this act shall be construed to abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding therefor.

(c) All actions pursuant to this article, except actions under W.S. 35-11-902(o), shall be brought in the county in which the violation occurred or in Laramie county by the attorney general in the name of the people of Wyoming. All actions pursuant to this article for the enforcement of any program to administer the provisions of W.S. 35-11-301(a)(iii) and (v) pursuant to the authority delegated under W.S. 35-11-304 may also be brought by the county attorney in the county in which the violation occurred.

History:
Laws 1995, ch. 28, § 1; 2005, ch. 157, § 2.

The 2005 amendment substituted "game and fish fund" for "general fund" in (a).

Laws 2005, ch. 157, § 3, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 26, 2005.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

§ 35-11-904. Civil or criminal remedy.

(a) Except as provided in subsection (c) of this section, any person having an interest which is or may be adversely affected, may commence a civil action on his own behalf to compel compliance with this act only to the extent that such action could have been brought in federal district court under Section 520 of P.L. 95-87 [30 U.S.C. § 1270], as that law is worded on August 3, 1977:

(i) Against any governmental entity, for alleged violations of any provisions of this act or of any rule, regulation, order or permit issued pursuant thereto, or against any other person for alleged violations of any rule, regulation, order or permit issued pursuant to this act; or

(ii) Against the state of Wyoming, department of environmental quality, for alleged failure of the department to perform any act or duty under this act which is not discretionary with the department.

(b) Actions against the state of Wyoming, department of environmental quality, pursuant to this section shall be filed in the district court for Laramie county. Actions against any governmental entity, or any other person pursuant to this section shall be filed in the district court for the county in which the violation is alleged to have occurred.

(c) No action pursuant to this section may be commenced:

(i) Prior to sixty (60) days after the plaintiff has given notice in writing of the violation and of his intent to commence the civil action to the department and the alleged violator, except that such action may be brought immediately after such notification if the violation complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff; or

(ii) If the department, through the attorney general, has commenced a civil action to require compliance with the provisions of this act, or any rule, regulation, order or permit issued pursuant to this act, but in any such action any person may intervene as a matter of right.

(d) The state of Wyoming, department of environmental quality, may intervene as a matter of right in any action filed pursuant to this section.

(e) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation, (including attorney and expert witness fees), to any party whenever the court determines such award is appropriate.

(f) The availability of judicial review established pursuant to W.S. 16-3-114 shall not be construed to limit the operation of rights established in this section.

(g) Nothing in this act shall in any way limit any existing civil or criminal remedy for any wrongful action arising out of a violation of any provision of this act or any rule, regulation, standard, permit, license, or variance or order adopted hereunder.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.50; Laws 1980, ch. 64, § 2; W.S. 1977, § 35-11-902; Laws 1995, ch. 28, § 3.

Editor's notes. — This section was formerly § 35-11-902, and was renumbered as § 35-11-904 by Laws 1995, ch. 28, § 3.

Surface Mining Act. — Section 520 of P.L. 95-87, referred to in the introductory language of subsection (a), appears as the federal Surface Mining Act at 30 U.S.C. § 1270.

Meaning of "this act." — For the definition of "this act," referred to in subsections (a), (c) and (g), see § 35-11-103(a)(xiii).

Personal harm not prerequisite to bringing action. — This section allows an action to be brought by interested parties who may be adversely affected, in which no actual personal harm is complained of but merely the violation of the rules and regulations issued pursuant to this chapter. Belle Fourche Pipeline Co. v. Elmore Livestock Co., 669 P.2d 505, 1983 Wyo. LEXIS 357 (Wyo. 1983).

But proper notice prerequisite. — Where an action can only be construed to have been brought as a private attorney general under subsection (a)(i), such action is procedurally defective if the plaintiff fails to provide both the department of environmental quality and the alleged violator with the proper notice required in subsection (c)(i). Belle Fourche Pipeline Co. v. Elmore Livestock Co., 669 P.2d 505, 1983 Wyo. LEXIS 357 (Wyo. 1983).

Quoted in Stalkup v. State Dep't of Envtl. Quality, 838 P.2d 705, 1992 Wyo. LEXIS 123 (Wyo. 1992).

Law reviews. — For comment, "Hazardous Waste Cleanup in Wyoming: Legal Tools Available to the Private Citizen," see XIX Land & Water L. Rev. 395 (1984).

For comment, "State Participation in Federal Policy Making for the Yellowstone Ecosystem: A Meaningful Solution or Business as Usual?" see XXI Land & Water L. Rev. 397 (1986).

Library references. — 17 Nat. Resources & Env't Law Review 161.

18 Nat. Resources & Env't Law Review 53.

Am. Jur. 2d, ALR and C.J.S. references. — Standing to sue for violation of state environmental regulatory statute, 66 ALR4th 685.

What constitutes "suit" triggering insurer's duty to defend environmental claims — state cases, 48 ALR5th 355.

Construction and application of 42 USC § 7604(d) pertaining to recovering costs of litigation in suits under Clean Air Act, 85 ALR Fed 118.

Necessity of proof of scienter under statute fixing criminal penalties for hazardous waste violations (42 USC § 6928(d)), 106 ALR Fed 836.

What constitutes "disposal" for Purposes of owner or operator liability under § 107(a)(2) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9607(a)(2)), 136 ALR Fed 117.

Private entity's status as owner or operator under § 107(a)(1, 2) of Comprehensive Environmental Response, Compensation, and Liability Act (42 USCS § 9607(a)(1, 2) (CERCLA), 140 ALR Fed 181.

ARTICLE 10. JUDICIAL REVIEWS

Library references. — American Law of Mining, 2nd Edition § 172.03 (Matthew Bender).

§ 35-11-1001. Judicial review; temporary relief; conditions.

(a) Any aggrieved party under this act, any person who filed a complaint on which a hearing was denied, and any person who has been denied a variance or permit under this act, may obtain judicial review by filing a petition for review within thirty (30) days after entry of the order or other final action complained of pursuant to the provisions of the Wyoming Administrative Procedure Act [§§ 16-3-101 through 16-3-115].

(b) Any person having a legal interest in the mineral rights or any person or corporation having a producing mine or having made substantial capital expenditures and commitments to mine mineral rights with respect to which the state has prohibited mining operations because the mining operations or proposed mining operations would irreparably harm, destroy or materially impair an area that has been designated to be of a unique and irreplaceable historical, archeological, scenic or natural value, may petition the district court for the district in which the mineral rights are located to determine whether the prohibition so restricts the use of the property as to constitute an unconstitutional taking without compensation. Upon a determination that a taking has occurred the value of the investment in the property or interests condemned shall be ascertained and damages shall be assessed as in other condemnation proceedings.

(c) In a proceeding to review any order or decision of the department providing for regulation of surface coal mining and reclamation operations in accordance with P.L. 95-87 [30 U.S.C. § 1201 et seq.], the court may under conditions it prescribes grant temporary relief pending final determination of the review proceedings if:

(i) All parties to the proceedings were notified and given opportunity for hearing on the request for temporary relief;

(ii) The party requesting relief shows there is a substantial likelihood he will prevail on the final determination of the proceeding; and

(iii) The relief will not adversely affect the public health and safety or cause significant environmental harm to land, air or water resources.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.51; Laws 1983, ch. 68, § 1.

Cross references. — For judicial review of administrative action, see Rule 12, W.R.A.P.

Editor's notes. — Public Law 95-87, referred to in the introductory paragraph in subsection (c), appears as 30 U.S.C. §§ 1201 et seq.

Meaning of "this act." — For the definition of "this act," referred to twice in subsection (a), see § 35-11-103(a)(xiii).

Jurisdiction to decide compensatory taking action. — The legislature has charged the Environmental Quality Council with the responsibility for approving or denying applications for mining permits and until its determination has been rendered, the courts do not have jurisdiction under subsection (b) of this section to make a decision on a compensatory taking action or entertain an appeal from the denial of an application for a permit under § 16-3-114 and W.R.A.P. 12. Rissler & McMurry Co. v. State, 917 P.2d 1157, 1996 Wyo. LEXIS 87 (Wyo. 1996), reh'g denied, 1996 Wyo. LEXIS 109 (Wyo. July 16, 1996), cert. denied, 519 U.S. 1091, 117 S. Ct. 765, 136 L. Ed. 2d 712, 1997 U.S. LEXIS 532 (U.S. 1997).

Law reviews. — For article, "Administrative Law, Wyoming Style," see XVIII Land & Water L. Rev. 223 (1983).

Am. Jur. 2d, ALR and C.J.S. references. — Private individual's standing to challenge omission or adequacy of environmental impact statement required by § 102(2)(C) of National Environmental Policy Act of 1969 (42 USC § 4332(2)(C)), 62 ALR Fed 337.

Availability of Court of Appeals review, under § 509(b)(1)(E) of Federal Water Pollution Control Act (33 USC § 1369(b)(1)(E)), of action by Administrator of Environmental Protection Agency in approving or promulgating effluent and other limitations, 62 ALR Fed 906.

What constitutes "issuing or denying" permit for discharge of pollutants within meaning of § 509(b)(1)(F) of the Federal Water Pollution Control Act (33 USC § 1369(b)(1)(F)) which authorizes judicial review of such action by administrator of environmental protection agency, 67 ALR Fed 365.

Award of costs and attorneys' fees in judicial review of administrative proceedings under § 307(f) of Clean Air Act (42 USC § 7607(f)), 68 ALR Fed 969.

Construction and application of § 307(b)(1) of Clean Air Act (42 USC § 7607(b)(1)) pertaining to judicial review by courts of appeals, 86 ALR Fed 604.

§ 35-11-1002. Publication of rules and regulations.

Any rule, regulation or standard promulgated under this act shall be published and distributed to members of the legislature and any other interested party.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.52.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

ARTICLE 11. MISCELLANEOUS PROVISIONS

Library references. — American Law of Mining, 2nd Edition § 172.03 (Matthew Bender).

§ 35-11-1101. Records available to the public; restrictions.

(a) Any records, reports or information obtained under this act or the rules, regulations and standards promulgated hereunder are available to the public. Upon a showing satisfactory to the director by any person that his records, reports or information or particular parts thereof, other than emission and pollution data, to which the director and administrators have access under this act if made public would divulge trade secrets, the director and administrators shall consider the records, reports or information or particular portions thereof confidential in the administration of this act.

(b) Nothing herein shall be construed to prevent disclosure of any records, reports or information to federal, state or local agencies necessary for the purposes of administration of any federal, state or local air, water or land control measures or regulations or when relevant to any proceedings under this act.

(c) In any suit under this section or the Public Records Act, W.S. 16-4-201 et seq., to compel the release of information under this act, the court may assess against the state reasonable attorney fees and other litigation costs reasonably incurred in any case in which the complainant has substantially prevailed and in which the court determines the award is appropriate.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.53; Laws 1975, ch. 198, § 2; 1994, ch. 82, § 2; 1995, ch. 58, § 2; 1998, ch. 80, § 1.

Cross references. — For provisions governing public records generally, see §§ 9-2-405 to 9-2-413.

Editor's notes. — Laws 1995, ch. 58, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 18, 1995.

Meaning of "this act." — For the definition of "this act," as used in this section, see § 35-11-103(a)(xii).

Law reviews. — For article, "Environmental Audits in Wyoming: A Practitioner's Guide," see XXXII Land & Water L. Rev. 655 (1997).

§ 35-11-1102. Hearing unnecessary prior to issuance of emergency order.

Nothing in this act shall be construed to require a hearing prior to the issuance of an emergency order.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.54.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

§ 35-11-1103. Property exempt from ad valorem taxation.

The following property is exempt from ad valorem taxation pursuant to the provisions of this act and includes facilities, installations, machinery or equipment attached or unattached to real property and designed, installed and utilized primarily for the elimination, control or prevention of air, water or land pollution, or in the event such facility, installation, equipment or machinery shall also serve other beneficial purposes and use, such portion of the assessed valuation thereof as may be reasonably calculated to be necessary for and devoted to elimination, control or prevention of air, water and land pollution. The department of revenue shall determine the exempt portion on all property assessed pursuant to W.S. 39-13-102(m). The county assessor shall determine the exempt portion on all property assessed pursuant to W.S. 39-13-103(b). The determination shall not include as exempt any portion of any facilities which have value as the specific source of marketable byproducts.

History:
Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.55; Laws 1975, ch. 198, § 2; 1991, ch. 174, § 2; ch. 249, § 1; 1998, ch. 5, § 2.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Property exempt not limited to that required. — By including the language "pursuant to the provisions of this act," the legislature expressly defined the property which was subject to the ad valorem tax exemption articulated in this section as being property having to do with environmental quality and distinguished that property from other types of property, which were exempt from ad valorem taxation; the legislature did not limit the exemption to property required by the Department of Environmental Quality or federal environmental protection agencies. State, Dep't of Revenue & Taxation v. Pacificorp, 872 P.2d 1163, 1994 Wyo. LEXIS 47 (Wyo. 1994).

Monitoring devices. — Under the plain and ordinary meaning of the statutory language, monitoring devices fit squarely within the ad valorem tax exemption. State, Dep't of Revenue & Taxation v. Pacificorp, 872 P.2d 1163, 1994 Wyo. LEXIS 47 (Wyo. 1994).

Pollution control equipment exempt during construction for considerable period of time. — Since the department of revenue and taxation exempted pollution control equipment during construction for a considerable period of time without the legislature's making any statutory changes, court inferred that this interpretation was consistent with legislative intent. State Bd. of Equalization v. Tenneco Oil Co., 694 P.2d 97, 1985 Wyo. LEXIS 431 (Wyo. 1985).

Equipment necessary to produce marketable product. — Although this section exempts pollution control devices from taxation, there is no evidence of an intent by the legislature to exempt equipment which is necessary to produce a marketable final product, even if that final product pollutes less when consumed by an end-user and even if environmental regulations require the modification to the final product. Laramie County Bd. of Equalization v. Wyoming State Bd. of Equalization, 915 P.2d 1184, 1996 Wyo. LEXIS 67 (Wyo. 1996).

Department need not consider county assessor's recommendation. — In determining the tax exemption of pollution control equipment, the state board of equalization (now the department of revenue) need not consider the recommendation of the county assessor. General Chem. Corp. v. Wyoming State Bd. of Equalization, 819 P.2d 418, 1991 Wyo. LEXIS 164 (Wyo. 1991).

And need not consider equipment's operating costs. — The state board of equalization (now the department of revenue) correctly interprets this section by not considering operating costs in determining the amount of value of pollution control equipment for ad valorem taxation. General Chem. Corp. v. Wyoming State Bd. of Equalization, 819 P.2d 418, 1991 Wyo. LEXIS 164 (Wyo. 1991).

State Board exceeded its authority. — The State Board of Equalization exceeded its statutory authority by adopting a rule which allowed the ad valorem tax exemption for only property which was required by the state or federal environmental protection agencies and by adopting a rule which did not allow the exemption for monitoring devices. State, Dep't of Revenue & Taxation v. Pacificorp, 872 P.2d 1163, 1994 Wyo. LEXIS 47 (Wyo. 1994).

Law reviews. — For comment, "'Primary Purpose' Pollution Control Tax Incentives: Is The Public Getting What It's Paying For?," see XXXI Land & Water L. Rev. 401 (1996).

§ 35-11-1104. Limitation of scope of provisions.

(a) Nothing in this act:

(i) Grants to the department or any division thereof any jurisdiction or authority with respect to pollution existing solely within commercial and industrial plants, works or shops;

(ii) Affects the relations between employers and employees with respect to or arising out of any condition of pollution;

(iii) Limits or interferes with the jurisdiction, duties or authority of the state engineer, the state board of control, the director of the Wyoming game and fish department, the state mine inspector, the oil and gas supervisor or the oil and gas conservation commission, or the occupational health and safety commission.

History:

Laws 1973, ch. 250, § 1; W.S. 1957, § 35-502.56; Laws 1974, ch. 14, §§ 1, 2; 1975, ch. 198, § 3; 2004, ch. 130, § 1.

The 2004 amendment, in (a)(iii) substituted "director of the Wyoming game and fish department" for "game and fish commissioner."

Laws 2004, ch. 130, § 4, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 19, 2004.

Editor's notes. — Laws 2000, ch. 13, § 3, repealed Laws 1999, ch. 204, § 1, which had amended this section effective July 1, 2001 by substituting "commission" for "commissioner" following "game and fish" in (a)(iii), and adding (b) through (e).

There is no subsection (b) in this section as it appears in the printed acts.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Severability. — Section 4, ch. 250, Laws 1973, provides: "If any provision of this act or the applicability thereof to any person or circumstance is held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby."

Conflicting legislation. — Laws 2004, ch. 130, § 3, provides: "Any other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

Cited in Town of Torrington v. Envtl. Quality Council, 557 P.2d 1143, 1976 Wyo. LEXIS 234 (Wyo. 1976).

§ 35-11-1105. Environmental audit privilege; exceptions; burden of proof; waiver; disclosure after in camera review; application.

(a) As used in this section:

(i) "Environmental audit" means a voluntary, internal and comprehensive evaluation of one (1) or more facilities or an activity at one (1) or more facilities regulated under this act, or of management systems related to the facility or activity, that is designed to identify and prevent noncompliance and to improve compliance with this act. An environmental audit may be conducted by the owner or operator, by the owner's or operator's employees or by independent contractors. Once initiated the voluntary environmental audit shall be completed within one hundred eighty (180) days. Nothing in this section shall be construed to authorize uninterrupted voluntary environmental audits;

(ii) "Environmental audit report" means a set of documents, each labeled "Environmental Audit Report: Privileged Document," prepared as a result of an environmental audit and may include field notes and records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically recorded information, maps, charts, graphs and surveys if supporting information is generated or developed for the primary purpose and in the course of an environmental audit. An environmental audit report, when completed, shall have three (3) components:

(A) An audit report prepared by the auditor, including the scope, commencement and completion dates of the audit, the information gained in the audit, conclusions and recommendations, together with exhibits and appendices;

(B) Memoranda and documents analyzing the audit report and discussing implementation issues; and

(C) An audit implementation plan that corrects past noncompliance, improves current compliance and prevents future noncompliance.

(iii) "In camera review" means a hearing or review in a courtroom, hearing room or chambers to which the general public is not admitted. However, all parties to a civil or administrative proceeding may attend an in camera hearing and shall have a reasonable opportunity to review the documents for which the privilege is claimed and challenge the application of privilege to an environmental audit report. After such hearing or review, the content of oral and other evidence and statements of the judge, counsel and all parties shall be held in confidence by those

participating in or present at the hearing or review, and any transcript of the hearing or review shall be sealed and not considered a public record until its contents are disclosed, pursuant to this section, by a court having jurisdiction over the matter.

(b) Owners and operators of facilities and persons whose activities are regulated under this act may conduct a voluntary internal environmental audit of compliance programs and management systems to assess and improve compliance with this act. An environmental audit privilege is created to protect the confidentiality of communications relating to these audits.

(c) An environmental audit report is privileged and shall not be admissible as evidence in any civil or administrative proceeding, except as follows:

(i) The owner or operator of a facility may waive this privilege in whole or in part. If an owner or operator of a facility or person conducting an activity seeks to introduce any part of an environmental audit report as evidence in any proceeding, including reporting of violations under W.S. 35-11-1106(a), the privilege is waived as to those sections of the report dealing with that media sought to be introduced into evidence;

(ii) In a civil or administrative proceeding, the court or hearing officer after in camera review consistent with the Wyoming Rules of Civil Procedure, shall require disclosure of all or part of the report if it determines:

(A) The privilege is asserted for a fraudulent purpose;

(B) The material is not subject to the privilege;

(C) The material shows evidence of noncompliance with this act or any federal environmental law or regulation and appropriate efforts to achieve compliance were not pursued as promptly as circumstances permit and completed with reasonable diligence; or

(D) The information contained in the environmental audit report demonstrates a substantial threat to the public health or environment or damage to real property or tangible personal property in areas outside of the facility property.

(iii) Repealed by Laws 1998, ch. 80, § 2.

(iv) A party asserting the privilege granted under this section has the burden of proving the privilege, including proof that appropriate efforts to achieve compliance with this act or any federal environmental law or regulation were promptly pursued and completed with reasonable diligence. A party seeking disclosure under subparagraph (c)(ii)(A) of this section has the burden of proving that the privilege is asserted for a fraudulent purpose;

(v) through (vii) Repealed by Laws 1998, ch. 80, § 2.

(viii) The parties may at any time stipulate to entry of an order directing whether specific information contained in an environmental audit report is subject to the privilege provided under this section;

(ix) Upon making a determination under paragraph (c)(ii) of this section, the court shall compel disclosure of those portions of an environmental audit report relevant to issues in dispute in the proceeding.

(d) The privilege described in this section shall not extend to:

(i) Documents, communications, data, reports or other information required to be collected, developed, maintained, reported or otherwise made available to a regulatory agency or to any person pursuant to any regulatory requirement of this act or any other federal or state law or regulation;

(ii) Information obtained by observation, sampling or monitoring by any regulatory agency;

(iii) Information obtained from a source independent of the environmental audit;

(iv) Documents existing prior to the commencement of the environmental audit; or

(v) Documents prepared subsequent to and independent of the completion of the environmental audit.

(e) Nothing in this section shall limit, waive or abrogate the scope or nature of any statutory or common law privilege, including the work product doctrine and the attorney-client privilege.

History:

Laws 1995, ch. 58, § 1; 1998, ch. 80, §§ 1, 2; 2006, ch. 114, § 1.

The 2006 amendment, deleted "or" at the end of (d)(iii).

Laws 2006, ch. 114, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 24, 2006.

Editor's notes. — Laws 1995, ch. 58, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 18, 1995.

Meaning of "this act." — For the definition of "this act," as used in this section, see § 35-11-103(a)(xiii).

Conflicting legislation. — Laws 2006, ch. 114, § 3, provides: "[A]ny other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

Law reviews. — For article, "Environmental Audits in Wyoming: A Practitioner's Guide," see XXXII Land & Water L. Rev 655 (1997).

§ 35-11-1106. Limitation on civil penalties; voluntary reports of violations.

(a) If an owner or operator of a facility regulated under this act voluntarily reports to the department a violation disclosed by the audit conducted under W.S. 35-11-1105 within sixty (60) days of the completion date of the audit, the department shall not seek civil penalties or injunctive relief for the violation reported unless:

(i) The facility is under investigation for any violation of this act at the time the violation is reported;

(ii) The owner or operator does not take action to eliminate the violation within the time frame specified in an order affirmed by the council or otherwise made final pursuant to W.S. 35-11-701(c)(ii);

(iii) The violation is the result of gross negligence or recklessness; or

(iv) The department has assumed primacy over a federally delegated environmental law and a waiver of penalty authority would result in a state program less stringent than the federal program or the waiver would violate any federal rule or regulation required to maintain state primacy. If a federally delegated program requires the imposition of a penalty for a violation, the voluntary disclosure of the violation shall to the extent allowed under federal law or regulation, be considered a mitigating factor in determining the penalty amount.

(b) Reporting a violation is mandatory if required by this act, any departmental rule or regulation, federal law or regulation, local ordinance or resolution, any order of the council or by any court and is therefore not voluntary under this section.

(c) Notwithstanding subsection (a) of this section, injunctive relief may be sought under W.S. 35-11-115.

(d) The elimination of administrative or civil penalties under this section does not apply if a person or entity has been found by a court to have committed serious violations that constitute a pattern of continuous or repeated violations of environmental laws, rules, regulations, permit conditions, settlement agreements or orders on consent and that were due to separate and distinct events giving rise to the violations, within the three (3) year period prior to the date of the disclosure. A pattern of continuous or repeated violations may also be demonstrated by multiple settlement agreements related to substantially the same alleged violations concerning serious instances of noncompliance with environmental laws that occurred within the three (3) year period immediately prior to the date of the voluntary disclosure.

History:
Laws 1995, ch. 58, § 1.

Editor's notes. — Laws 1995, ch. 58, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 18, 1995.

Meaning of "this act." — For the definition of "this act," as used in this section, see § 35-11-103(a)(xiii).

Law reviews. — For article, "Environmental Audits in Wyoming: A Practitioner's Guide," see XXXII Land & Water L. Rev. 655 (1997).

Library references. — 17 Nat. Resources & Env't Law Review 161.

ARTICLE 12. ABANDONED MINE RECLAMATION PROGRAM

Library references. — American Law of Mining, 2nd Edition § 172.03 (Matthew Bender).

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§ 35-11-1201. Abandoned mine reclamation program.

In addition to any other powers and duties imposed by law, the governor, through the director

shall perform any and all acts necessary or expedient to implement and administer an abandoned mine reclamation program pursuant to section 405 of P.L. 95-87 [30 U.S.C. § 1235] in accordance with an approved state reclamation plan and annual approved applications for implementation of specific reclamation projects.

History:
Laws 1980, ch. 64, § 1; 1991, ch. 72, § 1.

Editor's notes. — Section 405 of P.L. 95-87, referred to in this section, appears as 30 U.S.C. § 1235.

§ 35-11-1202. State reclamation plan.

(a) The state reclamation plan may provide for any or all of the following activities:

(i) The acquisition, reclamation or restoration of land and water resources which were mined for coal or minerals or affected by coal or other mineral mining processes and left or abandoned in an unreclaimed or inadequately reclaimed condition prior to August 3, 1977, and for which there is no continuing reclamation responsibility under state or federal statutes. The effective date for the purpose of determining eligibility on federal lands managed by the forest service shall be August 28, 1974, and the effective date for determining eligibility on federal lands managed by the bureau of land management shall be November 26, 1980. Any of the activities under this paragraph shall reflect the following priorities in the order stated:

(A) The protection of public health, safety, general welfare and property from extreme danger of adverse effects of mining and processing practices;

(B) The protection of public health, safety and general welfare from adverse effects of mining and processing practices;

(C) The restoration of land and water resources and the environment previously degraded by the adverse effects of coal and mineral mining and processing practices.

(D) through (F) Repealed by Laws 1991, ch. 72, § 2.

(ii) Repealed by Laws 1991, ch. 72, § 2.

(iii) The acquisition, reclamation and transfer of land to the state or to a political subdivision thereof, or to any person after a determination by the governor that such is an integral and necessary element of an economically feasible plan for a project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this article, persons dislocated as a result of adverse effects of coal mining practices which constitute an emergency, or persons dislocated as the result of natural disasters or catastrophic failures from any cause. However, no part of the abandoned mine reclamation funds may be used to pay the actual construction costs of housing;

(iv) Repealed by Laws 1991, ch. 72, § 2.

(v) Reclamation projects involving the protection, repair, replacement, construction or enhancement of utilities, such as those relating to water supply, roads and other facilities serving the public adversely affected by coal and mineral mining and processing practices. The construction and maintenance of public facilities in communities impacted by coal or mineral mining and processing practices is deemed to be included within the objectives established for the abandoned mine reclamation program, and shall be undertaken in accordance with the priorities stated in paragraph (i) of this subsection.

(b) The state reclamation plan shall be developed by the governor, after recommendation from the director. The director after consulting the administrator of the abandoned land mine division shall make this recommendation only after he has prepared a proposed plan and afforded, at a minimum, an opportunity for the public to inspect and comment on this proposed plan in each county having land and water resources which qualify for acquisition, reclamation or restoration under subsection (a) of this section. All comments shall be recorded and considered in the development of the plan.

(c) Notwithstanding subsection (a) of this section, the governor may request abandoned mine land funds be appropriated for the construction of specific public facilities related to the coal or mineral industries or for other activities related to the impacts of these industries.

History:
Laws 1980, ch. 64, § 1; 1991, ch. 72, §§ 1, 2; 1992, ch. 60, § 3.

§ 35-11-1203. Abandoned mine reclamation account; subsidence mitigation account.

(a) Upon approval of the state reclamation plan, the state treasurer shall create an abandoned mine reclamation account for the purpose of accounting for monies received by the state from the secretary of the interior and any other monies authorized to be deposited in the account. The account shall be administered in compliance with the approved plan.

(b) Revenue to the account shall include amounts granted by the secretary of the interior under Title IV of P.L. 95-87, monies received by the state for the use or sale of lands acquired with monies from the account and such other monies which may be deposited in the account for use in carrying out the state reclamation program.

(c) There is created a coal mine subsidence mitigation account. Revenue to the account shall be ten percent (10%) of the amount granted by the secretary of the interior under title IV of P.L. 95-87 as provided by P.L. 100-34. Revenue shall be deposited in an interest bearing account and all interest shall be credited to the program. No monies from the account shall be expended prior to September 30, 1995. After September 30, 1995 the money may be expended as provided in this subsection. The legislature shall authorize expenditure by appropriation from the account as necessary to defray the administrative expenses of the program. The remaining funds in the account shall only be used to address the reclamation activities described in W.S. 35-11-1202(a)(i)(A) and (B) where mine reclamation is necessary for the protection of the public health or safety, with a priority given to pay for contractual services to mitigate and control mine subsidence that threatens structures. If authorized by the United States congress, funds from the account may be used for the repair or enhancement of structures defined in W.S. 35-11-1301(a)(iii), provided that no funds from the account may be used for any structure where construction is commenced after the effective date of this act unless an engineering assessment documenting the minimal risk of loss from mine subsidence precedes commencement of construction. The liability of the state to fulfill the requirements of this subsection is limited to the amount of funds available in the account established in this subsection. The state has no obligations under this subsection except to the extent of federal funds deposited in the coal mine mitigation account and the interest thereon to operate the program.

History:

Laws 1980, ch. 64, § 1; 1987, ch. 59, § 2; 1989, ch. 38, § 1; 1991, ch. 72, § 1; ch. 186, § 1; 2005, ch. 231, § 1.

The 2005 amendment, effective July 1, 2005, deleted "within the trust and agency fund" in (a); and deleted "within the federal revenue fund" in (c).

Editor's notes. — Title IV of P.L. 95-87, referred to in subsection (b), and in the second sentence in subsection (c), appears as 30 U.S.C. § 1231 et seq.

P.L. 100-34, referred to in the second sentence in subsection (c), appears as 30 U.S.C. §§ 1232 and 1278.

Meaning of "this act." — For the meaning of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Conflicting legislation. — Laws 2005, ch. 231, § 3, provides: "The provisions of this act shall supersede the provisions of any other bill enacted into law during the 2005 general session which amends or references accounts or funds to the extent any other enactment is inconsistent with the establishment of the funds and accounts created under this act. The state auditor shall account for any fund or account created in any other legislation enacted in the 2005 general session in accordance with generally accepted accounting principles (GAAP) as promulgated by the governmental accounting standards board (GASB) and in accordance with this act."

§ 35-11-1204. Right of entry.

(a) The director, administrator of the abandoned mine land division, or their designated authorized representative shall have the right to enter upon or have access to any property adversely affected by past coal mining practices to restore, reclaim, abate, control or prevent the adverse effects if the director makes a finding that:

(i) The adverse effects on land or water resources are such that, in the public interest, the action should be taken; and

(ii) The owners of the property either are not known or readily available or refuse to give permission to enter.

(b) Prior to entry, notice shall be given by mail to the owners, if known, or if not known, by posting notice upon the premises and advertising once in a newspaper of general circulation in the locality of the land.

(c) Monies expended for work on or to the premises and the benefits accruing to any premises entered upon shall be chargeable against the land and shall mitigate or offset any claim of or any action brought by any owner of any interest in the premises for any alleged damages by virtue of the entry. However, this provision is not intended to create new rights of action or eliminate existing immunities.

(d) The director, administrator of the abandoned mine land division, or their designated authorized representatives shall have the right to enter upon any property for the purpose of conducting exploratory work to determine the feasibility to restore, reclaim, abate, control or prevent the adverse effects.

(e) Any entry under this section shall be construed as an exercise of the state's police power and shall not be construed as an act of condemnation or trespass.

History:
Laws 1980, ch. 64, § 1; 1991, ch. 72, § 1; 1992, ch. 60, § 3.

§ 35-11-1205. Land acquisition and disposal.

(a) The state may acquire any land, by purchase, donation or condemnation, which is adversely affected by past coal mining practices if the director, with the concurrence of the governor, finds that acquisition of the land is necessary to successful reclamation and that:

(i) The acquired land, after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes or provide open space benefits; and

(ii) Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices; or

(iii) Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this article or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(b) Title to all lands acquired pursuant to this section shall be in the name of the state. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

(c) Where land acquired pursuant to this section is deemed to be suitable for industrial, commercial, residential or recreational development, the director, with the approval of the governor and the secretary of the interior, may sell the land for at least fair market value by public sale under a system of competitive bidding.

(d) The director, when requested after appropriate public notice, shall hold a public hearing, with appropriate notice, in the county or counties in which lands acquired pursuant to this section are located in order to afford all persons an opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices.

History:
Laws 1980, ch. 64, § 1; 1991, ch. 72, § 1.

§ 35-11-1206. Liens for reclamation on private lands.

(a) Within six (6) months after the completion of projects to restore, reclaim, abate, control or prevent adverse effects of past coal or mineral mining practices on privately owned land, the director shall itemize the monies expended and may file a lien against the property with the appropriate county clerk. If the monies expended result in a significant increase in property value, a notarized appraisal by an independent appraiser shall be filed with the lien. The lien shall be the amount determined by the appraisal to be the increase in the fair market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal or mineral mining practices. No lien shall be filed under this section against the property of any person who neither consented to, participated in, nor exercised control over the mining operation which necessitated the reclamation project.

(b) The landowner may petition the district court for the district in which the majority of the land

is located within sixty (60) days of the filing of the lien to determine the increase in the fair market value of the land. The amount reported to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the lien.

(c) The lien provided in this section shall constitute a lien upon the land as of the date of the expenditure of the monies and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

History:
Laws 1980, ch. 64, § 1; 1991, ch. 72, § 1; 1995, ch. 34, § 1; 2005, ch. 155, § 1; 2009, ch. 143, § 1.

The 2005 amendment, effective July 1, 2005, in (a) substituted "be" for "not exceed the cost of reclamation work" after "The lien shall" and deleted "whichever is less" at the end of the third sentence; deleted "but not exceeding the cost of reclamation work" after "premises" in the last sentence in (b); and made stylistic changes.

The 2009 amendment, effective July 1, 2009, deleted "who owned the surface prior to May 2, 1977, and" following "the property of any person" in the last sentence of (a).

§ 35-11-1207. Miscellaneous authority.

(a) The governor may promulgate any rules and regulations which may be necessary or expedient to implement and administer the provisions of this article.

(b) The director may construct and operate any plants, including major interceptors and other facilities appurtenant to the plant for the control and treatment of water pollution resulting from mine drainage.

(c) The governor may transfer funds to other appropriate state or federal agencies in order to carry out the reclamation activities authorized by this article.

History:
Laws 1980, ch. 64, § 1; 1991, ch. 72, § 1.

§ 35-11-1208. Mine subsidence mitigation program.

The governor may establish a coal mine subsidence mitigation program to assist property owners with mine subsidence problems that threaten life and property in this state. The program shall be operated by the director and be coordinated with the mine subsidence loss insurance program of W.S. 35-11-1301 through 35-11-1304. The program shall provide for backfilling of mine voids and stabilization of the land where evidence supports imminent or continuous threat to structures defined in W.S. 35-11-1301(a)(iii) if the threat is due to coal mine subsidence as defined in W.S. 35-11-1301(a)(ii).

History:
Laws 1987, ch. 59, § 1; 1991, ch. 72, § 1.

§ 35-11-1209. Contract eligibility.

(a) The abandoned mine land division shall not issue a contract to any contractor if the United States department of interior, office of surface mining applicant violator system shows the contractor has any one (1) or more of the following:

(i) Delinquent abandoned mine reclamation fee;

(ii) Federal or state failure-to-abate cessation order;

(iii) Unabated federal or state imminent harm cessation order;

(iv) Delinquent civil penalty issued under the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87 [30 U.S.C. § 1201 et seq.];

(v) Bond forfeiture if the violation upon which the forfeiture was based has not been corrected;

(vi) Unabated violation of federal or state law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation;

(vii) Unresolved notice of violation.

(b) As used in this section "ownership or controlling interest" means as defined in Title 30 of the Code of Federal Regulations part 773.5, as amended.

History:

Laws 1995, ch. 25, § 1; 2005, ch. 155, § 1; 2010, ch. 82, § 1.

The 2005 amendment, effective July 1, 2005, rewrote the introductory language in (a), which formerly read: "The abandoned mine land division shall not issue a contract to any construction contractor or professional services contractor if any surface coal mining and reclamation operation owned or controlled by the contractor, or by any person who owns or controls the contractor has any"; and added (a)(vii).

The 2010 amendment, inserted "one (1) or more of the following" in the introductory language of (a) and made stylistic change.

Laws 2010, ch. 82, § 6, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 9, 2010.

Surface Mining Control and Reclamation Act of 1977. — The Surface Mining Control and Reclamation Act of 1977 is codified as 30 U.S.C. § 1201 et seq.

§ 35-11-1210. Abandoned mine land funds reserve account.

(a) There is created the abandoned mine land funds reserve account.

(b) All funds received from the federal government, from the Surface Mining Control and Reclamation Act Amendments of 2006, Section 411(h)(1), pursuant to 2007 H.R. 6111, shall be deposited into the abandoned mine land funds reserve account.

(c) All funds and all interest generated on the funds, shall remain in the abandoned mine land funds reserve account until appropriated by the legislature.

(d) The funds under subsection (b) of this section are separate from and in addition to the funds distributed to Wyoming for the abandoned mine land program under W.S. 35-11-1201 through 35-11-1209.

(e) There is created the abandoned mine land funds balancing account. Notwithstanding other provisions of this section, the legislature may deposit into the balancing account and appropriate therefrom funds as it determines appropriate to substitute for or supplement abandoned mine land funds received from the federal government, from the Surface Mining Control and Reclamation Act Amendments of 2006, Section 411(h)(1).

History:

Laws 2007, ch. 49, § 1; 2008, ch. 116, § 1; 2012, ch. 27, § 6.

The 2008 amendment, substituted "Section 411(h)(1)" for "Section 411(h)" in (b).

Laws 2008, ch. 116, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 13, 2008.

The 2012 amendment, added (e).

Laws 2012, ch. 27, § 8, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 8, 2012.

Effective dates. — Laws 2007, ch. 49, § 2, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 15, 2007.

ARTICLE 13. MINE SUBSIDENCE LOSS INSURANCE

Library references. — American Law of Mining, (2nd Ed.) § 172.03 (Matthew Bender).

§ 35-11-1301. Definitions.

(a) As used in this act:

(i) "Administrator" means the administrator of the abandoned mine land division of the department of environmental quality;

(ii) "Mine subsidence loss" means loss caused by lateral or vertical movement, including collapse which results therefrom, of structures from collapse of man-made underground mines or from collapse of underground cavities resulting from burned coal seams but excludes loss caused by underground water, soil expansion, earthquake, landslide, volcanic eruption or collapse of storm or sewer drains or underground pipelines;

(iii) "Structure" means any dwelling, building or fixture, publicly or privately owned, permanently affixed to realty but excludes land, trees, plants and crops;

(iv) "This act" means W.S. 35-11-1301 through 35-11-1304.

History:
Laws 1986, ch. 85, § 1; 1992, ch. 60, § 3.

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

§ 35-11-1302. Mine subsidence loss insurance program; established; rulemaking authority.

(a) The governor shall establish an insurance program to cover mine subsidence loss to specified structures in this state. The program shall be operated by the director of the department of environmental quality through the administrator who shall contract for all services related to advertising, sales of the coverage and claims adjustment and may contract for other services necessary to the efficient operation of the program. The program shall cover all structures insured under this act for mine subsidence damage occurring after the effective date of the coverage, consistent with the contract terms and conditions. The program shall also cover structures which have been damaged before the effective date of this act, provided that:

(i) Damage to the structures was caused by subsidence of mine voids in the number one and seven coal seams in Rock Springs, Wyoming;

(ii) Claims made to the administrator documenting that initial subsidence damage was suffered on or about the dates of August 15, August 21, September 4 or September 10, 1985;

(iii) The property owner has made application for coverage under this act, paid the premium required by the administrator and paid an enrollment fee of one hundred dollars ($100.00);

(iv) The property owner executes and delivers instruments and papers and does whatever else is necessary to secure rights in the state to be subrogated to all the owner's right of recovery against any person, entity or organization for the damage and loss covered under this act; and

(v) Claims for damages and loss covered under this act and filed under the Wyoming Governmental Claims Act [1-39-101 et seq.] are withdrawn.

(b) The governor may promulgate rules and regulations necessary to establish and operate a mine subsidence loss insurance program under this act, including but not limited to:

(i) Contract terms and conditions;

(ii) Deductibles;

(iii) Coverage limits;

(iv) Claims adjustment procedures;

(v) Premium rates and enrollment fees sufficient to:

(A) Cover administrative expenses of the program including service contracts;

(B) Satisfy anticipated claims from mine subsidence loss;

(C) Establish a surplus to cover catastrophic hazard and to ensure solvency.

(vi) Designation of structures or areas for which coverage shall not be available;

(vii) Inspection of structures prior to issuing insurance coverage;

(viii) Rules or regulations necessary to enable the state to qualify for federal grants for state mine subsidence loss insurance programs.

(c) The governor may accept grants from any source to aid in establishing or operating the program under this act.

History:
Laws 1986, ch. 85, § 1; 1992, ch. 60, § 3.

Meaning of "this act." — For the definition of "this act," as used to in this section, see § 35-11-1301(a)(iv).

§ 35-11-1303. Applicability of Wyoming Insurance Code; exemption.

(a) The Wyoming Insurance Code applies to transactions under this act except:

(i) The state and its officers, agencies and employees are exempt from the licensing, financial and tax requirements imposed by chapters 3, 4, 6, 7 and 8 of the Wyoming Insurance Code;

(ii) Any person who contracts with the state to transact insurance under this act is subject to the Wyoming Insurance Code as if the state were an insurer with a certificate of authority to transact the insurance in this state.

History:
Laws 1986, ch. 85, § 1.

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-1301(a)(iv).

Insurance Code. — See §§ 26-1-101 and 26-1-102(a)(xxxii).

§ 35-11-1304. Account created; premiums to be deposited; payment of expenses and claims.

There is created a mine subsidence loss insurance account. All premiums, fees, amounts recovered under the program and, where appropriate, grants shall be deposited into this account. The legislature shall authorize expenditures by appropriation from the account as necessary to defray the administrative expenses of the program but not claims for losses under policies. The remaining funds in the account shall be used and are appropriated to pay claims for losses under insurance policies under this act.

History:
Laws 1986, ch. 85, § 1; 2005, ch. 231, § 1.

The 2005 amendment, effective July 1, 2005, deleted "within the enterprise fund" in the first sentence.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-1301(a)(iv).

Liability of state. — Laws 1986, ch. 85, § 2, provides: "The liability of the state of Wyoming for claims under policies issued under this act is limited to the amount of funds available in the account established under this section. No coverage under this act shall be sold until the state has qualified for a grant of federal funds to operate the program."

Conflicting legislation. — Laws 2005, ch. 231, § 3, provides: "The provisions of this act shall supersede the provisions of any other bill enacted into law during the 2005 general session which amends or references accounts or funds to the extent any other enactment is inconsistent with the establishment of the funds and accounts created under this act. The state auditor shall account for any fund or account created in any other legislation enacted in the 2005 general session in accordance with generally accepted accounting principles (GAAP) as promulgated by the governmental accounting standards board (GASB) and in accordance with this act."

ARTICLE 14. STORAGE TANKS

Law reviews. — For case note, "Hazardous Waste — The Supreme Court's Interpretation of RCRA: An Inequitable Result. KFC Western, Inc. v. Meghrig, 516 U.S. 479, 116 S. Ct. 1251, 134 L. Ed. 2d 121, 1996 U.S. LEXIS 1955 (1996)," see XXXII Land & Water L. Rev. 699 (1997).

Library References. — American Law of Mining, (2nd Ed.) § 172.03 (Matthew Bender).

§§ 35-11-1401 through 35-11-1413. [Repealed.]

Repealed by Laws 1990, ch. 98, § 3.

§ 35-11-1414. Short title; purpose; department report.

(a) This article is known and may be cited as the "Storage Tank Act of 2007".

(b) The legislature recognizes the threat to the public health, safety, welfare and the environment caused by pollution to soil and water from underground and aboveground storage tanks. The purpose of this article is to take primacy of the underground storage tank program and to provide funding to take corrective actions at sites contaminated by underground storage tanks and aboveground storage tanks.

(c) The legislature also recognizes that owners and operators cannot take corrective action without placing their businesses' existence in financial jeopardy. The legislature finds that, because Wyoming is a large rural state, it is in the public interest to take corrective action at contaminated sites so that fuel will continue to be readily available throughout Wyoming.

(d) The department shall prepare an annual report for the legislature identifying the actions taken and monies expended pursuant to this article.

History:
Laws 1990, ch. 98, § 1; 1994, ch. 32, § 1; 2007, ch. 88, § 2.

The 2007 amendment, effective July 1, 2007, in (a) substituted "Storage Tank Act of 2007" for "Water Pollution from Underground Storage Tanks Corrective Action Act of 1990"; and in (b) inserted "soil and" in the first sentence.

Cited in Wilson v. Amoco Corp., 989 F. Supp. 1159, 1998 U.S. Dist. LEXIS 57 (D. Wyo. 1998).

§ 35-11-1415. Definitions.

(a) As used in this article:

(i) "Corrective action" means an action taken to investigate, minimize, eliminate or clean up a release to protect the public health, safety and welfare or the environment;

(ii) "Corrective action account" means the account established in W.S. 35-11-1424;

(iii) "Department" means the department of environmental quality through its water quality division;

(iv) "Environmental pollution financial responsibility account" or "financial responsibility account" means the account established in W.S. 35-11-1427;

(v) "Operator" means any person in control of, or having responsibility for, the daily operation of the tank;

(vi) "Owner" means:

(A) In the case of an underground storage tank in use or brought into use on or after November 8, 1984, any person who owns an underground storage tank while it is used for the storage, use or dispensing of regulated substances;

(B) In the case of an underground storage tank in use before November 8, 1984, but no longer in use after that date, any person who owned such a tank immediately before the discontinuation of its use; and

(C) Any person who owns an aboveground storage tank meeting the definition of paragraph (xi) of this subsection.

(vii) "Regulated substance" means:

(A) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act; and

(B) Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(viii) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from a tank into groundwater, surface water or subsurface soils;

(ix) "Underground storage tank" means and includes any one (1) or combination of underground storage tanks, including underground pipes connected thereto, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground, but does not include:

(A) A farm or residential underground storage tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel for noncommercial or agricultural purposes;

(B) An underground storage tank used for storing heating oil for consumptive use on the premises where stored;

(C) Septic tanks;

(D) A pipeline facility, including gathering lines, regulated under:

(I) The Pipeline Safety Improvement Act of 2002;

(II) The Hazardous Liquid Pipeline Safety Act of 1995;

(III) An intrastate pipeline facility regulated under state laws comparable to the provisions of law in subdivision (I) or (II) of this paragraph.

(E) Surface impoundments, pits, ponds or lagoons;

(F) Storm water or wastewater collection systems including oil/water separators used to separate oil and water at oil production sites, gas processing plants and refineries;

(G) Flow-through process tanks;

(H) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;

(J) Storage tanks situated in an underground area, if the storage tank is situated upon or above the surface of the floor;

(K) Underground storage tanks of one hundred ten (110) gallons or less of holding capacity;

(M) Underground storage tanks containing de minimus concentrations of regulated substances;

(N) Emergency or overflow underground storage tanks;

(O) An underground storage tank system holding hazardous wastes listed or identified under Subtitle C of the federal Solid Waste Disposal Act or a mixture of such hazardous waste and other regulated substances;

(P) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) or 402 of the federal Clean Water Act;

(Q) Any equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(x) "This article" means W.S. 35-11-1414 through 35-11-1428;

(xi) "Aboveground storage tank" means any one (1) or a combination of containers, vessels and enclosures, including structures and appurtenances connected to them, constructed of nonearthen materials including but not limited to concrete, steel or plastic which provides structural support, the volume of which including the pipes connected thereto is more than ninety percent (90%) above the surface of the ground, which is used by a dealer to dispense gasoline or diesel fuels;

(xii) "Dealer" means a person meeting the definition of W.S. 39-17-101(a)(v) or 39-17-201(a)(vi);

(xiii) "Tank" means and includes both underground and aboveground storage tanks as defined by this act.

History:

Laws 1990, ch. 98, § 1; 1993, ch. 207, § 1; 1994, ch. 32, § 1; 1998, ch. 5, § 2; 1999, ch. 14, § 1; 2007, ch. 88, § 2.

The 2007 amendment, effective July 1, 2007, in (a)(ix)(D)(I) substituted "Pipeline Safety Improvement Act of 2002" for "Natural Gas Pipeline Safety Act of 1968"; in (a)(ix)(D)(II) substituted "1995" for "1979"; and added (a)(ix)(O) through (a)(ix)(Q).

Editor's notes. — There is no subparagraph (a)(ix)(I) or (a)(ix)(L) and no subsection (b) in this section as it appears in the printed acts.

Meaning of "this act." — For the meaning of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Hazardous Liquid Pipeline Safety Act. — The federal Hazardous Liquid Pipeline Safety Act, referred to in subsection (a)(ix)(D)(II), has been repealed. For present similar provisions, see the Accountable Pipeline Safety and Partnership Act of 1996, 49 U.S.C. § 60101.

Am. Jur. 2d, ALR and C.J.S. references. — Determination whether substance is "hazardous substance" within meaning of § 101(14) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9601(14)), 118 ALR Fed 293.

Application of Statutes of Limitations (42 USCS § 9613(g)) in Action Under § 113(f) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9613(f)) for Contribution for Response Costs or Damages. 143 ALR Fed 591.

Equitable allocation of response costs in contribution action under § 113(f) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9613(f); factors affecting response cost liability of generator, broker or arranger, and transporter in single waste stream cases, 146 ALR Fed 363.

Amount and characteristics of wastes as equitable factors in allocation of response costs pursuant to § 113(f)(1) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9613(f)(1): multiple waste streams, 162 ALR Fed 371.

§ 35-11-1416. Rules and regulations.

(a) The council shall promulgate rules and regulations necessary to administer this article after recommendation from the director of the department, the administrators of the various divisions and their respective advisory boards. The rules shall include but shall not be limited to rules and regulations which:

(i) Provide for performance, operating and installation standards for underground storage tanks which shall be no less or no more stringent than the federal standards. The rules shall include, but shall not be limited to, standards for upgrading existing facilities, abandonment, closure, compatibility, construction, design, installation, record maintenance and release detection, spill and overfill, inspection procedures and compliance deadlines. The rules shall include standards for aboveground storage tanks determined by the council to be necessary to meet the goals of this paragraph;

(ii) Require proof of financial assurance as required by federal law;

(iii) Specify the requirements for delegating installation or modification inspection authority including but not limited to requirements for inspectors;

(iv) Establish a procedure or procedures for reporting any release from a tank;

(v) Require taking corrective action in response to a reported release from a tank. These rules may include provisions under which priorities for corrective action may be established considering the state resources available to take corrective actions and the threat posed to public health, safety and welfare or the environment;

(vi) Require records for compliance with repairs and upgrades to be maintained for the operational life of the tank;

(vii) Adopt the requirements for notification to the department when there is a change of ownership or control over a tank in accordance with W.S. 35-11-1420(a);

(viii) Specify the requirements for notifying the department of installations or modifications in accordance with W.S. 35-11-1420(b);

(ix) Specify standards for restoration of the environment.

History:
Laws 1990, ch. 98, § 1; 1994, ch. 32, § 1.

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

§ 35-11-1417. Noninsurance proviso.

Nothing in this article shall be construed as creating an insurance company nor in any way subjecting the accounts created to the laws of the state regulating insurance or insurance companies.

History:
Laws 1990, ch. 98, § 1.

§ 35-11-1418. [Repealed.]

Repealed by Laws 2007, ch. 88, § 3.

§ 35-11-1419. Tank registration; proof of insurance.

(a) After each new installation or modification of a regulated storage tank system the owner of a tank shall register the tank with the department on forms developed and furnished by the department. The registration form shall be submitted under oath or affirmation. The forms shall include but not be limited to:

(i) The name, address and telephone number of the tank owner;

(ii) The name, address and telephone number of the tank operator;

(iii) A description of the location of the facility where the tank is maintained or operated and the location of the tank at that facility;

(iv) The type and age of each tank at the facility;

(v) The type of substance stored or contained in the tank;

(vi) The size of each tank;

(vii) Whether the tank is currently in use, and if not, the most recent date of use of the tank if known;

(viii) The most recent date the tank was tested and a copy of the test results if not previously submitted;

(ix) Whether the owner of the tank has insurance or other types of financial assurance to cover at least thirty thousand dollars ($30,000.00) as specified in W.S. 35-11-1428(c)(i);

(x) Proof as required by federal law that an owner of more than one hundred (100) underground storage tanks anywhere in the United States has insurance, or other environmental pollution financial responsibility instrument, indicating at least two million dollars ($2,000,000.00) in liability protection for releases occurring from any of those regulated tanks; and

(xi) Other information as may be required by rules and regulations.

History:
Laws 1990, ch. 98, § 1; 2007, ch. 88, § 2.

The 2007 amendment, effective July 1, 2007, in (a) substituted "After each new installation or modification of a regulated storage tank system" for "On or before July 1 of each year either", and deleted "or operator" following "the owner"; in (a)(ix) deleted "or operator" preceding "of the tank" and substituted "to cover at least thirty thousand dollars ($30,000.00) as specified in W.S. 35-11-1428(c)(i)" for "covering corrective action costs and third party damages, the amount of the policy coverage, the period of time covered and a copy of the insurance certificate in effect"; added (x) and designated the existing paragraph as (xi).

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

§ 35-11-1420. Tank notification required; change of owner; installation requirements; inspections.

(a) In the event of the transfer of any tank to a different owner, notification of the transfer shall be provided to the department by the new and former owners. Such notifications shall be made on forms developed and provided by the department and shall include:

(i) The name, address and telephone number of the former and new tank owner;

(ii) The name, address and telephone number of the former and new tank operator;

(iii) A description of the location of the facility where the tank is maintained or operated and the location of the tank at that facility; and

(iv) Proof of insurance or other types of financial assurance by the new or former owner as applicable.

(b) No person shall install or substantially modify, or cause to be installed or substantially modified, any new or replacement tank without thirty (30) days prior notification to the department. Upon completion of the installation or modification the owner shall notify the department and the department shall within ten (10) days of receiving notification of completion, inspect the site or have the site inspected by a qualified state, local government or private inspector. No tank shall be operated until the department determines the installation or modification meets the applicable standards and the department has issued a written inspection letter to the tank owner stating that the facility, as constructed or modified, meets state standards, except that if the department has not inspected the tank within fifteen (15) days after receiving notice of completion, the tank may be operated without written notification of the department until the tank is inspected.

(c) The department shall collect an installation or modification fee of two hundred fifty dollars ($250.00) for each tank or for all multiple tanks installed or modified at the same time and at the same site. The fees collected under this subsection shall be deposited in the general fund.

(d) If an owner or operator is unable to comply with subsection (b) of this section because of an emergency, he shall inform the department as soon as possible after the emergency is known. The owner or operator shall provide the information on the installation or modifications as required by this section without delay thereafter but within five (5) working days from the time the department is informed of the emergency.

History:
Laws 1990, ch. 98, § 1; 1993, ch. 207, § 1; 1994, ch. 32, § 1; 1997, ch. 87, § 1; 2007, ch. 88, § 2.

The 2007 amendment, effective July 1, 2007, in (a) substituted "the transfer of any tank to a different owner" for "transferal of tank ownership", substituted "and" for "or" preceding "former", substituted "owners" for "owner" at the end of the first sentence and deleted the second sentence; and rewrote (b).

§ 35-11-1421. Reporting releases.

An owner or operator shall report a known or suspected release to the department as required by rules and regulations.

History:
Laws 1990, ch. 98, § 1.

§ 35-11-1422. Right of entry; inspection.

(a) When requested by an authorized agent of the state the owner or operator shall:

(i) Provide information to determine compliance with the statutes and rules and regulations;

(ii) Provide access to any site or premises where a tank is located or where any records relevant to the operation of a tank are kept;

(iii) Provide copies of any records relevant to the operation of a tank;

(iv) Allow the authorized agent to obtain samples of the regulated substances;

(v) Allow the authorized agent to inspect or conduct the monitoring or testing of the tank system; and

(vi) Allow the authorized agent entry on the premises to do assessments and corrective actions.

(b) A duplicate sample taken by or for the state for testing shall be provided to the tank owner if requested by the owner. A duplicate copy of the analytical report from the department pertaining to the samples taken shall be provided as soon as practicable to the tank owner.

(c) No person conducting an inspection under this section shall unreasonably interfere with the operations, business or work, of any person at the site being inspected. The tank owner or operator shall be given the opportunity to accompany any person making an inspection.

(d) In carrying out a corrective action the department has the right to construct and maintain any structure, monitor well, recovery system or any other reasonable and necessary item associated with taking corrective action.

(e) The department shall give a minimum of seven (7) working days notice prior to an investigation unless an emergency exists.

History:

Laws 1990, ch. 98, § 1; 1994, ch. 32, § 1; 2007, ch. 88, § 2.

The 2007 amendment, effective July 1, 2007, in (b) substituted "if requested" for "or operator unless waived", deleted "or operator" following "owner" twice; and in (e) substituted "seven (7)" for "one (1)" and substituted "days" for "day's" preceding "notice prior."

§ 35-11-1423. Public notice; right to intervene.

(a) The department shall notify the affected public of all confirmed releases requiring a plan for soil and groundwater remediation, and upon request, provide or make available to the interested public information concerning the nature of the release and the corrective actions planned or taken.

(b) Any person having an interest that is or may be adversely affected may intervene as a matter of right in any civil action for remedies specified in this act.

History:

Laws 1990, ch. 98, § 1.

Meaning of "this act." — The term "this act," referred to in subsection (b), refers to Laws 1990, ch. 98, §§ 1 and 2, which appear as §§ 35-11-103, 35-11-1414 through 35-11-1428, and various sections throughout title 39 (see Table of Disposition of Acts in volume 11).

§ 35-11-1424. Corrective action account created; use of monies; cost recovery.

(a) There is created the corrective action account. This account is intended to provide for financial assurance coverage required by federal law and shall be used by the department to take corrective action in response to a release and to remediate solid waste landfills. The department shall use monies from the corrective action account as appropriated by the legislature for the administration of this article and W.S. 35-11-533 through 35-11-537. Interest earned by this account shall be deposited in the general fund. Monies in the corrective action account shall also be used for the state water pollution control revolving loan account pursuant to W.S. 16-1-201 through 16-1-207. Except as provided in subsection (p) of this section, and contingent on availability of money in the account, the director shall distribute monies in the corrective action account to the solid waste landfill remediation account created by W.S. 35-11-535 on July 1 of each specified year in an amount not less than:

(i) 2019 - two million dollars ($2,000,000.00);

(ii) 2020 - five million dollars ($5,000,000.00);

(iii) 2021 – six million dollars ($6,000,000.00);

(iv) 2022 – six million dollars ($6,000,000.00);

(v) 2023 – seven million dollars ($7,000,000.00);

(vi) 2024 and each year thereafter – the director shall determine expected expenditures from the corrective action account for the underground storage tank program for the next fiscal year

and retain monies equal to that amount in the corrective action account, with the remainder of the monies deposited to the landfill remediation account, but in no event shall monies in the corrective action account on July 1 of any year be less than five million dollars ($5,000,000.00).

(b) The department shall establish priority lists of sites contaminated by tanks. The priorities shall be based on public health, safety and welfare and environmental concerns. The council after recommendation from the director of the department, the administrator of the various divisions and their respective advisory boards shall promulgate rules and regulations for defining priorities.

(c) The department shall use corrective action account monies to take corrective actions at sites contaminated by tanks. The department shall take corrective actions based on the sites' placement on the priority list. However, if an emergency threat to public health, safety and welfare or to the environment exists, or costs of cleanup may be significantly reduced, a site may be moved up on the priority list for immediate corrective action.

(d) For a site to be eligible for use of monies in the corrective action account, the owner or operator of the site shall, if required, pay the tank fee required by W.S. 35-11-1425, conduct a minimum site assessment, as defined by rule and regulation, and, if contamination is found, take action to prevent continuing contamination. The department shall notify all owners and operators on record at the department of the minimum site assessment requirements. Sites which do not meet the eligibility requirements specified in this subsection shall not be eligible for use of any monies in the corrective action account. Owners and operators of these ineligible sites shall not use the corrective action account for proof of financial assurance for the sites. Pending determination of the site's eligibility, the department may use corrective action account monies for corrective actions at a contaminated site.

(e) Sites where tanks have been removed or abandoned in accordance with any government regulations effective at the time of abandonment may become eligible for use of corrective action account monies if the person who owns the site pays a two hundred dollar ($200.00) annual fee per site and conducts a site assessment as required by subsection (d) of this section. The annual fee per site required under this subsection shall be paid for a maximum of ten (10) years and shall then lapse until corrective action is undertaken by the department. Failure to meet these requirements may subject the person who owns the site to suit for corrective action or cost recovery. The fee collected under this subsection shall be deposited in the corrective action account. The department shall notify all the owners and operators who are on record at the department who have removed or properly abandoned a tank of the provisions of this subsection.

(f) If, after due diligence, no owner or operator can be found, a contaminated site shall be placed on the priority list in appropriate rank with other sites. If an owner or operator of a site which is not in compliance and the owner or operator refuses to comply with subsection (d) of this section is discovered, that site shall be considered as ineligible for use of corrective action account monies and shall be treated as defined in subsection (g) of this section.

(g) The department may, by an action brought by the attorney general against an owner or operator, recover reasonable and necessary expenses incurred by the department in taking a corrective action. These recoverable expenses include but are not limited to costs of investigating a release, administrative costs and reasonable attorney fees. The department's certification of expenses is prima facie evidence the expenses are reasonable and necessary. Expenses recovered under this section shall be deposited in the corrective action account unless otherwise required by state or federal law. The department may sue for recovery of expenses only if:

(i) The owner or operator has failed to take the actions required for that site in subsection (d) of this section; or

(ii) The owner or operator had tank insurance for that site at the time of the release. However no such recovery under this subsection may exceed the limits or coverage of the insurance policy in question.

(h) The state has a right of subrogation to any insurance policies in existence at the time of the release to the extent of any rights the owner may have had under that policy. This right of subrogation shall apply regardless of the owner's eligibility to use corrective action account monies under subsection (d) of this section. In implementing this section the department shall:

(i) Notify all known owners and operators, past and present, of sites where contamination from a tank is known to exist and request information relating to any insurance policies they possess or possessed at the time of release that may provide coverage for corrective action or cleanup of the contamination at the site;

(ii) Notify all insurance companies which have been identified to the department pursuant to W.S. 35-11-1419 and may have issued insurance policies that provide coverage for contamination from tanks and request copies of any such policies. In notifying insurance companies the department shall provide the insurance company with the name of all known owners, past and present, and the legal description of the site upon which the tank is or was located. The department notification shall require each insurance company to notify the department whenever there is a change in the insurance policy, including cancellation.

(j) Nothing in this section shall be construed to authorize payments for the repair, removal or replacement of any tank or equipment.

(k) Nothing in this section shall be construed to authorize payments or commitments for payments in amounts in excess of the monies available.

(m) Within thirty (30) days after receipt of notification that the corrective action account has become incapable of paying for assured corrective actions, the owner or operator shall obtain alternate financial assurance.

(n) Any person or insurance company notified by the department under paragraph (h)(i) or (ii) of this section shall provide the requested information to the department within thirty (30) days of receipt of the notification. In addition to other remedies provided for in this act, failure of any insurance company to provide copies of the requested policies shall result in the statute of limitations provided in subsection (o) of this section being tolled for any action the department may bring in subrogation until such time as the policy is discovered.

(o) Notwithstanding any other applicable period of limitation, upon notification by any owner, operator or insurance company of any insurance coverage in existence, the department shall have five (5) years to commence any action for the recovery of proceeds under the applicable policy.

(p) The director is authorized to withhold distributions from the corrective action account to the municipal solid waste remediation account as provided in subsection (a) of this section in the event of:

(i) An emergency involving a leaking underground storage tank which requires immediate corrective action which will require an expenditure of monies in excess of the monies available in the corrective action account; or

(ii) Monies in the account are less than the amount required by federal law to provide for financial assurance coverage or adequate leaking underground storage tank remediation.

(q) The director shall submit a report to the joint minerals, business and economic development interim committee by June 15, 2019 and by June 15 of every year thereafter, describing the amount to be withheld in the corrective action account pursuant to subsection (a) of this section, and the factors used in making that determination.

(r) In the event the director exercises the authorization provided under subsection (p) of this account, the director shall inform the joint minerals, business and economic development interim committee in writing of the withholding of the distribution.

History:

Laws 1990, ch. 98, § 1; 1993, ch. 207, § 1; 1994, ch. 32, § 1; 2005, ch. 231, § 1; 2007, ch. 88, § 2; 2015, ch. 46, § 1.

The 2005 amendment, effective July 1, 2005, deleted "within the earmarked revenue fund" in the first sentence in (a).

The 2007 amendment, effective July 1, 2007, in (h) deleted "or operator" preceding "may have had" and substituted "owner's" for "owner or operator's"; in (h)(ii) inserted "have been identified to the department pursuant to W.S. 35-11-1419 and" following "insurance companies which", deleted "or may provide" preceding "coverage for contamination", deleted "and operator" preceding "past and present," and added the last sentence.

The 2015 amendment, effective July 1, 2015, in the introductory language of (a), added "and to remediate solid waste landfills" in the second sentence, added "and W.S. 35-11-533 through 35-11-537" in the third sentence, substituted "16-1-207" for "16-1-206," and added the last sentence; added (a)(i) through (a)(vi); and added (p) through (r).

Editor's notes. — There is no subsection (i) or (l) in this section as it appears in the printed acts.

Meaning of "this act." — For the meaning of "this act," referred to in this section, see § 35-11-103(a)(xiii).

Refund of LUST tax. — Laws 2001, ch. 129, § 2, provides that all severance taxes distributed under title 39, chapter 14, to the corrective action account created by § 35-11-1424 and the financial responsibility account created by § 35-11-1427 are to be in the amount of fuel taxes collected under § 39-17-104(c), (§ 39-17-104(a)(iii)), § 39-17-204(b) and § 39-17-204(a)(ii)), less any refunds.

Conflicting legislation. — Laws 2005, ch. 231, § 3, provides: "The provisions of this act shall supersede the provisions of any other bill enacted into law during the 2005 general session which amends or references accounts or funds to the extent any other enactment is inconsistent with the establishment of the funds and accounts created under this act. The

state auditor shall account for any fund or account created in any other legislation enacted in the 2005 general session in accordance with generally accepted accounting principles (GAAP) as promulgated by the governmental accounting standards board (GASB) and in accordance with this act."

Stated in Wilson v. Amoco Corp., 989 F. Supp. 1159, 1998 U.S. Dist. LEXIS 57 (D. Wyo. 1998).

Cited in V-1 Oil Co. v. State, 934 P.2d 740, 1997 Wyo. LEXIS 52 (Wyo. 1997).

§ 35-11-1425. Tank fee; deposit into corrective action account; late fee.

(a) On or before January 1 of each year the owner of a tank shall pay a fee to the department of two hundred dollars ($200.00) per tank owned, except the owner of an aboveground storage tank subject to this section that holds five thousand (5,000) gallons or less shall pay a fee of fifty dollars ($50.00) per tank owned. This fee shall be deposited in the corrective action account.

(b) On April 1 of each year the department may assess a late payment fee of one hundred dollars ($100.00) per tank or contaminated site against any owner who has not paid the annual fee required pursuant to subsection (a) of this section. This late fee shall be paid by the owner and shall be in addition to the annual fee required pursuant to subsection (a) of this section and shall be deposited in the department's corrective action account.

(c) The change from July 1 to January 1 for the due date of storage tank fees shall be revenue neutral. The department shall collect one-half (1/2) of the annual fee on July 1, 2007 and shall collect the full annual fee on January 1, 2008 and annually thereafter.

History:

Laws 1990, ch. 98, § 1; 1994, ch. 32, § 1; 1995, ch. 26, § 1; 2007, ch. 88, § 2.

The 2007 amendment, effective July 1, 2007, added (b) and (c) and designated the present provisions as (a); and in (a) substituted "January" for "July", deleted "either" twice and deleted variants of "or operator" four times.

§ 35-11-1426. Restoration standard.

Any owner or operator, department or other person taking a corrective action shall restore the environment to a condition and quality consistent with standards established in rules and regulations.

History:

Laws 1990, ch. 98, § 1.

§ 35-11-1427. Financial responsibility account.

There is created the environmental pollution financial responsibility account. This account is intended to provide for financial assurance coverage required by federal law and shall be for the purpose of compensating third parties for damage caused by releases from one (1) or more tanks. Interest earned by the account shall be deposited in the general fund.

History:

Laws 1990, ch. 98, § 1; 1994, ch. 32, § 1; 2005, ch. 231, § 1.

The 2005 amendment, effective July 1, 2005, deleted "within the earmarked revenue fund" at the end of the first sentence.

Refund of LUST tax. — Laws 2001, ch. 129, § 2, provides that all severance taxes distributed under title 39, chapter 14, to the corrective action account created by § 35-11-1424 and the financial responsibility account created by § 35-11-1427 are to be in the amount of fuel taxes collected under § 39-17-104(c), (§ 39-17-104(a)(iii)), § 39-17-204(b) and § 39-17-204(a)(ii)), less any refunds.

Conflicting legislation. — Laws 2005, ch. 231, § 3, provides: "The provisions of this act shall supersede the provisions of any other bill enacted into law during the 2005 general session which amends or references accounts or funds to the extent any other enactment is inconsistent with the establishment of the funds and accounts created under this act. The state auditor shall account for any fund or account created in any other legislation enacted in the 2005 general session in accordance with generally accepted accounting principles (GAAP) as promulgated by the governmental accounting standards board (GASB) and in accordance with this act."

Cited in V-1 Oil Co. v. State, 934 P.2d 740, 1997 Wyo. LEXIS 52 (Wyo. 1997).

§ 35-11-1428. Uses of financial responsibility account monies.

(a) As provided in this section, the department shall, on application by an owner or operator,

direct the payment of monies from the financial responsibility account to satisfy judgments against the owner or operator for third party property damage or personal injury.

(b) The attorney general shall be served by certified mail return receipt requested with a copy of the complaint filed in any suit initiated against an owner or operator for third party property damage or personal injury. Service of the complaint on the attorney general is a jurisdictional requirement in order to maintain the suit. The attorney general shall be notified in writing by certified mail return receipt requested of any judgment, compromise, settlement or release entered into by an owner or operator. As provided in this section, the department shall, on application by an owner or operator, direct the payment of monies from the financial responsibility account to pay settlements for third party property damage or personal injury on terms negotiated by the attorney general and approved by the council.

(c) The monies from the financial responsibility account shall only be used to pay judgments and settlements not to exceed one million dollars ($1,000,000.00), for all the damages arising from releases from one (1) or more of the tanks on a site, provided that the owner or operator:

(i) Shall remain liable for payment of the judgment or settlement up to, but not exceeding, thirty thousand dollars ($30,000.00). The department may bring an action against the owner or operator to recover any amount paid by the department pursuant to a judgment or settlement for which the owner or operator remains liable under this paragraph;

(ii) Has not been relieved of his responsibility for the judgment or settlement by operation of law or otherwise. For purposes of this paragraph, an owner or operator shall not be deemed to have been relieved of his responsibility for the judgment or settlement by virtue of the Governmental Claims Act [1-39-101 et seq.]; and

(iii) Pays the tank fee required by W.S. 35-11-1424(e) or 35-11-1425, conducts a minimum site assessment, as defined by rule and regulation, and, if contamination is found, takes action to prevent continuing contamination.

(d) Nothing herein shall be construed to authorize the department to obligate funds from the financial responsibility account for payment of costs which may be associated with, but are not integral to, the personal injury or property damage such as the costs for modifying, removing or replacing tanks.

(e) The department shall establish a priority list for purposes of the financial responsibility account. The department shall not approve use of monies from the financial responsibility account if there are insufficient monies in the account to fund the application before the department and all other outstanding commitments.

(f) Nothing in this section shall be construed to authorize commitments to cover property or personal injury damages in excess of the balance in the financial responsibility account.

(g) Within thirty (30) days after receipt of notification that the financial responsibility account has become incapable of paying for assured third party compensation costs, the owner or operator shall obtain alternate financial assurance.

History:

Laws 1990, ch. 98, § 1; 1993, ch. 207, § 1; 1994, ch. 32, § 1.

Provision not applicable. — Wyo. Stat. § 35-11-1428(b) did not apply in an action by the beneficiaries of a trust against the trustee for breach of its duties under the trust, including the duty to act in good faith with respect to trust property. Wells Fargo Bank v. Hodder, 2006 WY 128, 144 P.3d 401, 2006 Wyo. LEXIS 144 (Wyo. 2006).

Cited in Wilson v. Amoco Corp., 989 F. Supp. 1159, 1998 U.S. Dist. LEXIS 57 (D. Wyo. 1998).

§ 35-11-1429. Tank requirements; rulemaking authority.

(a) Cathodic protection shall be installed and operated on all internally lined underground storage tanks no later than June 30, 2008.

(b) All underground storage tank systems that dispense more than five hundred thousand (500,000) gallons per month of a regulated substance shall be replaced with double wall tanks and lines with interstitial leak monitoring no later than June 30, 2012, or thirty (30) years from the date of installation of the underground storage tank, whichever is later.

(c) Double wall underground storage tanks and lines with interstitial leak monitoring shall be installed whenever any underground storage tank is installed.

(d) Double wall underground storage tank system lines with interstitial leak monitoring shall be installed whenever any line is installed on any underground storage tank system.

(e) The council may promulgate rules and regulations to administer this section after recommendation from the director.

History:
Laws 2007, ch. 88, § 1.

Editor's notes. — Laws 2007, ch. 172, § 1, also enacted a § 35-11-1429, but it was renumbered as § 35-11-1430.

Effective dates. — Laws 2007, ch. 88, § 4, makes the act effective July 1, 2007.

§ 35-11-1430. [Repealed.]

W.S. 35-11-1430(b) repealed this section effective June 30, 2009.

ARTICLE 15. RADIOACTIVE WASTE STORAGE FACILITIES

Law reviews. — For case note, "Hazardous Waste — The Supreme Court's Interpretation of RCRA: An Inequitable Result. KFC Western, Inc. v. Meghrig, 516 U.S. 479, 116 S. Ct. 1251, 134 L. Ed. 2d 121, 1996 U.S. LEXIS 1955 (1996)," see XXXII Land & Water L. Rev. 699 (1997).

§ 35-11-1501. Definitions.

(a) As used in this article:

(i) "High-level radioactive waste" means as defined in the "Nuclear Waste Policy Act of 1982" as amended, 42 U.S.C. § 10101 et seq.;

(ii) "High-level radioactive waste storage" means the emplacement of high-level radioactive waste or spent nuclear fuel regardless of the intent to recover that waste or fuel for subsequent use, processing or disposal;

(iii) "High-level radioactive waste storage facility" includes any facility for high-level radioactive waste storage, other than a permanent repository operated by a federal agency pursuant to the Nuclear Waste Policy Act of 1982, as amended. "High-level radioactive waste storage facility" includes an independent spent fuel storage installation as defined in title 10 of the Code of Federal Regulations part 72 section 3;

(iv) "Spent nuclear fuel" means as defined in the Nuclear Waste Policy Act of 1982 as amended, 42 U.S.C. § 10101 et seq.

History:
Laws 1995, ch. 212, § 1.

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

§ 35-11-1502. Application to site a high-level radioactive waste storage facility; requirements; payment of costs.

(a) Any person undertaking the siting of any high-level radioactive waste storage facility shall do so in accordance with this article. Facilities subject to this article are exempt from the jurisdiction of the Industrial Development Information and Siting Act, W.S. 35-12-101 et seq.

(b) Any person undertaking the siting of any facility governed by this section shall submit an application documenting the following information to the director:

(i) The criteria upon which the proposed site was chosen, and information showing how the site meets the criteria of the nuclear regulatory commission and the department pursuant to W.S. 35-11-1506(c)(xvi);

(ii) The technical feasibility of the proposed waste management technology;

(iii) The environmental, social and economic impact of the facility in the area of study;

(iv) Conformance of the plan with the federal guidelines for a high-level radioactive waste storage facility.

(c) The application shall be accompanied by an initial deposit of five hundred thousand dollars ($500,000.00) plus any additional amount reverted pursuant to W.S. 35-11-1506(c). The purpose of the initial deposit and additional monthly payments as billed to the applicant shall be to cover the costs to the state associated with the investigation, review and processing of the application and

with the preparation and public review of the report required in W.S. 35-11-1503 and 35-11-1504. Unused fees under this subsection shall be refunded to the applicant. The initial deposit shall be held in an interest bearing account in reserve by the department to guarantee that sufficient funds are available to pay for any outstanding costs incurred by the state in the event that the applicant is unable to complete the application process for any reason. Any costs to the state for application processing, preparation of the report required in W.S. 35-11-1503 and 35-11-1504 and for any other costs incurred by the state to fulfill any requirement of article 15 of this act, shall be billed by certified mail and reimbursed to the state by the applicant on a monthly basis at a rate established by the state for comparable other similar permitting reviews. The applicant may appeal the assessment to the department within twenty (20) days after receipt of the written notice. The appeal shall be based only upon the allegation that the particular assessment is erroneous or excessive. Failure of the applicant to pay within thirty (30) days of the date of mailing shall be cause for suspension or termination of the application process. Upon termination of the process, any unused sum remaining in said reserve account shall be returned to the applicant.

(d) Any applicant for a permit to construct and operate a high-level radioactive waste storage facility shall share pertinent information relevant to both state and nuclear regulatory commission permitting. It is the intention of this article that an applicant can supply information common to both state and federal permitting, without duplication of effort.

(e) Upon receipt of an application under subsection (b) of this section, the director shall, at the earliest possible date, apply for any funds which may be available to the state from the Interim Storage Fund or the Nuclear Waste Fund under the provisions of 42 U.S.C. § 10156 and 42 U.S.C. § 10222. Nothing in this subsection shall be construed as authorizing the siting, construction or operation of any high-level radioactive waste storage facility not otherwise authorized under this article.

History:
Laws 1995, ch. 212, § 1; 1999, ch. 163, § 1.

§ 35-11-1503. Preparation of the report by the department.

(a) The department shall within eighteen (18) months of receipt of an application and the application fee under W.S. 35-11-1502, prepare a report which examines the environmental, social and economic impacts of any proposal to site a high-level radioactive waste storage facility within the state. The director may employ experts, contract with state or federal agencies, or obtain any other services through contractual or other means to prepare the report.

(b) Any report prepared under this section shall evaluate and assess all probable impacts associated with any proposal to site a high-level radioactive waste storage facility within the state, including but not limited to short term impacts and any other impacts which may be serious, reversible or irreversible. In developing the report under this section, the director may consider the guidelines and standards for preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4332(2)(C). If appropriate and to the extent practicable, the department shall prepare a joint report with the nuclear regulatory commission under the National Environmental Policy Act.

(c) The report shall evaluate the environmental, social and economic impacts to the state from a range of alternative actions, including the siting of the high-level radioactive waste storage facility as proposed, the no action alternative and other alternatives.

(d) The report shall include a proposed benefits agreement, which shall be negotiated with the person who proposes to site the high-level radioactive waste storage facility.

(e) The director shall, in the preparation of the report, identify a recommended action from among the alternatives evaluated.

History:
Laws 1995, ch. 212, § 1.

§ 35-11-1504. Public review of any report for the siting of a high-level radioactive waste storage facility; submission to legislature.

(a) The department shall submit any report prepared under W.S. 35-11-1503 for public review as

required under this section. The public shall be afforded an opportunity to review the report and provide comments to the director. To the extent practicable, the director shall hold public hearings throughout the state to receive comments on the report.

(b) Following any public review of the report as provided in this section, but in no event before the United States department of energy issues a final environmental impact statement with the Yucca mountain site recommendation submitted to the president of the United States along with a license application for Yucca mountain as the permanent repository for high-level radioactive waste, the director shall submit the report to the legislature. The submission by the director shall include:

(i) The report;

(ii) The director's preferred or recommended alternative;

(iii) Any conditions proposed by the director regarding siting, construction, operation, monitoring, decontamination or decommissioning, or any other element of the proposed project that the director determines to be necessary to protect the public health or environment of the state, or to mitigate local or statewide social or economic impacts;

(iv) The proposed benefits agreement, including but not limited to:

(A) The number of jobs that will be created in planning, permitting, licensing, site analysis and preparation, purchasing, construction, transportation, operation and decommissioning;

(B) Local and state taxes generated by all aspects of the project;

(C) Benefits from job training, education, communication systems, monitoring and security systems;

(D) Mitigation payments to the affected communities;

(E) Cash and other in kind benefits that will offset any adverse effects;

(F) The duration of benefits from the project of all kinds.

(v) A summary of and a discussion of the considerations given by the department to any public comments received.

History:
Laws 1995, ch. 212, § 1.

§ 35-11-1505. Benefits agreement.

No benefits agreement shall be finally effective until authorized by the legislature under W.S. 35-11-1506. The benefits agreement shall be sufficient to offset adverse environmental, public health, social or economic impacts to the state as a whole, and specifically to the local area hosting the storage facility. The benefits agreement shall be attached to and made part of any permit for the facility. Failure to adhere to the benefits agreement shall be considered grounds for enforcement up to and including permit termination. No benefits agreement as provided in this section shall limit or waive any rights afforded to the state by the Nuclear Waste Policy Act, as of March 1, 1995 [42 U.S.C. § 10101 et seq.], including any right to disapprove any site or siting.

History:
Laws 1995, ch. 212, § 1.

Nuclear Waste Policy Act. — The Nuclear Waste Policy Act is codified as 42 U.S.C. § 10101 et seq.

§ 35-11-1506. Legislative approval of the siting of high-level radioactive waste storage facilities; conditions.

(a) Except as provided in subsection (e) of this section, no construction may commence, nor shall any high-level radioactive waste storage facility be sited within this state, unless the legislature has enacted legislation approving the siting, construction and operation of the facility in accord with this section. Any authorization of a facility under this section shall not be considered to grant to any person an exclusive right or franchise to store high-level radioactive wastes within the state.

(b) In addition to any facility which meets the requirements of subsection (e) of this section, the legislature may authorize one (1) or more facilities under subsection (a) of this section if it finds that:

(i) The siting of a high-level radioactive waste storage facility within the state is in the best interests of the people of Wyoming;

(ii) The siting of a high-level radioactive waste storage facility within the state can be

accomplished without causing irreversible adverse environmental, public health, social or economic impacts to the state as a whole, and specifically to the local area hosting the proposed storage facility;

(iii) The proposed benefits agreement is sufficient to offset any adverse environmental, public health, social or economic impacts to the state as a whole, and specifically to the local area hosting the proposed storage facility; and

(iv) Sufficient safeguards, by contractual assurances or other means, exist to provide that:

(A) The authorization to site, construct and operate any proposed storage facility shall be limited to no more than forty (40) years, provided that extensions may be granted if the legislature enacts legislation authorizing nuclear waste storage facilities to operate for more than forty (40) years;

(B) Any wastes in storage at any facility shall remain the property of the waste generator or civilian nuclear power reactor owner, until transferred to permanent storage or until the federal government takes title to the wastes under the provisions of the Nuclear Waste Policy Act, 42 U.S.C. § 10101 et seq.;

(C) Conditions substantially equivalent to the licensing conditions imposed upon monitored retrievable storage facilities under 42 U.S.C. § 10168(d) existing as of March 1, 1995 shall be effective for any high-level radioactive waste storage facility authorized under this article; and

(D) There exists either a cooperative agreement between the state and the nuclear regulatory commission, or such other legally binding agreement for specific performance between the director and the applicant, which shall provide for state regulation of the facility.

(c) With permission of the governor and the management council, an applicant for either a monitored retrievable storage facility or an independent spent fuel storage installation may enter into a preliminary but nonbinding feasibility agreement and study with the director which shall be submitted to and reviewed by the director, governor and the management council. The public shall be afforded a thirty (30) day public comment opportunity to review the feasibility agreement prior to its submission to the governor and the management council. The purposes of this feasibility agreement and study are to allow the state to make a preliminary determination, whether, on the basis of the feasibility agreement and study, the proposed benefits substantially outweigh any adverse effects and to allow an applicant based on the state's preliminary review of any proposed benefit to determine whether or not a prudent investor, planner, builder and operator would decide to proceed with an application. Upon entering into a feasibility agreement, the applicant shall pay to the state a fee of fifty thousand dollars ($50,000.00). The fee shall be used by the department for costs attendant to the preliminary agreement. Excess funds collected may be used by the department to review an application submitted under W.S. 35-11-1502. Appropriate time shall be afforded the director, the governor, the management council and the applicant to prepare and to evaluate the preliminary agreement and study, but neither the state nor the applicant shall unnecessarily delay the feasibility agreement and study. The preliminary feasibility agreement and study shall not supersede nor replace other requirements under this act [§§ 35-11-1501 through 35-11-1507]. This agreement and study shall set forth the following:

(i) The source and adequacy of the financing for the facility and the applicant's ability to fulfill the terms of any contract entered into regarding the siting, construction or operation of the facility. The information required under this paragraph shall include, but is not limited to, audited financial statements covering the five (5) year period prior to the feasibility agreement, a listing of all partners if the applicant is a partnership and a listing of all persons owning or controlling five percent (5%) or more of its stock if the applicant is a corporation;

(ii) Financial strengths of prospective storage customers;

(iii) The technical experience of the applicant and his associates in permitting before the nuclear regulatory commission, and in design, construction and operation of nuclear facilities;

(iv) The preliminary design plan and technical feasibility of the planned temporary fuel rod storage facility;

(v) The best estimate of a range of costs for the permitting, planning and construction of the facility, based upon available information;

(vi) The proposed storage capacity of the planned facility, necessary to give reasonable assurance of economic feasibility, with evidence to show that the proposed storage capacity will not adversely affect the health and safety of Wyoming people or the environment;

(vii) How the applicant will proceed with the facility to assure that its construction, operation and decommissioning will neither temporarily nor permanently adversely affect the health and safety of Wyoming people;

(viii) A best estimate of a time frame required to obtain the necessary permits, including nuclear regulatory commission licensing, design and construction, and a suggested time frame for decisions by Wyoming government to meet the target timetable;

(ix) An outline of transportation plans, including rail and highway;

(x) Substantial assurances that the facility is temporary, including options for that assurance including a time frame for the movement of the temporarily stored fuel rods to a permanent repository, delivery of the stored rods to reprocessing centers or to a purchaser, domestic or foreign, buying the rods for future reprocessing;

(xi) A range of benefits the nearby communities and the state might expect in return for temporarily storing the fuel rods, and a best estimate of when the benefits might begin to be received by the nearby communities and state;

(xii) A mutual review, by the state and applicant, of a range of taxes the state might reasonably impose on the facility and the fuel rods while they are in temporary storage including the annual acceptance taxes to be levied on fuel rods, based upon the kilograms of fuel rods stored at the Wyoming facility;

(xiii) A description of security measures that would be installed in and around the facility to isolate and protect it from intruders;

(xiv) A description of an emergency response procedure in the event of an unusual occurrence;

(xv) An outline of the information program an applicant would initiate to explain its plans to the community and state;

(xvi) A description of site suitability characteristics and evidence that the applicant's proposed site for the facility meets those characteristics;

(xvii) Evidence of support from nearby Wyoming communities for exploring the project.

(d) If the legislature authorizes the siting of a facility under subsection (a) of this section, the department shall issue a permit incorporating the conditions presented to the legislature including the benefits agreement. The issuance of the permit is not appealable to the environmental quality council. The permit shall also include a provision for payment by the permittee of inspection and review costs unless such costs are included in the benefits agreement.

(e) The legislature hereby authorizes the siting of temporary high-level radioactive waste storage facilities within this state subject to the following:

(i) A facility shall only be authorized if it is operated on the site of and to store the waste produced by a nuclear power generation facility operating within the state;

(ii) The applicant for the facility shall otherwise comply with the requirements of this act;

(iii) The department shall review the application submitted pursuant to W.S. 35-11-1502 and determine specifically if the facility meets the safety considerations in paragraph (b)(iv) of this section and any other potential safety or environmental concerns;

(iv) After preparation of the report under W.S. 35-11-1503 and public review under W.S. 35-11-1504, the department may authorize siting and construction of the facility;

(v) If a facility is authorized by the department under paragraph (iv) of this subsection, the benefits agreement shall be the agreement as negotiated with the applicant under W.S. 35-11-1503(d).

History:

Laws 1995, ch. 212, § 1; 2013, ch. 41, § 1.

The 2013 amendment, effective July 1, 2013, added "Except as provided in subsection (e) of this section," to the beginning of the first sentence in (a); added "In addition to any facility which meets the requirements of subsection (e) of this section," to the beginning of the first sentence in (b); and added (e).

§ 35-11-1507. Injunction proceedings; penalties.

(a) When, in the opinion of the governor, a person is violating or is about to violate any provision of this article, the governor shall direct the attorney general to apply to the appropriate court for an order enjoining the person from engaging or continuing to engage in the activity. Upon a showing that the person has engaged, or is about to engage in the activity, the court may grant a permanent or temporary injunction, restraining order or other order.

(b) In addition to being subject to injunctive relief any person convicted of violating any provision of this article may be imprisoned for up to one (1) year, fined up to five thousand dollars ($5,000.00), or both.

History:
Laws 1995, ch. 212, § 1.

ARTICLE 16. VOLUNTARY REMEDIATION OF CONTAMINATED SITES

§ 35-11-1601. Applicability; nonvoluntary remediation.

(a) This article establishes the requirements and procedures necessary for voluntary remediation of eligible sites under this act, and shall not authorize unpermitted releases of contaminants to the environment of the state. Consistent with the policy and purpose of this act, this article shall provide incentive to remediate eligible sites and establish criteria for application of site-specific, risk-based remediation. All voluntary remediation requirements for eligible sites shall be performed in accordance with this article and shall be contained in a remedy agreement issued under W.S. 35-11-1607. Except as provided in subsection (d) of this section, no additional remediation requirements may be imposed by the department under this act for remediation of any site subject to a remedy agreement issued under W.S. 35-11-1607, unless the remedy agreement has been reopened or terminated under W.S. 35-11-1610. Nothing in this subsection shall prohibit the imposition of remediation requirements to address the release of a contaminant which may occur after a remedy agreement has been entered into or a no further action letter has been issued. Remediation authorized by the department under this article shall not be deemed a prohibited act under this act, or of any rules or regulations promulgated thereunder.

(b) Remediation is not voluntary under this article if it is required:

(i) By order of the department, council or by any court and entered without the consent of a person; or

(ii) By order of the department, council or by any court and entered without the consent of a person who has failed or refused to enter into, or breached the terms of, a preliminary remediation agreement, remedy agreement or reopened remedy agreement; or

(iii) By administrative or judicial order to which the United States environmental protection agency is a party, which is issued after the effective date of this act, on a site that has been determined not to be eligible under W.S. 35-11-1603.

(c) Sites that are not eligible for voluntary remediation are subject to all other applicable requirements of this act, including the provisions of W.S. 35-11-1613.

(d) Nothing herein shall relieve owners or operators of eligible sites from applicable permit requirements under this act or limit the director's ability to undertake enforcement action relating to a complaint under article 7 of this act [§ 35-11-701] and impose a penalty for violation of the act under article 9 of this act [§ 35-11-901 et seq.].

(e) Nothing in this article shall limit the director's authority to order any person to abate any condition that poses an imminent or substantial endangerment to human health or the environment, or the director's authority to issue emergency orders under W.S. 35-11-115.

History:
Laws 2000, ch. 13, § 1.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

§ 35-11-1602. Eligibility for voluntary remediation program; sites eligible; sites ineligible.

(a) Eligible sites shall include sites which meet the following conditions:

(i) Sites, or portions of sites, where releases occurred before the effective date of this article and:

(A) The site, or portion of site, where the release occurred was not subject to the permit requirements of this act at the time of the release; or

(B) The site is covered by an order of the department, council or by any court and entered with the consent of the person or entity.

(ii) Sites, or portions of sites, where releases occurred on or after the effective date of this article and where the owner or operator is implementing a pollution prevention plan consistent with rules promulgated under this act;

(iii) Waste management or disposal units that have been permitted under this act and the director determines that the release from the permitted unit, if restricted or prohibited by the permit, cannot be remediated in accord with the permit requirements because of technical impracticability.

(b) Eligible sites shall not include:

(i) A site for which remediation is not voluntary under W.S. 35-11-1601(b);

(ii) A site that is listed on the National Priorities List of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675;

(iii) A commercial solid waste management facility, commercial waste incineration or disposal facility subject to W.S. 35-11-514;

(iv) Underground and aboveground storage tanks subject to article 14 of this act [§ 35-11-1401 et seq.];

(v) Radioactive waste storage facilities subject to article 15 of this act [§ 35-11-1501 et seq.];

(vi) Abandoned mine land sites subject to article 12 of this act [§ 35-11-1201 et seq.]; or

(vii) Any site where a release resulted from continuous or repeated violations of any law, rule, regulation or order under this act.

History:
Laws 2000, ch. 13, § 1.

"this act," referred to in this section, see § 35-11-103(a)(xiii).

Meaning of "this act." — For the definition of

§ 35-11-1603. Participation in the voluntary remediation program; application; time for determination.

To participate in the voluntary remediation program a person must submit an application to the department that identifies the owner and provides a location and description of the site. The application shall also describe the site-specific conditions which the applicant believes satisfy one (1) or more of the eligibility criteria of W.S. 35-11-1602. No later than forty-five (45) days after receipt of the application, the department shall give written notice to the applicant containing the department's determination of the site eligibility for participation in the voluntary remediation program.

History:
Laws 2000, ch. 13, § 1.

§ 35-11-1604. Public participation; notice; plan.

(a) Following any determination by the department that a site is an eligible site, or following the submission of any application to modify an existing remedy agreement, the owner or operator shall give written notice to all surface owners of record of land which is contiguous to the site, and to all known adjacent surface owners of record of land, and shall publish notice once per week for four (4) consecutive weeks in a newspaper of general circulation in the county in which the site is located. The notice published in a newspaper shall be a display advertisement. The notice to individual landowners and the notice published in a newspaper shall identify the site, provide a summary of the criterion in W.S. 35-11-1602 which makes the site eligible for participation in the voluntary remediation program under this article, describe the process for the public to request the development of a public participation plan under subsection (b) of this section, and provide a thirty (30) day period for the public to request that a public participation plan be developed.

(b) For any eligible site where there is significant public interest as determined by the director after considering the factors enumerated in paragraphs (i) through (iii) of this subsection, the person who has submitted an application for participation, or the owner of the site, shall prepare and implement a public participation plan which shall be approved by the director. In preparing the plan, the applicant or owner shall consult with and consider the public participation needs of

interested parties, including but not limited to contiguous surface owners of record and all known adjacent surface owners of record of land, local government, local economic development agencies or groups, and public interest groups. In determining whether there is significant public interest, the director shall consider whether there have been responses to the notice required under subsection (a) of this section requesting the development of a public participation plan by:

(i) At least twenty-five (25) individuals;

(ii) An organization representing at least twenty-five (25) individuals; or

(iii) The governing body of a local government.

(c) Any owner or operator of an eligible site which is also subject to permitting or corrective action requirements of the hazardous waste rules and regulations promulgated under W.S. 35-11-503(d) shall prepare and implement a public participation plan which complies with those rules and regulations.

(d) At a minimum for any eligible site regardless of whether a public participation plan has been required, prior to entering into a remedy agreement, the owner shall give written notice of the proposed remedy agreement to all surface owners of record of land adjacent to the site, and publish notice once per week for four (4) consecutive weeks in a newspaper of general circulation in the county in which the site is located. The notice shall be of a form and content prescribed by the department, and shall summarize the proposed remedy agreement, provide a description of the site, provide for a thirty (30) day public comment period after the date of the last publication, and provide an opportunity for an oral hearing. An oral hearing on the proposed remedy agreement shall be held if the department finds sufficient interest. The department may enter into a remedy agreement following the public comment period or any hearing, whichever is later.

History:
Laws 2000, ch. 13, § 1.

§ 35-11-1605. Voluntary remediation standards; site-specific, risk-based standards; considerations in choice of remedy; alternate standards for soil; alternate standards for soil or water; point of compliance; contamination from source not on site; alternate remediation standards for site contaminated from source not on site; supplemental requirements.

(a) Consistent with any requirements necessary to retain state primacy in federal programs, any remedy proposed by an owner of an eligible site, or considered by the director, shall:

(i) Be protective of human health, safety and the environment. A remedy shall be considered to be protective of human health if it reduces risk to human receptors of acute and chronic toxic exposures to contaminants to levels that do not pose a significant risk to human health. A remedy shall be considered to be protective of the environment if it adequately reduces risk of significant adverse impacts to ecological receptors for which habitats have been identified on or near the site. Remedies may meet this requirement through a combination of monitored natural attenuation, removal, treatment, or engineering or institutional controls. Except as provided in subsection (d) of this section, any site where a remedy is proposed that includes engineering or institutional controls must also have been designated as a use control area in accord with W.S. 35-11-1609;

(ii) Attain standards established by the director under this subsection for air, soil, and water affected by the site, unless the director sets an alternate standard in accord with subsection (c) or (d) of this section. No standard set under this section for a contaminant shall be set at a level or concentration lower than the background level or concentration for that contaminant. A remedy must attain standards or alternate standards by the end of the remediation period set forth in the remedy agreement. A remedy shall be considered to attain standards for air, soil and water if it:

(A) Meets any applicable media standards established under federal or state law or rule or regulation; or

(B) Meets site-specific, risk-based standards developed for the eligible site. Site-specific, risk-based standards shall establish a risk reduction goal for contaminants which are known or suspected carcinogens to ensure that the excess upper bound lifetime cancer risk to any exposed individual may not exceed a probability of developing cancer of one in one million (1

in 1,000,000) to one in ten thousand (1 in 10,000). The one in one million (1 in 1,000,000) risk level shall be used as the point of departure for determining remediation goals for alternatives when individual contaminant standards are not available, or are not sufficiently protective because of the presence of multiple contaminants at a site or multiple pathways of exposures. Site-specific, risk-based standards must also require that for contaminants which are systemic toxicants, the hazard index must not exceed one (1). The director shall use residential exposure factors, giving consideration to children and the elderly, to establish site-specific, risk-based standards under this subsection for soils and air. The exposure factors to be used by the director to establish site-specific, risk-based standards under this subsection for hazardous substances in groundwater shall assume that groundwater may be used as a drinking water source, provided that no standard set under this subsection for a contaminant shall be set at a level or concentration lower than the background level or concentration for that contaminant. For nonhazardous substances, the exposure factors to be used by the director shall assume uses consistent with the class of use prior to contamination of the groundwater.

(iii) Control any sources of releases so as to reduce or eliminate, to the extent technically practicable, further releases as required to protect human health and the environment. A remedy shall be considered to control sources of releases if it controls the release of contaminants from sources to any media in concentrations that exceed applicable standards set by the director under paragraph (a)(ii) of this section, or the soil standards under subsection (c) or (d) of this section; and

(iv) Comply with any applicable standard for management of wastes generated as a consequence of the remedy. A remedy shall be considered to comply with applicable standards for management of wastes if all wastes generated as a consequence of implementation of the remedy are treated, stored or disposed of in compliance with the requirements of this act.

(b) The director shall choose a remedy, or combination of remedies, from among those remedies which meet the requirements of subsection (a), (c) or (d) of this section, as applicable. In choosing a remedy, the director shall consider:

(i) The extent to which the remedy will be reliable and effective for the long term. For remedies that include engineering or institutional controls in accord with a use control area designation, the director shall consider the expected life cycle performance of any engineering controls, monitoring systems and institutional controls;

(ii) The extent to which the remedy results in a reduction of toxicity, mobility or volume of contaminants. The director shall consider the degree to which remedies incorporate treatment or removal of contaminants to lower long term risk to human health and the environment;

(iii) The short term effectiveness of the remedy. The director shall consider the time required for each remedy to attain standards for air, soil and water specified in paragraph (a)(ii) or subsection (c) or (d) of this section, as applicable. A remedy involving monitored natural attenuation may be considered whether or not the director has made a determination of technical impracticability under subsection (d) of this section. Monitored natural attenuation shall be deemed effective if there is evidence that natural attenuation is occurring and will be completed within a reasonable time period;

(iv) Impacts which may be caused by implementation of the remedy. The director shall consider any adverse impacts which may be caused by a remedy, and shall take into consideration the gravity of any projected impact and the cost and availability of measures to mitigate the impact;

(v) The extent and nature of contamination and practicable capabilities of remedial technologies, and whether achieving standards is technically impracticable;

(vi) Reasonably anticipated future land uses or use restrictions in a use control area designation;

(vii) Consistency of remedies with the nature and complexities of releases of contaminants; and

(viii) Cost of the remedy. The director shall consider whether a remedy presents a substantial and disproportionately high cost for implementation and completion. The director shall compare the costs of remedies considering the degree of risk reduction that is afforded by each remedy. Costs considered shall include capital, operation and maintenance, engineering and institutional control costs and monitoring costs for the anticipated life of the remedy.

(c) The director may establish alternate site-specific, risk-based standards for surface and subsurface soils to be employed at a site in lieu of the soil standards in paragraph (a)(ii) of this section, for any site that is located within a use control area designated under W.S. 35-11-1609. A remedy that employs alternate standards established by the director under this subsection shall meet the requirements of this subsection and paragraphs (a)(i), (iii) and (iv) of this section. The alternate standards for such a site shall use the carcinogenic and systemic toxicant risk reduction goals of subparagraph (a)(ii)(B) of this section, except that the exposure assumptions used to calculate the alternate standards under this subsection shall be consistent with the use restrictions contained in the use control area designation. If the director establishes alternate soil standards under this subsection, the owner or operator must evaluate technologies that can meet the alternate soil standards. Owners or operators of eligible sites that implement remedies which achieve the alternate soil standards set under this subsection may be issued a certificate of completion and covenant not to sue pursuant to W.S. 35-11-1607. The soil standards of paragraph (a)(ii) of this section must be met if the owner or operator applies to remove the use restrictions applicable to the site or to receive a no further action letter under W.S. 35-11-1608.

(d) The director may establish alternate site-specific, risk-based standards for soil or water to be employed at a site in lieu of the soil and water standards in paragraph (a)(ii) of this section if, after evaluation of currently available technology the director determines that it is technically impracticable to meet a standard at a specific site. A remedy that employs alternate standards established by the director under this subsection shall meet the requirements of this subsection and paragraphs (a)(i), (iii) and (iv) of this section. The technical impracticability determination shall include evaluation of the cost of remedy alternatives, including but not limited to, substantial and disproportionately high costs, present worth of construction, operation and maintenance costs, continued operational costs of the remedy selected and costs of any proposed alternative remedy strategies. Whenever the director sets an alternate standard, the director shall select a remedy capable of meeting the alternate standard and which is technically practicable, controls any sources of contamination to the extent technically practicable, and controls human and environmental exposures to contaminated air, soil or water. The director may establish alternate standards for soil or water under this subsection only if the owner has or obtains rights to control human or environmental exposures to contaminated media, and consents to impose such controls as are required to protect human health and the environment. Notwithstanding the provisions of paragraph (a)(i) of this section, or W.S. 35-11-1609 such controls may be imposed by the owner without the site receiving a use control area designation under W.S. 35-11-1609. The standards of paragraph (a)(ii) of this section must be met if the owner or operator applies to remove the use restrictions applicable to the site or to receive a no further action letter under W.S. 35-11-1608.

(e) When establishing standards under paragraph (a)(ii) or subsection (c) or (d) of this section, the director shall specify one (1) or more points of compliance where standards must be achieved. In specifying a point of compliance, the director shall consider the following factors:

(i) Compliance with groundwater standards shall be monitored as close as reasonably practical to the contaminant source or site boundary or boundary of the use control area. The director shall select any groundwater point of compliance based upon the evaluation of the properties of the aquifer, the proximity of existing and reasonably anticipated points of groundwater withdrawal or discharge to the surface, the location of the contaminant plume relative to the site or use control area boundary, the toxicity of the contaminant, the presence and proximity of multiple contaminant sources, the exposure and likelihood of actual exposure to contaminated groundwater, and the technical practicability of groundwater remediation;

(ii) For soils, standards shall be met at locations determined to ensure protection of human health and identified environmental receptors, and protection of surface water, groundwater and air resulting from any potential transfer of contaminants from soils to these other media; and

(iii) For surface water, standards shall be met at the point where any release enters any surface water of the state consistent with applicable federal and state requirements. If sediments are affected by releases to surface water, a sediment point of compliance may also be established.

(f) Remediation standards for a site that has become contaminated by a release or migration of contamination from a source not located on the site shall be appropriate for any use control area designation applicable to such site, or if desired by the owner the remediation requirements shall be adequate to restore the site to all uses for which it was suitable prior to the contamination.

(g) The department may establish supplemental requirements for owners or operators of lands or facilities subject to permitting or corrective action requirements of the hazardous waste rules and regulations promulgated under W.S. 35-11-503(d) as may be necessary to ensure that such sites are characterized and remediated in a manner which is consistent with, equivalent to, and no less stringent [than] permitting, closure, post-closure and corrective action requirements contained in rules and regulations adopted by the United States Environmental Protection Agency (EPA) under authority of subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. Election by an eligible site owner or operator who is subject to such hazardous waste permitting or corrective action requirements to participate in the voluntary remediation program under this article shall not relieve the owner or operator of the duty to comply with all requirements of the hazardous waste rules and regulations promulgated under W.S. 35-11-503(d).

History:
Laws 2000, ch. 13, § 1; 2001, ch. 59, § 1.

Meaning of "this act." — For the meaning of "this act," referred to in this section, see § 35-11-103(a)(xiii).

§ 35-11-1606. Preliminary remediation agreement; contents.

(a) The preliminary remediation agreement shall contain the terms and conditions agreed to by the parties, which shall include the information and procedures required for completion of an environmental assessment or site characterization that is adequate and appropriate to support selection of a permanent or long term protective remedy for the site and adjacent property to meet the standards in W.S. 35-11-1605, and a work plan, schedule and statement of any criteria the department intends to use to evaluate work plans and reports.

(b) For any site that is determined by the director to have the potential for significant contamination, be located in an area where human exposures to contaminants are likely, or require evaluation of remedial alternatives as a condition for the state to maintain primacy in any federal program, the director shall require the site characterization plan within the preliminary remediation agreement under this section to include a description of alternative remedial actions to be evaluated and a plan for the collection of any data and site information needed to evaluate those alternative remedial actions. Not all potential remedies must be evaluated for a site. The director and the owner may enter into a single agreement containing both characterization and alternative remedial action evaluation plans, or may enter into an alternative remedial action evaluation agreement following completion of site characterization.

History:
Laws 2000, ch. 13, § 1.

§ 35-11-1607. Remedy agreement; prerequisite; contents; violation of agreement; changes to agreement; covenant not to sue; certificate of completion; recording; effect on orders or permits.

(a) Except as provided in W.S. 35-11-1605(d), before an owner and the department may enter into a remedy agreement that includes long-term restrictions on the use of the site, the owner must obtain a use control area designation for the site as set forth in W.S. 35-11-1609. The use restrictions contained in any use control area designation may be used by the director to establish any alternate soil standard as provided in W.S. 35-11-1605(c).

(b) Any remedy agreement shall contain:

(i) A remedial action plan, including the remediation standards and objectives for the site or use control area, the remediation standards and objectives for adjacent property, a description of any engineering or institutional control, a schedule for the required remediation activities, and conditions for the effective and efficient implementation of the remedy agreement. The department shall require a suitable bond or other evidence of financial assurance to assure the performance and maintenance of engineering controls and any monitoring activities required in a remedy agreement; and

(ii) The reopeners or termination clauses set forth in W.S. 35-11-1610.

(c) The remedy and remediation standards for a site that are set forth in a remedy agreement shall be permanent, subject to the reopeners and termination clauses in W.S. 35-11-1610.

(d) Use restrictions, or other terms or conditions set forth in a remedy agreement shall run with the land and be binding upon successors in interest. If a term or condition of any remedy agreement, covenant not to sue, or certificate of completion requires the maintenance of a bond or other evidence of financial assurance, it shall be the duty of any successor in interest to maintain such bond or financial assurance.

(e) A violation of any use restriction, term or condition of a remedy agreement or certificate of completion shall be deemed a violation of this act, and the department may bring any action for such violation against the owner of the site at the time the violation occurs or against the person who violates the use restriction, term or condition of the remedy agreement or certificate of completion.

(f) No person shall change any engineering or institutional controls contained in a remedy agreement or certificate of completion without the prior written consent of the department. Before a change may be made, the department shall review the contamination at the site and any new requirements shall be incorporated into a subsequent remedy agreement or certificate of completion. Upon entry into a subsequent remedy agreement or certificate of completion or issuance of a no further action letter, the director shall modify or terminate any prior remedy agreement or certificate of completion.

(g) Consistent with the reopeners and termination clauses in W.S. 35-11-1610, the department shall, upon request, provide the owner or prospective purchaser a covenant not to sue. Any covenant not to sue shall extend to subsequent owners.

(h) If the director determines that all remediation requirements for a site have been successfully implemented or satisfied, the department shall, upon request, provide the owner or prospective purchaser a certificate of completion.

(j) A person who receives a remedy agreement or certificate of completion under this section shall record a copy in the office of the county clerk with the deed for the site and shall file the copy in the office of the county clerk no later than ten (10) business days after the date the remedy agreement or certification of completion is signed.

(k) No remedy agreement for any site subject to a prior administrative or judicial order or permit which contains remedial requirements shall be effective until the order or permit has been modified to incorporate the terms of the remedy agreement. Modifications to orders or permits under this subsection shall be made using the procedures specified in the prior order or permit. Entry into a remedy agreement under this article shall not affect the duty of the site owner or operator to comply with any prior order or permit. Following modification of the order or permit as provided in this subsection, the owner shall comply with the modified order or permit.

History:
Laws 2000, ch. 13, § 1.

Editor's notes. — There is no subsection (i) in this section as it appears in the printed acts.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

§ 35-11-1608. No further action letters; findings; natural attenuation.

(a) If the department determines that no further remediation is required on a site, the department shall, upon request, provide the owner or prospective purchaser a no further action letter, subject to reopener or termination as provided in W.S. 35-11-1610. The department may only issue a no further action letter upon a finding by the department that the site does not require engineering or institutional controls or use restrictions to meet the standards specified in W.S. 35-11-1605(a)(ii).

(b) When the department has determined that monitored natural attenuation over a reasonable period of time is appropriate and that no exposure to contaminated media is reasonably expected during the period of natural attenuation, the department shall, upon request, provide the owner or prospective purchaser a no further action letter. The no further action letter may require that the current use of the property continue during the period of natural attenuation and also may require that testing be conducted to confirm that standards are met.

History:
Laws 2000, ch. 13, § 1; 2001, ch. 59, § 1.

§ 35-11-1609. Use control areas; when establishment required; procedure; contents of petition; notice; failure of governmental entity to act; enforcement; exception.

(a) The owner of a site who proposes long-term restrictions on the use of the site shall petition to the appropriate governmental entity or entities for the creation of a use control area to establish long-term restrictions on the use of the site.

(b) A use control area may be created or modified only upon the petition of the owner of a site, and notice and public hearing as provided in subsection (d) of this section, and shall include only the site, unless adjacent property owners consent.

(c) The petition to establish a use control area shall contain data, information and any remedy options required in a preliminary remediation agreement under W.S. 35-11-1606.

(d) Upon submission of a petition for long term use restrictions, the governmental entity to whom the use area designation petition has been submitted shall cause the owner to give written notice of the petition to all surface owners of record of land contiguous to the site, and to publish notice of the petition and a public hearing once per week for four (4) consecutive weeks in a newspaper of general circulation in the county in which the site is located. The notice shall identify the property, generally describe the petition and proposed use restrictions, direct that comments may be submitted to the governmental entity or entities to whom the petition has been submitted, and provide the date, time and place of a public hearing. The public hearing shall be held no sooner than thirty (30) days after the first publication of the notice. After the public hearing has been held, the governing board, commission or council shall vote upon the creation of the use control area in accordance with applicable rules, regulations and procedures. No use control area shall be created except upon petition of the owner and a majority vote of the appropriate board, commission or council.

(e) The governmental entity to whom the use control area petition has been submitted shall approve or deny an owner's petition for a use control area within one hundred eighty (180) days after the petition is received. The owner and a governmental entity may agree to extend the time period in which the governmental entity is to vote upon the petition. The governmental entity may, on a vote taken within one hundred eighty (180) days after the petition is received, condition its vote approving the petition upon the owner's subsequent filing of the determination by the director that a remedy can be selected that meets the requirements of W.S. 35-11-1605 and is consistent with owner's petition.

(f) The restrictions in a use control area are enforceable by the issuing governmental entity by injunction, mandamus or abatement, in addition to any other remedies provided by law.

(g) Except as provided in subsection (e), nothing in this section shall contravene or limit the authority of any county, city or town to regulate and control the property under their jurisdiction.

(h) The department shall not have the authority to require a governmental entity to adopt any zoning regulation or restriction applicable to a site as part of a remediation or response action or a remedy agreement.

(j) If the department has issued a no further action letter under W.S. 35-11-1608, then no use control area designation shall be required.

History:
Laws 2000, ch. 13, § 1.

Editor's notes. — There is no subsection (i) in this section as it appears in the printed acts.

§ 35-11-1610. Reopening or termination of remedy agreements, covenants not to sue, certificates of completion or no further action determinations; conditions; recording.

(a) The department may reopen a remedy agreement, covenant not to sue or certificate of completion at any time if:

(i) The current owner fails substantially to comply with the terms and conditions of the remedy agreement, covenant not to sue or certificate of completion;

(ii) An imminent and substantial endangerment to human health or the environment is discovered;

(iii) Contamination is discovered that was present on the site but was not known to the owner

or the department on the date of the remedy agreement or when the department issued a covenant not to sue or certificate of completion; or

(iv) The remedy fails to meet the remediation objectives that are contained in the remedy agreement or certificate of completion.

(b) The department may reopen a no further action determination at any time if:

(i) An imminent and substantial endangerment to human health or the environment is discovered; or

(ii) The department determines that the monitored natural attenuation remedy under W.S. 35-11-1608(b) is not effective in meeting the standards for a no further action letter under this section.

(c) The department may terminate a remedy agreement, covenant not to sue, certificate of completion or no further action letter if it is discovered that any of these instruments were based on fraud, material misrepresentation or failure to disclose material information, or if an owner's willful violation of any use restriction results in harmful exposures of any toxic contaminant to any user or occupant of the site.

(d) If a remedy agreement, covenant not to sue, certificate of completion or no further action letter is reopened or terminated, the department shall record a notice of such action in the office of the county clerk with the deed for the site and shall file the notice in the office of the county clerk no later than ten (10) business days after the date of the remedy agreement, covenant not to sue, certificate of completion or no further action letter is reopened or terminated.

History:
Laws 2000, ch. 13, § 1.

§ 35-11-1611. Disputes; appeal.

If a person and the department are unable after good faith efforts to resolve a dispute arising under this article pursuant to the provisions of an agreement, the person may appeal the department's decision to the council.

History:
Laws 2000, ch. 13, § 1.

§ 35-11-1612. Fees; notice; appeal.

The department shall implement a fee system and schedule of fees which are applicable to the preliminary remediation agreements, remedy agreements, certificates of completion and no further action letters authorized under this article. Fees shall cover all reasonable direct and indirect costs of the department's participation in any activity authorized by this article. The department shall give written notice of the amount of the fee assessment. The owner of the eligible site may appeal the assessment to the council within forty-five (45) days of receipt.

History:
Laws 2000, ch. 13, § 1.

§ 35-11-1613. Remediation requirements for nonvoluntary sites.

(a) The remediation requirements for sites that do not participate in the voluntary remediation program in W.S. 35-11-1601 through 35-11-1612 may include, in the discretion of the director requirements which:

(i) Return contaminated soil and water to background contaminant levels;

(ii) Return contaminated soil to contaminant levels that are safe for any potential future use of the site;

(iii) Return contaminated groundwater to contaminant levels that ensure that the class of use of groundwater prior to the release is restored, or if not technically practicable, employs the best available groundwater remediation technology. No liability release shall be provided to the owner until the owner demonstrates that groundwater standards have been met;

(iv) Remove all continuing sources of soil or water contamination; and

(v) Eliminate to the extent practical any continuing risk to any ecological receptor present at or near the site.

History:
Laws 2000, ch. 13, § 1.

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

ARTICLE 17. ORPHAN SITE REMEDIATION

§ 35-11-1701. Orphan site remediation.

(a) The director may expend funds contained within the account under W.S. 35-11-424(a) for the purpose of remediation of orphan sites and the performance of any other activity as defined in this article.

(b) As used in this section, orphan sites means:

(i) Sites where the department determines that there is no viable party that is responsible for causing or contributing to the contamination present at the site; and

(ii) Sites where the department has issued a no further action letter, and where there is a subsequent discovery of contamination which was present at the site when the no further action letter was issued but:

(A) Was not known to the site owner or the department at the time the no further action letter was issued, provided that a comprehensive and complete site characterization was conducted by the owner;

(B) Is not the result of activities conducted on the site after the no further action letter was issued; and

(C) Does not constitute an imminent or substantial endangerment to human health or the environment which is being addressed by the holder of the no further action letter pursuant to a reopening of the no further action letter under W.S. 35-11-1610(b).

(iii) Spill sites, where the department determines that the person responsible for the spill cannot be identified, or where the department must take prompt action to prevent hazards to human health or the environment at a site where a responsible party fails to act promptly.

(c) The department may expend funds from this account to conduct site evaluations and testing, evaluate remedial measures, select remediation requirements, and construct, install, maintain and operate systems to remedy contamination in accordance with a remediation work plan prescribed by the director for the orphan site.

(d) The department may also expend funds from this account to pay for the orphan share of any removal or remedial action taken pursuant to the Comprehensive Environmental Response, Control And Liability Act (42 U.S.C. § 9601, et seq.), provided that:

(i) The department has participated in negotiations for, and concurs with, the orphan share allocation amount for the action; and

(ii) Each responsible party to an action has agreed not to seek cost recovery from less than de minimus contributors in exchange for the state assumption of the orphan share cost.

(e) Revenue to the account shall include such monies which may be deposited in the account for use in remediation of orphan sites. The liability of the state to fulfill the requirements of this section is limited to the amount of funds available in the account.

(f) The department shall project an annual funding need for the identification, characterization, prioritization and remediation of contaminated orphan sites within the state and shall recommend a funding source adequate to meet the identified funding need.

(g) In any case under paragraph (b)(iii) of this section where the department expends funds to remediate or contain contamination resulting from a spill, and where the department has identified a responsible party, the responsible party shall reimburse the department in an amount equal to three (3) times the expenditure from the account. The attorney general shall bring suit to recover the reimbursement amount required in this subsection where recovery is deemed possible.

History:
Laws 2000, ch. 13, § 1; 2005, ch. 231, § 1; 2008, ch. 44, § 1.

The 2005 amendment, effective July 1, 2005, deleted "trust and agency" preceding "account" once in (a) and three times in (e).

The 2008 amendment, in (f), deleted the former first and second sentences pertaining to various reporting requirements to the legislature and legislative

committees, deleted "also" after "The department," and inserted "within the state" following "orphan sites."

Laws 2008, ch. 44, § 4, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, of the Wyo. Const. Approved March 5, 2008.

Conflicting legislation. — Laws 2005, ch. 231, § 3, provides: "The provisions of this act shall supersede the provisions of any other bill enacted into law during the 2005 general session which amends or references accounts or funds to the extent any other enactment is inconsistent with the establishment of the funds and accounts created under this act. The state auditor shall account for any fund or account created in any other legislation enacted in the 2005 general session in accordance with generally accepted accounting principles (GAAP) as promulgated by the governmental accounting standards board (GASB) and in accordance with this act."

Laws 2008, ch. 44, § 3, provides: "Any other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

ARTICLE 18. INNOCENT OWNERS

§ 35-11-1801. Definition of innocent owner.

(a) "Innocent owner" means a person who did not cause or contribute to the source of contamination and who is one (1) of the following:

(i) An owner of real property that has become contaminated as a result of a release or migration of contaminants from a source not located on or at the real property;

(ii) An owner of real property who can show with respect to the property that the owner has no liability for contamination under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9607(a), because the owner can show a defense as provided in section 107(b) of that act (42 U.S.C. § 9607(b));

(iii) An owner of real property who at the time of becoming the owner of the property did not know or should not have reasonably known about the presence of contamination on the property;

(iv) A lender or fiduciary who owns or holds a security interest in land, unless the lender or fiduciary participated in the management of a site at the time that the owner or operator thereof caused a release or migration of contaminants;

(v) A unit of state or local government which acquired ownership or control through bankruptcy, tax delinquency, abandonment or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government contributed to the contamination;

(vi) A bona fide prospective purchaser; or

(vii) A surface owner if the source of the contamination was a pipeline running under or across the land of the surface owner and the surface owner was not involved in the installation, operation or maintenance of the pipeline.

(b) No person who owns or operates lands or facilities subject to permitting or corrective action requirements of the hazardous waste rules and regulations promulgated under W.S. 35-11-503(d) shall be considered an innocent owner, nor shall any hazardous waste generator who may be subject to corrective action requirements of such rules and regulations be considered an innocent owner.

History:

Laws 2000, ch. 13, § 1; 2013, ch. 38, § 1; 2015, ch. 2, § 1.

The 2013 amendment, added (a)(vi).

Laws 2013, ch. 38, §2, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo Const. Approved February 14, 2013.

The 2015 amendment, effective July 1, 2015, added (a)(vii) and made related changes.

§ 35-11-1802. Immunity for innocent owners.

(a) An innocent owner is not liable for investigation, monitoring, remediation or other response action regarding contamination attributable to a release, discharge or migration of contaminants on his property.

(b) To be eligible for immunity under this act, a person shall:

(i) Grant to the department or to a person designated by the department, reasonable access to the land for purposes of investigation, monitoring or remediation;

(ii) Comply with any requirements established by the department that are necessary to maintain state authorization to implement federal regulatory programs;

(iii) Not use the real property in a manner that causes exposure of the public to harmful environmental conditions; and

(iv) Comply with any engineering or institutional controls applicable to the real property.

History:
Laws 2000, ch. 13, § 1.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

§ 35-11-1803. Limitations.

(a) Any person who knowingly transfers, conveys or obtains an interest in land to avoid liability for contamination, remediation or compliance with any provision of this act shall not be an innocent owner.

(b) Notwithstanding the provisions of W.S. 35-11-1802, an innocent owner who undertakes a cleanup of his property must comply with all applicable provisions of this act.

History:
Laws 2000, ch. 13, § 1.

Meaning of "this act." — For the definition of "this act," referred to in this section, see § 35-11-103(a)(xiii).

ARTICLE 19. INTEGRATED SOLID WASTE PLANNING

Appropriations. — Laws 2006, ch. 101, §§ 2, 3, 4 provide:

"Section 2. There is appropriated from the general fund to the department of environmental quality seven million nine hundred seventy thousand dollars ($7,970,000.00) for the purpose of providing monitoring grants under this act. Notwithstanding W.S. 9-4-207(a), any unexpended funds appropriated under this section shall not revert to the general fund at the end of the biennium.

"Section 3.

"(a) There is appropriated from the general fund to the department of environmental quality one million three hundred thousand dollars ($1,300,000.00) or as much thereof as is necessary for the purpose of providing planning grants to assist participating local governmental entities in the preparation of integrated solid waste management plans under W.S. 35-11-1902. The department shall provide planning grants to local governmental entities pursuant to W.S. 35-11-1902(c), subject to the appropriation amount as follows:

"(i) An amount not to exceed fifty percent (50%) of estimated plan preparation costs shall be provided to the local governmental entity preparing an integrated solid waste management plan for a planning area encompassing a single local governmental entity;

"(ii) An amount not to exceed seventy percent (70%) of estimated plan preparation costs shall be provided to the local governmental entity preparing an integrated solid waste management plan for a planning area encompassing two (2) local governmental entities;

"(iii) An amount not to exceed ninety percent (90%) of estimated plan preparation costs shall be provided to the local governmental entity preparing an integrated solid waste management plan for a planning area encompassing three (3) or more local governmental entities.

"Section 4. There are authorized two (2) additional full-time positions to the department of environmental quality for the purposes of implementing this act. There is appropriated from the general fund to the department of environmental quality three hundred twenty thousand five hundred dollars ($320,500.00) or as much thereof as is necessary to fund these two (2) positions. A request from the department of environmental quality shall be included in the 2009–2010 biennium standard budget request for purposes of continuing funding of this program and these positions."

Effective dates. — Laws 2006, ch. 101, § 5(b), makes sections 1 and 4 of the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 24, 2006. Sections 2 and 3 are effective July 1, 2006.

§ 35-11-1901. Purpose.

The purpose of this article is to establish a process for local governmental entities to prepare and maintain approved integrated solid waste management plans.

History:
Laws 2006, ch. 101, § 1.

§ 35-11-1902. Integrated solid waste management plans.

(a) Each local governmental entity shall prepare and maintain an integrated solid waste management plan describing management of solid waste generated within its jurisdiction or shall participate in a multi-jurisdictional integrated solid waste management plan.

(b) Integrated solid waste management plans shall be completed and submitted to the department by July 1, 2009, and shall be reviewed, revised as necessary and resubmitted to the department every ten (10) years thereafter.

(c) For the purposes of this article, the local governmental entity responsible for preparing an integrated solid waste management plan shall be the permitted operator of the solid waste disposal facility serving the planning area provided, however, that for any planning area where the permitted operator is a nongovernmental entity, the local government entity responsible for preparing a plan under this subsection shall be the county. Upon mutual written agreement, a local governmental entity may prepare an integrated solid waste management plan for another local governmental entity.

(d) The planning requirements of subsections (a) and (b) of this section shall be contingent upon the legislature making at least one million three hundred thousand dollars ($1,300,000.00) available to the department for grants to assist local governmental entities in the preparation of integrated solid waste management plans.

History:
Laws 2006, ch. 101, § 1.

§ 35-11-1903. Recommendations for integrated solid waste management planning areas.

By July 31, 2006, the department shall assess the patterns of generation of municipal solid waste within the state and issue a report identifying those areas of the state where integrated solid waste management plans may be prepared by local governmental entities. The identification of planning areas shall be considered guidance to local governmental entities. Local governmental entities shall not be required to adhere to any planning area boundaries identified by the department.

History:
Laws 2006, ch. 101, § 1.

§ 35-11-1904. Integrated solid waste management plan content; department approval.

(a) Integrated solid waste management plans shall address a period of not less than twenty (20) years and shall contain the following information:

(i) A description of the planning area covered by the integrated waste management plan and the names of all local governmental entities participating in the plan, including a copy of each governing body's resolution adopting the plan;

(ii) An evaluation of current and projected volumes for all major waste types within the planning area, including a discussion of expected population growth and development patterns;

(iii) An evaluation of reasonable alternate solid waste management services, a description of the selected procedures, facilities and systems for solid waste collection, transfer, treatment, storage and information about how the procedures, facilities and systems are to be funded;

(iv) A discussion of how the plan shall be implemented, including public participation, public education and information strategies which may include, but are not limited to, citizen advisory committees and public meetings during the preparation, maintenance and implementation of the plan;

(v) Objectives for solid waste management within the jurisdiction, including but not limited to:

(A) Waste diversion, reduction, reuse, recycling or composting;

(B) Waste collection and transportation;

(C) Improving and maintaining waste management systems;

(D) Household hazardous waste management; and

(E) Special waste management.

(vi) An economic analysis of the total cost of alternatives and final systems selected by the participating local governmental entities to achieve the plan's objectives, including capital and operating costs; and

(vii) Elements including:

(A) Strategies to meet each identified objective;

(B) A schedule for implementation; and

(C) Any financial or other incentives offered to residents to encourage participation in local recycling programs.

(b) Each plan shall be submitted for public review prior to submission to the department. The plan submission shall include a statement describing public comments received and how the public comments were addressed. The department shall review each plan for completeness. If the department determines that the plan is not complete, the department shall provide a written statement identifying the elements of subsection (a) of this section which are not included in the plan. Upon addressing the incomplete elements, a local governmental entity may resubmit the plan for subsequent review by the department.

History:
Laws 2006, ch. 101, § 1.

ARTICLE 20. NUCLEAR REGULATORY AGREEMENT

35-11-2001. Authorization to negotiate transfer of certain nuclear regulatory functions to the state; rulemaking.

(a) The governor, on behalf of the state, is authorized to contact the federal nuclear regulatory commission to express the intent of the state of Wyoming to enter into an agreement with the nuclear regulatory commission providing for the assumption by the state of responsibilities relating to the regulation of source materials from uranium mining and milling and the wastes associated with the recovery, mining and milling of such source materials.

(b) The department of environmental quality shall serve as the lead agency for the regulation of source materials from uranium mining and milling and the wastes associated with the recovery, mining and milling of such source materials in the state of Wyoming under any proposed agreement negotiated under this section.

(c) The governor, through the department, is authorized to negotiate all aspects of a potential agreement under this section between the state of Wyoming and the federal nuclear regulatory commission. The governor is authorized to enter into a final agreement with the federal nuclear regulatory commission for the regulation of source materials from uranium mining and milling and the wastes associated with the recovery, mining and milling of such source materials in the state of Wyoming pursuant to the requirements of this section. A final agreement under this section shall include all necessary components of a program to regulate source materials from uranium mining and milling and the wastes associated with the recovery of such source materials.

(d) The department is authorized to promulgate reasonable rules and regulations necessary to effectuate the purposes of this section.

History:
Laws 2015, ch. 60, § 1.

Effective date. — Laws 2015, ch. 60, § 4, makes the act effective July 1, 2015.

CHAPTER 12

Industrial Development and Siting

Section
35-12-101. Short title.
35-12-102. Definitions.
35-12-103. Creation of industrial siting division.
35-12-104. Industrial siting council created; composition; terms; removal; compensation.

Section
35-12-105. Appointment and duties of administrator; staff; rules and regulations.
35-12-106. Permit from council required prior to commencing construction of facility; electronic permitting; amendments; exceptions.
35-12-107. Request for waiver of permit application; form.
35-12-108. Quantity of water available; analysis; public comment; opinions.
35-12-109. Application for permit; form; fee; financial accounting.
35-12-110. Service of notice of application; information and recommendations; application deficiencies; procedure; jurisdiction; hearing.
35-12-111. Parties to permit proceeding; waiver by failure to participate.
35-12-112. Record of hearing; procedure.
35-12-113. Decision of council; findings necessary for permit conditions imposed; service of decision on parties; waste management surcharge.
35-12-114. Review of grant or denial of permit.
35-12-115. Additional requirements by other governmental agencies not permitted after issuance of permit; exceptions.
35-12-116. Revocation or suspension of permit.
35-12-117. Monitoring of facilities.
35-12-118. Penalties for violations; civil action by attorney general.
35-12-119. Exemptions; information required.

Revision of chapter. — Laws 1987, ch. 82, § 2, revised this chapter by repealing and recreating former §§ 35-12-101 through 35-12-121 as present §§ 35-12-101 through 35-12-119.

Section 35-12-104 was also amended by Laws 175, § 1.

No detailed explanation of the changes made by Laws 1987, ch. 82 has been attempted, but, where appropriate, annotations to cases decided under former provisions have been placed under comparable sections. For tables of revised and renumbered sections, see Volume 11 of the Wyoming Statues Annotated.

Purpose of chapter. — The pervasive regulatory scheme of this chapter was enacted to protect Wyoming's environment and the social and economic fabric of the communities affected by industrial development. Industrial Siting Council v. Chicago & N.W. Transp. Co., 660 P.2d 776, 1983 Wyo. LEXIS 292 (Wyo. 1983).

This chapter provides especially for public participation in the decisions on projects such as the Laramie river station. Indeed, a purpose of establishing the industrial siting council was to receive from and disseminate to Wyoming citizens information upon which future industrial growth can be intelligently developed. Laramie River Conservation Council v. Dinger, 567 P.2d 731, 1977 Wyo. LEXIS 276 (Wyo. 1977).

Supremacy of federal law in regulation of interstate railroad lines. — Regulation of the construction, extension and operation of interstate railroad lines by this chapter is preempted by the federal Interstate Commerce Act under the supremacy clause of the U.S. Const., art. VI. Industrial Siting Council v. Chicago & N.W. Transp. Co., 660 P.2d 776, 1983 Wyo. LEXIS 292 (Wyo. 1983).

Law reviews. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see XI Land & Water L. Rev. 27 (1976).

For case note, "The Scope of Judicial Review of Administrative Actions, Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241, 1978 Wyo. LEXIS 254 (Wyo. 1978)," see XIV Land & Water L. Rev. 607 (1979).

For article, "Regulating Socioeconomic Impacts: Comparing the Colorado and Wyoming Approaches," see XX Land & Water L. Rev. 193 (1985).

Am. Jur. 2d, ALR and C.J.S. references. — Validity of local regulation of hazardous waste, 67 ALR4th 822.

Application of § 165 of Clean Air Act (42 USC § 7475), pertaining to preconstruction requirements for prevention of significant deterioration, to particular emission sources, 86 ALR Fed 255.

39A C.J.S. Health and Environment § 132.

Library References. — American Law of Mining, 2nd Edition § 174.03 (Matthew Bender).

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§ 35-12-101. Short title.

This chapter is the "Industrial Development Information and Siting Act".

History:
Laws 1975, ch. 169, § 1; W.S. 1957, § 35-502.75; Laws 1987, ch. 82, § 2.

§ 35-12-102. Definitions.

(a) As used in this chapter:

(i) "Advisory member" means an advisory member of the council provided by W.S. 35-12-104(f);

(ii) "Applicant" means any person who applies for a permit pursuant to this chapter;

(iii) "Commence to construct" means:

(A) Any clearing of land, excavation, construction or other action that would affect the environment of the site of any facility, but does not include changes needed for temporary use of sites for less than ninety (90) days, changes required to conduct required studies and tests under this chapter, or any other state or federal act or regulation, or access roads and services associated with utilities, or routes for nonutility purposes or for uses in securing geological data but not limited to necessary borings or drillings to ascertain foundation conditions;

(B) The nuclear fracturing of underground formation, if any such activity is related to the possible future development of a facility subject to this chapter, but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation or experimentation.

(iv) "Council" means the industrial siting council;

(v) "Director" means the director of the department of environmental quality;

(vi) "Impacted area" means an area of Wyoming in which sudden or prolonged population growth may occur or may cause environmental, social or economic stresses of such nature that the total local, state and federal resources available are not sufficient to alleviate them properly and effectively as determined by the council;

(vii) "Industrial facility" or "facility" means any industrial facility with an estimated construction cost of at least ninety-six million nine hundred thousand dollars ($96,900,000.00) as of May 30, 1987. Exempt activities shall not be included in the estimated construction cost of an industrial facility. The council shall adjust this amount, up or down, each year using recognized construction cost indices as the council determines to be relevant to the actual change in construction cost applicable to the general type of construction covered under this chapter. "Facility" also includes, regardless of construction cost:

(A) Any commercial waste incineration or disposal facility capable of receiving greater than five hundred (500) short tons per day of household refuse or mixed household and industrial refuse;

(B) Any commercial facility which incinerates or disposes of any regulated quantity of hazardous wastes which are subject to hazardous waste shipping manifest requirements under subtitle C of the Resource Conservation and Recovery Act (42 U.S.C. §§ 6921 through 6939e);

(C) Any commercial radioactive waste management facility defined by W.S. 35-11-103(d)(v);

(D) Until July 1, 1999, any facility constructed solely for the disposal of overburden, development waste rock or refuse from mining as defined under W.S. 35-11-103, except for the following facilities:

(I) Facilities permitted or licensed under article 4 of the Wyoming Environmental Quality Act;

(II) Facilities specifically exempt from permitting requirements under article 4 of the Wyoming Environmental Quality Act [35-11-101 et seq.];

(III) Facilities specifically identified under W.S. 35-11-103(d)(v)(A).

(E) Any commercial facility generating electricity from wind and associated collector systems that:

(I) Consists of thirty (30) or more wind turbines in all planned phases of the installation; or

(II) Expand an existing installation not previously defined as a facility to include a total number of turbines greater than or equal to the thresholds in subdivision (a)(vii)(E)(I) of this section.

(F) Any facility over which a board of county commissioners has authority to issue the permit required by W.S. 18-5-502 and which facility the board of county commissioners has referred to the council under W.S. 18-5-509.

(viii) "Local government" means any county, city, town or school district or any combination thereof as formed under the Wyoming Joint Powers Act;

(ix) Repealed by Laws 1992, ch. 60, § 4.

(x) "Permit" means the permit issued by the council and required for the construction or operation of any industrial facility or facilities;

(xi) "Person" includes an individual, group, firm, partnership, corporation, cooperative, association, or other entity excluding the state, federal government and local government. "Person"

also includes the parent company, partnership or holding entity for a commercial facility generating electricity from wind;

(xii) "Administrator" means the administrator of the division;

(xiii) "Division" means the industrial siting division of the department of environmental quality;

(xiv) "Collector system" means the electrical transmission infrastructure, including conductors, towers, substations, switchgear and other components necessary to deliver power from any commercial facility generating electricity from wind up to, but not including, electric substations or similar facilities necessary to interconnect to existing or proposed transmission lines that serve load or export energy from Wyoming;

(xv) "Affected landowner" means any person holding record title to land on which any portion of a commercial facility generating electricity from wind is proposed to be constructed and including any portion of any collector system located on those same lands. For purposes of this chapter, an affected landowner may be represented by any designated person.

History:

Laws 1975, ch. 169, § 1; W.S. 1957, § 35-502.76; Laws 1981, ch. 127, § 1; 1987, ch. 82, § 2; 1989, ch. 180, § 1; 1992, ch. 60, §§ 3, 4; ch. 88, § 1; 1996, ch. 60, § 1; 2010, ch. 47, § 1; ch. 97 § 2; 2011, ch. 146, § 1.

The 2010 amendments. — The first 2010 amendment, by ch. 47, § 1, in (a), added (a)(vii)(E), inserted the present last sentence in (a)(xi), added (a)(xiv); and made a related change.

Laws 2010, ch. 47, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2010.

The second 2010 amendment, by ch. 97, § 2, effective July 1, 2010, added (a)(vii)(F) and made related change.

While neither of the amendments gave effect to the other, both have been set out as reconciled by the legislative service office.

The 2011 amendment, effective July 1, 2011, added (a)(xv).

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

Wyoming Joint Powers Act. — See §§ 16-1-102 and 16-1-103(a)(ii).

Law reviews. — For comment, "State Participation in Federal Policy Making for the Yellowstone Ecosystem: A Meaningful Solution or Business as Usual?" see XXI Land & Water L. Rev. 397 (1986).

§ 35-12-103. Creation of industrial siting division.

There is created within the department of environmental quality the industrial siting division.

History:

Laws 1975, ch. 169, § 1; W.S. 1957, § 35-502.77; Laws 1987, ch. 82, § 2; 1992, ch. 60, § 3.

§ 35-12-104. Industrial siting council created; composition; terms; removal; compensation.

(a) There is created the industrial siting council consisting of seven (7) members who are residents of Wyoming.

(b) The terms of council members shall be six (6) years, except that on the initial appointment three (3) members shall serve for six (6) years, two (2) members shall serve for four (4) years and two (2) members shall serve two (2) years as designated by the initial appointment.

(c) Members shall be appointed by the governor with the advice and consent of the senate. The governor may remove any member as provided in W.S. 9-1-202. If a vacancy occurs the governor shall appoint a new member as provided in W.S. 28-12-101. Not more than four (4) members shall be of the same political party.

(d) The council, annually, shall elect a chairman, vice-chairman and secretary from among its members. The council shall have at least four (4) regularly scheduled meetings each year and may meet at the call of the chairman or upon request of a majority of the members at other times. For the purpose of conducting council business four (4) members constitute a quorum but no action taken is valid unless approved by at least four (4) members.

(e) Council members appointed pursuant to this section shall be reimbursed for per diem, mileage and expenses and receive salary for attending meetings and hearings of the council in the same manner and amount as members of the Wyoming legislature.

(f) The administrative head of each state agency enumerated in W.S. 35-12-110(b), or the designated representative, may attend meetings of the council and serve in an advisory capacity to

facilitate and expedite the decision making process of the council. The council may request any administrative head to pursue, evaluate and submit reports relative to any study which may be required in the evaluation of an application for a permit.

(g) Appointments and terms under this chapter shall be in accordance with W.S. 28-12-101 through 28-12-103.

History:
Laws 1975, ch. 169, § 1; W.S. 1957, § 35-502.78; Laws 1979, ch. 17, § 2; 1987, ch. 82, § 2; ch. 175, § 1.

Cross references. — As to compensation, per diem and travel expenses of members of the legislature, see §§ 28-5-101 and 28-5-102.

§ 35-12-105. Appointment and duties of administrator; staff; rules and regulations.

(a) The director shall appoint an administrator of the division who shall serve at the director's pleasure as the executive and administrative head of the division. The administrator is responsible to and under control and supervision of the director. The director shall employ such other staff as deemed necessary by the director to carry out the functions and responsibilities of the division.

(b) The council shall promulgate rules and regulations pursuant to the Wyoming Administrative Procedure Act, implementing this chapter. The director, or the administrator if designated by the director, shall administer and enforce this chapter and any rules, regulations and orders approved or issued by the council.

(c) The director, administrator and the staff of the division are authorized to the extent possible, at the request of local governments, to provide technical assistance to local governments in the preparation of anticipated impacts related to a proposed project consistent with W.S. 39-15-111(c) and (d) and 39-16-111(d) and (e) and negotiation of agreements with applicants as provided for in W.S. 35-12-107.

(d) In addition to the rules and regulations adopted under subsection (b) of this section, the council shall promulgate rules and regulations prescribing decommissioning and site reclamation standards for facilities permitted under W.S. 35-12-102(a)(vii)(E) and (F). Such standards shall preempt county rules or regulations concerning decommissioning and reclamation and shall be designed to assure the proper decommissioning and interim and final site reclamation of commercial facilities generating electricity from wind and wind energy facilities during construction and operation of the facility, at the end of their useful life, upon revocation of a permit authorizing their operation or upon the happening of any event which causes operations to cease. The council's regulation shall only preempt those facilities regulated under this act [§§ 35-12-101 through 35-12-119]. In the event of any conflict between a standard applied under this subsection and a valid order of the Wyoming public service commission, the order of the public service commission shall be applied.

(e) In addition to the rules and regulations adopted under subsection (b) of this section, the council shall promulgate rules and regulations prescribing financial assurance requirements for facilities permitted by it pursuant to W.S. 35-12-102(a)(vii)(E) and (F). These rules and regulations shall not apply to facilities that are public utilities and regulated by the Wyoming public service commission. These rules and regulations shall preempt county rules and regulations concerning financial assurances and shall be designed to provide adequate assurance that the permitted facilities will be properly reclaimed and decommissioned at the end of their useful life, upon revocation of a permit authorizing their operation or upon the happening of any event which causes operations to cease. The elements to consider when establishing adequate levels of financial assurance shall include credit worthiness, financial strength, credit history, credit rating and any other factors that reasonably bear upon the decision to accept a financial assurance. The financial assurance may be in any form acceptable to the council and may include a corporate guarantee, letter of credit, bond, deposit account or insurance policy.

(f) In addition to the rules and regulations adopted under subsection (b) of this section, the council shall promulgate rules and regulations requiring applicants for facilities described in W.S. 35-12-102(a)(vii)(E) and (F) to provide notice to record owners of mineral rights located on or under the lands where the proposed facility will be constructed. Such notice may include notice by publication.

(g) The council may adopt such rules and regulations, including fee structures, as are appropriate to accept and consider applications referred by any board of county commissioners under W.S. 18-5-509.

History:

Laws 1975, ch. 169, § 1; W.S. 1957, § 35-502.79; Laws 1987, ch. 82, § 2; 1992, ch. 60, § 3; 2010, ch. 47, § 3; ch. 97, § 3; 2015, ch. 107, § 1.

The 2010 amendments. — The first 2010 amendment by ch. 47, § 3, added (d) through (f).

Laws 2010, ch. 47, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2010.

The second 2010 amendment by ch. 97, § 3, effective July 1, 2010, added (d), (e) and (g).

The 2015 amendment, effective July 1, 2015, in (c), inserted "preparation of anticipated impacts related to a proposed project consistent with W.S. 39-15-111(c) and (d) and 39-16-111(d) and (e) and," and deleted "and 35-12-113(a)(vi)" at the end.

Editor's notes. — In subsection (d) the sentence "The council's regulation shall only preempt those facilities regulated under this act." became effective July 1, 2010. See 2010 Wyoming Session Laws Chapter 97, § 3(a).

The reference to § 35-12-113(a)(vi) in subsection (c) seems incorrect, as that section does not contain a subsection (a)(vi).

Wyoming Administrative Procedure Act. — See § 16-3-101(a), (b)(xi).

Appropriations. — Laws 2010, ch. 47, § 4, provides: "There is appropriated three hundred fifty-five thousand seven hundred fifty-four dollars ($355,754.00) from the general fund and one (1) full-time position is authorized to the department of environmental quality. This appropriation shall be for the fiscal biennium beginning July 1, 2010. This appropriation shall only be expended for the purposes of this act. Notwithstanding any other provision of law, this appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on June 30, 2012. This appropriation shall be included in the department's 2013-2014 standard biennial budget request."

§ 35-12-106. Permit from council required prior to commencing construction of facility; electronic permitting; amendments; exceptions.

(a) No person shall commence to construct a facility, as defined in this chapter, in this state without first obtaining a permit for that facility from the council. Any facility, for which a permit is required, shall be constructed, operated and maintained in conformity with the permit and any terms, conditions and modifications contained in the permit. A permit may only be issued pursuant to this chapter or pursuant to the provisions of W.S. 18-5-501 through 18-5-513 for facilities referred to the council.

(b) A permit may be transferred, subject to council approval, to a person who agrees to comply with the terms, conditions and modifications contained in the permit.

(c) Except as provided in subsection (d) of this section, the council may allow the amendment of a permit or application for a permit for good cause if the holder demonstrates to the council at its next meeting that the requested change is in compliance with local ordinances and applicable land use plans and will not significantly add to adverse environmental, social and economic impact in the impacted area.

(d) On an application for an amendment of a permit, the council shall hold a hearing in the same manner as a hearing is held on an application for a permit if in the council's opinion the requested change in the facility would result in a significant adverse increase in any environmental, social or economic impact of the facility or a change in the location of all or a portion of the facility unless the change in location was specifically approved by the council in the permit.

(e) The council may waive the application and permit provisions of this chapter if the applicant establishes by clear and convincing proof that an emergency exists created by the loss or damage to an existing facility which seriously threatens the health, safety and welfare of the public.

(f) The council may allow the permitting and reporting requirements of this act [§§ 35-12-101 through 35-12-119] to be conducted electronically as provided by the Uniform Electronic Transaction Act, W.S. 40-21-101 through 40-21-119.

History:

Laws 1975, ch. 169, § 1; W.S. 1957, § 35-502.80; Laws 1987, ch. 82, § 2; 2005, ch. 30, § 1; 2010, ch. 47, § 1; ch. 97, § 2.

The 2005 amendment added (f).

Laws 2005, ch. 30, § 2, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 18, 2005.

The 2010 amendments. — The first 2010 amendment, by ch. 47, § 5, in (c), substituted "impacted area" for "county"; and in (d), substituted "unless the change in location was specifically approved by the council in the permit" for "except as otherwise provided in the original application for alternate locations for the facility."

Laws 2010, ch. 47, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2010.

The second 2010 amendment, by ch. 97, § 2, effec-

tive July 1, 2010, inserted "or pursuant to the provisions of W.S. 18-5-501 through 18-5-513 for facilities referred to the council" in (a).

While neither amendment gave effect to the other, both have been given effect in this section as set out above.

Impact assistance funds paid from retroactive date of permit. — When the industrial siting council grants a permit which is retroactively dated to the first day of construction, that construction should be held to have commenced "under a permit" and the state treasurer should pay impact assistance funds covering the entire period during which construction was "under a permit." Evanston v. Griffith, 715 P.2d 1381, 1986 Wyo. LEXIS 517 (Wyo. 1986).

Law reviews. — For comment, "State Participation in Federal Policy Making for the Yellowstone Ecosystem: A Meaningful Solution or Business as Usual?" see XXI Land & Water L. Rev. 397 (1986).

§ 35-12-107. Request for waiver of permit application; form.

(a) Any person proposing to construct an industrial facility may submit a written request for a waiver of the application provisions of this chapter.

(b) A request for a waiver shall be filed with the division, in a form as prescribed by council rules and regulations, and shall contain the following information:

(i) The name and address of the applicant, and if the applicant is a partnership, association or corporation, the names and addresses of the managers designated by the applicant responsible for permitting or construction of the facility;

(ii) A description of the nature and location of the facility;

(iii) Estimated time of commencement of construction and construction time;

(iv) Estimated number and job classifications by calendar quarter of employees of the applicant, or contractor or subcontractor of the applicant, during the construction phase and during the operating phase;

(v) Estimated population increases attributable to the facility;

(vi) Estimated additional revenue to local governments due to the facility;

(vii) Estimated construction cost of the facility;

(viii) A description of the methods and strategies the applicant will use to maximize the employment and utilization of the existing local or in-state contractors and labor force during the construction and operation of the facility;

(ix) Any other information the applicant considers relevant or required by council rule or regulation;

(x) 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 facility;

(xi) Preliminary evaluations of or plans and proposals for alleviating social, economic or environmental impacts upon local government or any special districts which may result from the proposed facility, including voluntary company agreements with local governments;

(xii) Certification that the governing bodies of all local governments within the potentially impacted area were provided notification, a description of the proposed project and an opportunity to ask the applicant questions at least thirty (30) days prior to submission of the application;

(xiii) For facilities permitted pursuant to W.S. 35-12-102(a)(vii)(E) or (F), a site reclamation and decommissioning plan, which shall be updated every five (5) years and a description of a financial assurance plan which will assure that all facilities will be properly reclaimed and decommissioned. All such plans, unless otherwise exempt, shall demonstrate compliance with any rules or regulations adopted by the council pursuant to W.S. 35-12-105(d) and (e);

(xiv) Information demonstrating the applicant's financial capability to decommission and reclaim the facility. For facilities meeting the definition of W.S. 35-12-102(a)(vii)(E) the information shall also demonstrate the applicant's financial capability to construct, maintain and operate the facility;

(xv) For proposed facilities meeting the requirements of W.S. 35-12-102(a)(vii)(E) or (F), a list of all affected landowners with an address at which each affected landowner can be given the notices required by this act [§§ 35-12-101 through 35-12-119].

(c) Not more than seven (7) days following receipt of a request for a waiver, the director shall:

(i) Serve notice of the request upon the governing bodies of local governments which will be primarily affected by the proposed facility and, for proposed facilities meeting the requirements of W.S. 35-12-102(a)(vii)(E) or (F), upon affected landowners;

(ii) Cause a summary of the request to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility;

(iii) File a copy of the request with the county clerk of the county or counties in which the proposed facility will be constructed or which will be affected by the construction.

(d) Not more than fourteen (14) days following receipt of a request, the director shall:

(i) Schedule and conduct a public meeting;

(ii) Notify the applicant and local governments of the meeting and, for proposed facilities meeting the requirements of W.S. 35-12-102(a)(vii)(E) or (F), notify affected landowners;

(iii) Cause notice of the meeting to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility; and

(iv) Hold the meeting at a community as close as practicable to the proposed facility.

(e) At the public meeting, the applicant shall present such information as necessary to describe the proposed facility and its estimated impacts upon local units of government.

(f) Within fourteen (14) days of the public meeting, the applicant shall meet with the director and each local government affected by the proposed facility to determine the mitigation required to minimize any adverse impacts resulting from the proposed facility.

(g) Not more than fifty (50) days following receipt of a request, the director shall:

(i) Schedule and conduct a public hearing;

(ii) Notify the applicant and local governments of the hearing and, for proposed facilities meeting the requirements of W.S. 35-12-102(a)(vii)(E) or (F), notify affected landowners;

(iii) Cause notice of the hearing to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility; and

(iv) Hold the hearing at a community as close as practicable to the proposed facility.

(h) The applicant shall present any evidence necessary to demonstrate to the council:

(i) That the facility would not produce an unacceptable environmental, social or economic impact;

(ii) That the applicant has reached agreement with local governments affected by the facility on the mitigation required to alleviate adverse effects resulting from the facility; and

(iii) That the applicant has financial resources to decommission and reclaim the facility. For facilities meeting the definition of W.S. 35-12-102(a)(vii)(E) the evidence shall also demonstrate the applicant's financial capability to construct, maintain and operate the facility.

(j) Within ten (10) days from the date of completion of the hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the request for a waiver. The council shall grant a request for a waiver either as proposed or as modified by the council if it finds and determines that:

(i) The facility would not produce an unacceptable environmental, social and economic impact;

(ii) The applicant has discussed the proposed facility with all local governments potentially affected by the project;

(iii) The proposed facility is in compliance with all local ordinances and land use plans; and

(iv) The applicant has financial resources to decommission and reclaim the facility. For facilities meeting the definition of W.S. 35-12-102(a)(vii)(E) the council shall also be required to find the applicant has financial resources to construct, maintain and operate the facility.

(k) No request for a waiver shall be granted if two (2) or more local governments which will be affected are not satisfied that the facility, considering the voluntary company agreements, represents an acceptable impact on the local governments.

(m) If the council decides to waive all of the application requirements of this chapter, it shall issue a permit for the facility in accordance with W.S. 35-12-113. If the council decides to waive a part of the application requirements of this chapter, it shall issue an order specifying the requirements which will not be required for an application filed pursuant to W.S. 35-12-109.

History:

Laws 1977, ch. 166, § 1; W.S. 1957, § 35-502.80:2; Laws 1987, ch. 82, § 2; 1992, ch. 60, § 3; 2010, ch. 47, §§ 1, 3; 2011, ch. 146, § 1; 2012, ch. 50, § 1.

The 2010 amendment, substituted "a description of the methods" for "a brief description of the methods" in (b)(viii); added (b)(xii) through (b)(xiv); added (h)(iii); added (j)(iv); and made related changes.

Laws 2010, ch. 47, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2010.

The 2011 amendment, effective July 1, 2011, added (b)(xv); and in (c)(i), (d)(ii) and (g)(ii), added "and, for proposed facilities meeting the requirements of W.S. 35-12-102(a)(vii)(E) or (F), upon affected landowners" or variants.

The 2012 amendment, effective July 1, 2012, deleted "construct, maintain, operate" preceding "decommission" and added the second sentence in (b)(xiv), (h)(iii), and (j)(iv).

Editor's notes. — There is no subsection (i) or (l) in this section as it appears in the printed acts.

§ 35-12-108. Quantity of water available; analysis; public comment; opinions.

(a) If an applicant applies for an industrial siting permit, pursuant to W.S. 35-12-106, or for a waiver of the application provisions, pursuant to W.S. 35-12-107, for a facility which requires the use of eight hundred (800) or more acre feet of the waters of this state annually, the applicant shall prepare and submit to the state engineer a water supply and water yield analysis with a request for a preliminary and final opinion as to the quantity of water available for the proposed facility.

(b) Within ninety (90) days after the applicant has submitted an acceptable water supply and yield analysis, the state engineer, at the applicant's expense, shall complete a comprehensive review of the water supply and water yield analysis submitted.

(c) Within five (5) days after completion of the review, the state engineer shall render a preliminary opinion as to the quantity of water available for the proposed facility. The preliminary opinion, or a reasonable summary, shall be published for three (3) consecutive weeks in a newspaper of general circulation in the county in which the proposed facility is to be located. The expense of the publication shall be borne by the applicant.

(d) The state engineer may hold a public hearing before rendering a final opinion on the water supply and water yield analysis.

(e) In rendering a final opinion as to the quantity of water available for the proposed facility, the state engineer shall consider any comments which are submitted in writing within twenty (20) days of the last date of publication.

(f) Within thirty (30) days after the last date of publication, the state engineer shall render a final opinion. The final opinion shall:

(i) Be submitted to the industrial siting council and the public service commission;

(ii) Be binding on the industrial siting council for the purposes of issuing an industrial siting permit; and

(iii) Be reviewed by the public service commission prior to its issuance of a certificate of public convenience and necessity.

(g) The state engineer's preliminary and final opinion shall not create a presumption concerning injury or noninjury to water rights, nor shall those opinions be used as evidence in any administrative proceeding or in any judicial proceeding concerning water right determinations or administration.

History:
Laws 1975, ch. 169, § 1; W.S. 1957, § 35-502.81; W.S. 1977, § 35-12-107; Laws 1987, ch. 82, § 2.

§ 35-12-109. Application for permit; form; fee; financial accounting.

(a) An application for a permit shall be filed with the division, in a form as prescribed by council rules and regulations, and shall contain the following information:

(i) The name and address of the applicant, and, if the applicant is a partnership, association or corporation, the names and addresses of the managers designated by the applicant responsible for permitting, construction or operation of the facility;

(ii) The applicant shall state that to its best knowledge and belief the application is complete when filed and includes all the information required by W.S. 35-12-109 and the rules and regulations, except for any requirements specifically waived by the council pursuant to W.S. 35-12-107;

(iii) A description of the nature and location of the facility;

(iv) Estimated time of commencement of construction and construction time;

(v) Estimated number and job classifications, by calendar quarter, of employees of the applicant, or contractor or subcontractor of the applicant, during the construction phase and during the operating life of the facility. 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;

(vi) Future additions and modifications to the facility which the applicant may wish to be approved in the permit;

(vii) A statement of why the proposed location was selected;

(viii) A copy of any studies which may have been made of the environmental impact of the facility;

(ix) Inventory of estimated discharges including physical, chemical, biological and radiological characteristics;

(x) Inventory of estimated emissions and proposed methods of control;

(xi) Inventory of estimated solid wastes and proposed disposal program;

(xii) 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 estimated emissions or discharges;

(xiii) An evaluation of potential impacts together with any plans and proposals for alleviating social and economic impacts upon local governments or special districts and alleviating environmental impacts which may result from the proposed facility. The evaluations, plans and proposals shall cover the following:

(A) Scenic resources;

(B) Recreational resources;

(C) Archaeological and historical resources;

(D) Land use patterns;

(E) Economic base;

(F) Housing;

(G) Transportation;

(H) Sewer and water facilities;

(J) Solid waste facilities;

(K) Police and fire facilities;

(M) Educational facilities;

(N) Health and hospital facilities;

(O) Water supply;

(P) Other relevant areas;

(Q) Agriculture;

(R) Terrestrial and aquatic wildlife;

(S) Threatened, endangered and rare species and other species of concern identified in the state wildlife action plan as prepared by the Wyoming game and fish department.

(xiv) Estimated construction cost of the facility;

(xv) What other local, state or federal permits and approvals are required;

(xvi) Compatibility of the facility with state or local land use plans, if any;

(xvii) Any other information the applicant considers relevant or required by council rule or regulation;

(xviii) A description of the methods and strategies the applicant will use to maximize employment and utilization of the existing local or in-state contractors and labor force during the construction and operation of the facility;

(xix) Certification that the governing bodies of all local governments which will be primarily affected by the proposed facility were provided notification, a description of the proposed project and an opportunity to ask the applicant questions at least thirty (30) days prior to submission of the application;

(xx) For facilities permitted pursuant to W.S. 35-12-102(a)(vii)(E) or (F), a site reclamation and decommissioning plan, which shall be updated every five (5) years, and a description of a financial assurance plan which will assure that all facilities will be properly reclaimed and decommissioned. All such plans, unless otherwise exempt, shall demonstrate compliance with any rules or regulations adopted by the council pursuant to W.S. 35-12-105(d) and (e);

(xxi) Information demonstrating the applicant's financial capability to decommission and reclaim the facility. For facilities meeting the definition of W.S. 35-12-102(a)(vii)(E) the information shall also demonstrate the applicant's financial capability to construct, maintain and operate the facility;

(xxii) For proposed facilities meeting the requirements of W.S. 35-12-102(a)(vii)(E) or (F), a list of all affected landowners with an address at which each affected landowner can be given the notices required by this act [§§ 35-12-101 through 35-12-119].

(b) At the time of filing an application or a written request for a waiver of the application provisions of this chapter as provided in W.S. 35-12-107, or as subsequently required by the

director, an applicant shall pay a fee to be determined by the director based upon the estimated cost of investigating, reviewing, processing and serving notice of an application, holding a hearing in case of a request for waiver, inspection and compliance activities and processing application update requests. The fee shall be credited to a separate account and shall be used by the division as required to investigate, review, process and serve notice of the application, to hold a hearing in case of a request for waiver and to pay the reasonable costs of any meeting or hearing associated with permit compliance. Unused fees shall be refunded to the applicant. The maximum fee chargeable shall not exceed one-half of one percent (0.5%) of the estimated construction cost of the facility or one hundred thousand dollars ($100,000.00), whichever is less.

(c) The director shall provide the applicant with a full financial accounting, including but not limited to all materials, labor and overhead costs relating to the expenditures of the fee at the time of the council's decision as provided in W.S. 35-12-113 or at the completion of construction, whichever occurs later.

(d) At any time after the fee required by subsection (b) of this section has been exhausted or refunded and in addition to the fee imposed under subsection (b) of this section, the applicant may be required to pay a fee, as determined by the director, for the costs of any meeting or hearing associated with permit compliance. The director shall provide the applicant with a full financial accounting for the expenditure of the fee, including but not limited to all materials, labor and overhead costs, at the conclusion of the council meeting or hearing.

History:

Laws 1975, ch. 169, § 1; W.S. 1957, §§ 35-502.81, 35-502.83; Laws 1977, ch. 66, § 2; W.S. 1977, §§ 35-12-108, 35-12-110; Laws 1985, ch. 177, § 1; 1987, ch. 82, § 2; 1992, ch. 60, § 3; 2005, ch. 231, § 1; 2010, ch. 47, §§ 1, 3; 2011, ch. 146, § 1; 2012, ch. 50, § 1.

The 2005 amendment, effective July 1, 2005, substituted "a separate account" for "an account within the earmarked revenue fund" in (b).

The 2010 amendment, in (a), added (a)(xiii)(Q) through (a)(xiii)(S), substituted "other local, state" for "other state" in (a)(xv), and added (a)(xix) through (a)(xxi); in (b), inserted ", inspection and compliance activities and processing application update requests," and inserted "and to pay the reasonable costs of any meeting or hearing associated with permit compliance"; in (c), inserted "or at the completion of construction, whichever occurs later"; added (d); and made related and stylistic changes.

Laws 2010, ch. 47, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2010.

The 2011 amendment, effective July 1, 2011, added (a)(xxii).

The 2012 amendment, effective July 1, 2012, deleted "construct, maintain, operate" preceding "decommission" and added the second sentence in (a)(xxi).

Editor's notes. — There is no subparagraph (a)(xiii)(I) or (a)(xiii)(L) in this section as it appears in the printed acts.

Conflicting legislation. — Laws 2005, ch. 231, § 3, provides: "The provisions of this act shall supersede the provisions of any other bill enacted into law during the 2005 general session which amends or references accounts or funds to the extent any other enactment is inconsistent with the establishment of the funds and accounts created under this act. The state auditor shall account for any fund or account created in any other legislation enacted in the 2005 general session in accordance with generally accepted accounting principles (GAAP) as promulgated by the governmental accounting standards board (GASB) and in accordance with this act."

§ 35-12-110. Service of notice of application; information and recommendations; application deficiencies; procedure; jurisdiction; hearing.

(a) Not more than ten (10) days following receipt of an application for a permit, the director shall:

(i) Serve an electronic or physical copy of the application upon the governing bodies of local governments which will be primarily affected by the proposed facility together with notice of the applicable provisions of W.S. 35-12-111 and, for proposed facilities meeting the requirements of W.S. 35-12-102(a)(vii)(E) or (F), serve a copy of the application with notice of the applicable provisions of W.S. 35-12-111 upon affected landowners;

(ii) Cause a summary of the application to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility;

(iii) File a copy of the application with the county clerk of the county or counties in which the proposed facility will be constructed.

(b) The division shall obtain information and recommendations from the following state agencies relative to the impact of the proposed facility as it applies to each agency's area of expertise:

(i) Wyoming department of transportation;

(ii) Public service commission;

(iii) Repealed by Laws 1998, ch. 6, § 5.
(iv) Game and fish department;
(v) Department of health;
(vi) Department of education;
(vii) Office of state engineer;
(viii) Repealed by Laws 1990, ch. 44, § 3.
(ix) Wyoming state geologist;
(x) Wyoming department of agriculture;
(xi) Department of environmental quality;
(xii) Repealed by Laws 1992, ch. 60, § 4.
(xiii) Repealed by Laws 1990, ch. 44, § 3.
(xiv) The University of Wyoming;
(xv) Department of revenue;
(xvi) The Wyoming business council;
(xvii) Department of workforce services;
(xviii) Office of state lands and investments;
(xix) Department of workforce services;
(xx) Department of state parks and cultural resources;
(xxi) Department of fire prevention and electrical safety;
(xxii) Department of family services;
(xxiii) Oil and gas conservation commission.

(c) The information required by subsection (b) of this section shall be provided by the agency from which it is requested not more than sixty (60) days from the date the request is made and shall include opinions as to the advisability of granting or denying the permit together with reasons therefor, and recommendations regarding appropriate conditions to include in a permit, but only as to the areas within the expertise of the agency. Each agency which has regulatory authority over the proposed facility shall provide to the council a statement defining the extent of that agency's jurisdiction to regulate impacts from the facility, including a statement of the agency's capability to address cumulative impacts of the facility in conjunction with other facilities. The statement of jurisdiction from each agency is binding on the council.

(d) On receipt of an application, the director shall conduct a review of the application to determine if it contains all the information required by W.S. 35-12-109 and the rules and regulations. If the director determines that the application is incomplete, he shall within thirty (30) days of receipt of the application notify the applicant of the specific deficiencies in the application. The applicant shall provide the additional information necessary within thirty (30) days of a receipt of a request for additional information from the director.

(e) Upon receipt of the additional information specified in subsection (d) of this section, the director shall either notify the applicant that the application is complete or notify the applicant of continued deficiencies. The applicant shall provide the required information within fifteen (15) days of receipt of the notice of continued deficiency. Upon receipt of the second deficiency notice, the applicant may:

(i) Provide the required information within the time allotted; or
(ii) Withdraw the application.
(iii) Repealed by Laws 2010, ch. 47, § 2.

(f) Not more than ninety (90) days after receipt of an application for a permit, the director shall:

(i) Schedule and conduct a public hearing, provided that no hearing shall be held until the state engineer has submitted a preliminary and final opinion as to the quantity of water available for the proposed facility pursuant to W.S. 35-12-108;

(ii) Notify the applicant and local governments of the hearing and, for proposed facilities meeting the requirements of W.S. 35-12-102(a)(vii)(E) or (F), notify affected landowners;

(iii) Cause notice of the hearing to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility; and

(iv) Hold the hearing at a community as close as practicable to the proposed facility. The provisions of W.S. 35-12-111, 35-12-112 and 35-12-114 apply to the hearing.

(g) For proposed facilities meeting the requirements of W.S. 35-12-102(a)(vii)(E) or (F):

(i) The division shall request information and recommendations from affected landowners relative to the impact of the proposed facility as it applies to each affected landowner's lands and interests;

(ii) Not less than twenty-five (25) days prior to any scheduled hearing on the application, the director shall provide to all affected landowners a copy of all information received from agencies providing information under subsections (b) and (c) of this section; and

(iii) Agencies providing opinions and recommendations under subsections (b) and (c) of this section shall receive comments from affected landowners and shall provide a summary of all affected landowner comments with other information submitted. If comments are received after the agency's other information is submitted, the comments shall be forwarded when received to the division.

History:

Laws 1975, ch. 169, § 1; W.S. 1957, §§ 35-502.82, 35-502.84; Laws 1977, ch. 66, § 2; W.S. 1977, §§ 35-12-109, 35-12-111; Laws 1986, ch. 105, § 1; 1987, ch. 82, § 2; 1990, ch. 44, §§ 2, 3; 1991, ch. 174, § 2; ch. 221, § 2; ch. 241, § 3; 1992, ch. 60, §§ 3, 4; 1998, ch. 6, §§ 3, 5; 2006, ch. 114, § 1; 2010, ch. 47, §§ 1, 2; 2011, ch. 146, § 1; 2012, ch. 1, § 1.

Cross references. — As to publication of notices generally, see §§ 1-6-201 through 1-6-204.

As to creation of board of agriculture, see § 11-2-101.

The 2006 amendment, added "and" at the end of (b)(xv); and made a related change.

Laws 2006, ch. 114, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 24, 2006.

The 2010 amendment, in (a)(i), substituted "an electronic or physical copy" for "notice," and "together with the notice of" for "and the notice shall refer to"; added (b)(xvii) through (xxiii); and repealed former (e)(iii), pertaining to applicant electing not to provide required information; and made related changes.

Laws 2010, ch. 47, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2010.

The 2011 amendment, effective July 1, 2011, in (a)(i), added "and, for proposed facilities meeting the requirements of W.S. 35-12-102(a)(vii)(E) or (F), serve a copy of the application with notice of the applicable provisions of W.S. 35-12-111 upon affected landowners," and made stylistic changes; in (f)(ii), added "and, for proposed facilities meeting the requirements of W.S. 35-12-102(a)(vii)(E) or (F), notify affected landowners"; and added (g).

The 2012 amendment, effective July 1, 2012, substituted "workforce services" for "employment" in (b)(xix).

Conflicting legislation. — Laws 2006, ch. 114, § 3 provides:

"[A]ny other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

Concern with collective welfare of inhabitants of area. — The industrial siting council is to be concerned with the collective, not individual, social and economic welfare of present and expected inhabitants of the areas of site influence. Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241, 1978 Wyo. LEXIS 254 (Wyo. 1978).

May grant application to build but withhold permit for transmission lines. — There is no statutory barrier to the industrial siting council's granting of an application to build a generating plant, while withholding a permit for transmission lines until further study can be made concerning them. Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241, 1978 Wyo. LEXIS 254 (Wyo. 1978).

Purpose of subsection (f)(iv). — Subsection (f)(iv), under which all hearings on facilities as proposed by an electric power cooperative are required to be held "at a community as close as practicable to the proposed facility," is designed to prevent the situation in which the hearing is held at a considerable distance from the area affected by the development. Laramie River Conservation Council v. Dinger, 567 P.2d 731, 1977 Wyo. LEXIS 276 (Wyo. 1977).

§ 35-12-111. Parties to permit proceeding; waiver by failure to participate.

(a) The parties to a permit proceeding include:

(i) The applicant;

(ii) Each local government entitled to receive a copy of the application under W.S. 35-12-110(a)(i);

(iii) Any person residing in a local government entitled to receive a copy of the application under W.S. 35-12-110(a)(i) including any person holding record title to lands directly affected by construction of the facility and any nonprofit organization with a Wyoming chapter, concerned in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial, agricultural and industrial groups, or to promote the orderly development of the areas in which the facility is to be located. In order to be a party the person or organization must file with the office a notice of intent to be a party not less than twenty (20) days before the date set for the hearing.

(b) Any party identified in paragraph (a)(iii) of this section waives his right to be a party if he does not participate orally at the hearing. Any party identified in paragraph (a)(ii) of this section

waives its right to be a party unless the local government files a notice of intent to be a party with the office not less than twenty (20) days before the date set for the hearing.

(c) Any person may make a limited appearance in the proceeding by filing a statement in writing with the council prior to adjournment of the hearing. A statement filed by a person making a limited appearance shall become part of the record and shall be made available to the public. No person making a limited appearance under this subsection is a party to the proceeding.

(d) No state agency other than the industrial siting division shall act as a party at the hearing. Members and employees of all other state agencies and departments may file written comments prior to adjournment of the hearing but may testify at the hearing only at the request of the council, the industrial siting division or any party.

(e) Any person described in W.S. 35-12-111(a)(ii) or (iii) who participated in the public hearing under W.S. 35-12-107 may obtain judicial review of a council decision waiving all or part of the application requirements of this chapter.

History:

Laws 1975, ch. 169, § 1; W.S. 1957, § 35-502.85; W.S. 1977, § 35-12-112, Laws 1986, ch. 105, § 1; 1987, ch. 82, § 2; 1992, ch. 60, § 3; 2010, ch. 47, § 1; 2011, ch. 146, § 1.

The 2010 amendment, substituted "to receive a copy" for "to receive service of a copy" in (a)(ii) and (a)(iii), and inserted "including any person holding record title to lands directly affected by construction of the facility" in (a)(iii).

Laws 2010, ch. 47, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2010.

The 2011 amendment, effective July 1, 2011, in (a)(iii), added "agricultural."

§ 35-12-112. Record of hearing; procedure.

Any studies, investigations, reports or other documentary evidence, including those prepared by the division, which any party wishes the council to consider or which the council itself expects to utilize or rely upon, shall be made a part of the record. A complete record shall be made of the hearing and of all testimony taken. The contested case procedures of the Wyoming Administrative Procedure Act apply to the hearing under W.S. 35-12-110(f), but do not apply to the hearing under W.S. 35-12-107.

History:

Laws 1975, ch. 169, § 1; W.S. 1957, § 35-502.86; W.S. 1977, § 35-12-113; Laws 1987, ch. 82, § 2; 1992, ch. 60, § 3.

Wyoming Administrative Procedure Act. — See § 16-3-101(a), (b)(xi).

Transcript deemed part of record of proceedings. — A transcript of a tape recording of a public meeting of the industrial siting council held to discuss a decision of the council is a part of the record of the proceedings in a contested case under the provisions of the Administrative Procedure Act, as incorporated in this section. Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241, 1978 Wyo. LEXIS 254 (Wyo. 1978).

§ 35-12-113. Decision of council; findings necessary for permit conditions imposed; service of decision on parties; waste management surcharge.

(a) Within forty-five (45) days from the date of completion of the hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the application as filed, or granting it upon terms, conditions or modifications of the construction, operation or maintenance of the facility as the council deems appropriate. The council shall not consider the imposition of conditions which address impacts within the area of jurisdiction of any other regulatory agency in this state as described in the information provided in W.S. 35-12-110(b), unless the other regulatory agency requests that conditions be imposed. In considering the imposition of conditions requested by other agencies upon private lands, the council shall consider in the same manner and to the same extent any comments presented by an affected landowner. The council may consider direct or cumulative impacts not within the area of jurisdiction of another regulatory agency in this state. The council shall grant a permit either as proposed or as modified by the council if it finds and determines that:

(i) The proposed facility complies with all applicable law;

(ii) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition or inhabitants or expected inhabitants in the affected area;

(iii) The facility will not substantially impair the health, safety or welfare of the inhabitants; and

(iv) The applicant has financial resources to decommission and reclaim the facility. For facilities meeting the definition of W.S. 35-12-102(a)(vii)(E) the council shall also be required to find the applicant has financial resources to construct, maintain and operate the facility.

(b) No permit shall be granted if the application is incomplete.

(c) If the council determines that the location of all or part of the proposed 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.

(d) The council shall issue with its decision, an opinion stating in detail its reasons for the decision. If the council decides to grant a permit for the 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 facility, to implement the necessary procedures to alleviate the impact. A copy of the decision shall be served upon each party.

(e) A permit may be issued conditioned upon the applicant furnishing a bond to the division in an amount determined by the director from which local governments may recover expenditures in preparation for impact to be caused by a facility if the permit holder does not complete the facility proposed. The permit holder is not liable under the bond if the holder is prevented from completing the facility proposed by circumstances beyond his control.

(f) Within ten (10) days from the date of the council's decision, a copy of the findings and the council's decision shall be served upon the applicant, parties to the hearing and local governments to be substantially affected by the proposed facility and filed with the county clerk of the county or counties to be primarily affected by the proposed facility. Notice of the decision shall be published in one (1) or more newspapers of general circulation within the area to be affected by the proposed facility.

(g) Each approved facility enumerated under W.S. 35-12-102(a)(vii)(A) through (D) shall, on a quarterly basis, remit to the division a waste management surcharge to be deposited in the general fund. The surcharge amount is:

(i) A minimum of ten dollars ($10.00) per short ton of solid wastes, including radioactive wastes, received at the facility, less a minimum of five dollars ($5.00) for each short ton of solid wastes removed at the facility and recycled or reused and less any amount credited against the surcharge pursuant to W.S. 35-11-503(b)(iv)(B); and

(ii) A minimum of twenty-five dollars ($25.00) per short ton of hazardous wastes received at the facility, less a minimum of three dollars ($3.00) for each short ton of hazardous wastes treated at the facility to reduce toxicity and long-term hazards to the environment.

(h) For applicants subject to W.S. 35-12-105(e), a permit may be issued conditioned upon the applicant furnishing a bond or other financial assurance acceptable to the division in an amount determined by the director to cover the cost of decommissioning and reclaiming the facility.

History:

Laws 1975, ch. 169, § 1; W.S. 1957, §§ 35-502.82, 35-502.87; W.S. 1977, §§ 35-12-109, 35-12-114; Laws 1987, ch. 82, § 2; 1989, ch. 180, § 1; 1992, ch. 60, § 3; ch 88, § 1; 1996, ch. 60, § 1; 2010, ch. 47, § 1; 2011, ch. 146, § 1; 2012, ch. 50, § 1.

Cross references. — As to publication of notices generally, see §§ 1-6-201 through 1-6-204.

For procedure relating to service generally, see Rule 4, W.R.C.P.

The 2010 amendment, added (a)(iv); added (h); and made related changes.

Laws 2010, ch. 47, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2010.

The 2011 amendment, effective July 1, 2011, in the introductory language of (a), added the present third sentence.

The 2012 amendment, effective July 1, 2012, deleted "construct, maintain, operate" preceding "decommission" and added the second sentence in (a)(iv).

Complete record to be kept. — Both the Administrative Procedure Act (chapter 3 of title 16) and this section require the keeping of a complete record. Laramie River Conservation Council v. Dinger, 567 P.2d 731, 1977 Wyo. LEXIS 276 (Wyo. 1977).

§ 35-12-114. Review of grant or denial of permit.

(a) Any party as defined in W.S. 35-12-111 aggrieved by the final decision of the council on an application for a permit may obtain judicial review by the filing of a petition in any state district

court in which the major portion of the proposed facility is to be located within thirty (30) days after the issuance of a final decision. The petition for appeal by any party must include an express assumption of the cost of preparation of the complete written transcripts and record for the court. Upon receipt of a petition, the division shall deliver to the court a copy of the complete written transcript of the record of the proceeding before it and a copy of the council's decision and opinion entered therein which shall constitute the record on judicial review. At the same time the division shall deliver to the petitioner an itemized statement of the cost of preparing the complete written transcript and record for the court. The petitioner shall pay the division this cost within forty-five (45) days or forfeit the right to appeal to district court. A copy of the transcript, decision and opinion shall remain on file with the division and shall be available for public inspection.

(b) When a decision is issued after a hearing on an application for a permit, the decision is final for purposes of judicial review. The judicial review procedure shall be the same as that for contested cases under the Wyoming Administrative Procedure Act.

History:
Laws 1975, ch. 169, § 1; W.S. 1957, § 35-502.88; W.S. 1977, § 35-12-115; Laws 1987, ch. 82, § 2; 1992, ch. 60, § 3.

Wyoming Administrative Procedure Act. — See § 16-3-101(a), (b)(xi).

Official determination of industrial siting council is expressed in formal findings of fact and conclusions of law, and it is that action only which is to be tested upon review under the law; it cannot be impeached by reliance upon the dialogue of a public decisional meeting. Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241, 1978 Wyo. LEXIS 254 (Wyo. 1978).

Supported by substantial evidence. — For purposes of review, the findings of the industrial siting council must be supported by substantial evidence; that is, there must be present such relevant evidence as might lead a reasonable mind to the conclusion manifested in the questioned finding. Laramie River Conservation Council v. Industrial Siting Council, 588 P.2d 1241, 1978 Wyo. LEXIS 254 (Wyo. 1978).

Jurisdictional challenge. — By rule, the industrial siting council (ISC) has created a procedure apart from the permit process by which its jurisdiction over the construction of an industrial facility may be challenged. Under it, the ISC jurisdiction may be challenged by filing an application for a certificate of insufficient jurisdiction. The district court has jurisdiction to entertain an appeal from the denial of a certificate of insufficient jurisdiction by the ISC. Industrial Siting Council v. Chicago & N.W. Transp. Co., 660 P.2d 776, 1983 Wyo. LEXIS 292 (Wyo. 1983).

§ 35-12-115. Additional requirements by other governmental agencies not permitted after issuance of permit; exceptions.

(a) Notwithstanding any other provision of law, no state, intrastate regional agency or local government may require any approval, consent, permit, certificate or other condition for the construction, operation or maintenance of a facility authorized by a permit issued pursuant to this chapter except that:

(i) The department of environmental quality shall retain authority which it has or which it may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans and to enforce those standards; and

(ii) The public service commission shall retain authority which it has or may be granted relative to certificates of convenience and necessity, rates, interchange of services and safety regulations.

(b) Nothing in this chapter prevents the application of state laws for the protection of employees engaged in the construction, operation or maintenance of any facility specified in this section.

History:
Laws 1975, ch. 169, § 1; W.S. 1957, § 35-502.89; W.S. 1977, § 35-12-116; Laws 1987, ch. 82, § 2.

§ 35-12-116. Revocation or suspension of permit.

(a) A permit may be revoked or suspended for:

(i) Any material false statement in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted the council's refusal to grant a permit;

(ii) Failure to comply with the terms or conditions of the permit after notice of the failure from the office and reasonable opportunity to correct the failure; or

(iii) Violation of this chapter, the regulations issued pursuant to this chapter or orders of the council or office.

History:
Laws 1975, ch. 169, § 1; W.S. 1957, § 35-502.90; W.S. 1977, § 35-12-117; Laws 1987, ch. 82, § 2.

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

§ 35-12-117. Monitoring of facilities.

(a) Except as provided in subsection (b) of this section, the council and the division, utilizing to the fullest extent possible the staff and resources of all state agencies, boards and commissions, has continuing authority and responsibility for:

(i) Monitoring the operations of all facilities which have been granted permits under this chapter;

(ii) Assuring continuing compliance with this chapter and permits issued pursuant to this chapter; and

(iii) Discovering and preventing noncompliance with this chapter and the permits.

(b) The department of environmental quality has exclusive continuing authority and responsibility for monitoring and assuring compliance with:

(i) Laws and regulations pertaining to air, water and land quality, and solid waste management; and

(ii) Any permit conditions ordered by the council relating to matters of air, water and land quality, and solid waste management.

History:
Laws 1975, ch. 169, § 1; W.S. 1957, § 35-502.91; Laws 1977, ch. 66, § 2; W.S. 1977, § 35-12-118; Laws 1987, ch. 82, § 2; 1992, ch. 60, § 3.

§ 35-12-118. Penalties for violations; civil action by attorney general.

(a) No person shall:

(i) Commence to construct a facility after the effective date of this chapter without first obtaining a permit required under this chapter;

(ii) Construct, operate or maintain a facility, after having first obtained a permit, other than in specific compliance with the permit;

(iii) Cause any of the acts specified in this subsection to occur;

(iv) Operate or maintain an industrial facility without having first obtained the permit required under this chapter.

(b) Any person violating subsection (a) of this section is liable to a civil penalty of not more than ten thousand dollars ($10,000.00) for each violation. Each day of a continuing violation constitutes a separate offense. The penalty shall be recoverable in a civil suit brought by the attorney general on behalf of the state in the district court in and for the county of Laramie.

(c) Whoever knowingly and willfully violates subsection (a) of this section shall be fined not more than ten thousand dollars ($10,000.00) for each violation or imprisoned for not more than one (1) year, or both. Each day of a continuing violation constitutes a separate offense.

(d) In addition to any penalty provided in subsection (b) or (c) of this section, if the director determines that a person is violating this section, he shall refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court in and for the county of Laramie for injunctive or other appropriate relief against the violation and to enforce this chapter or a permit issued under this chapter, and upon a proper showing a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

(e) All fines collected pursuant to subsection (b) of this section shall be paid to the state treasurer and credited as provided in W.S. 8-1-109.

History:
Laws 1975, ch. 169, § 1; W.S. 1957, § 35-502.92; W.S. 1977, § 35-12-119; Laws 1987, ch. 82, § 2; 1992, ch. 60, § 3; 2005, ch. 157, § 2; 2010, ch. 47, § 1.

Cross references. — As to injunctions, see Rule 65, W.R.C.P.

The 2005 amendment substituted "paid to the state treasurer and credited as provided in W.S. 8-1-109" for "deposited in the state general fund" in (e).

Laws 2005, ch. 157, § 3, makes the act effective immediately upon completion of all acts necessary for

a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 26, 2005.

The 2010 amendment, added (a)(iv), and made related changes.

Laws 2010, ch. 47, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2010.

§ 35-12-119. Exemptions; information required.

(a) Nonmineral processing facilities to be constructed in existing industrial parks, as designated by local governments, are exempt from payment of fees and certification procedures but shall furnish the information required by W.S. 35-12-109(a)(iii), (iv) and (v) to the division if included in W.S. 35-12-102(a)(vii).

(b) State and local governmental units and agencies are exempt from the application and permit procedures of this chapter, but prior to commencing to construct any facility as provided in W.S. 35-12-102(a)(vii), those units and agencies shall furnish to the division information required by W.S. 35-12-109(a)(iii), (iv) and (v).

(c) The construction, operation and maintenance of the following activities are exempt from this chapter:

(i) Electric transmission lines with a maximum operating voltage of less than one hundred sixty thousand (160,000) volts, except:

(A) Any collector system, regardless of voltage, associated with a commercial facility generating electricity from wind and which meets the definition of an industrial facility pursuant to W.S. 35-12-102(a)(vii)(E) and (F) shall not be exempt;

(B) A commercial facility generating electricity from wind that is exempt from W.S. 35-12-102(a)(vii)(E) or (F) shall not become subject to this chapter because its collector system is greater than one hundred sixty thousand (160,000) volts.

(ii) Oil and gas drilling facilities;

(iii) All pipelines except coal slurry pipelines;

(iv) Oil and gas producing facilities;

(v) Oil and gas wellfield activities.

(d) Activities exempt under this section shall not be included as part of the application review of a facility subject to this chapter, and the council does not have jurisdiction over exempt activities. Applicants shall furnish the information required by W.S. 35-12-109(a)(iii), (iv), (v) and (viii) for exempt activities.

History:

Laws 1975, ch. 169, § 1; W.S. 1957, § 35-502.94; W.S. 1977, § 35-12-121; Laws 1979, ch. 97, § 2; 1981, ch. 127, § 1; 1987, ch. 82, § 2; 1992, ch. 60, § 3; 2002 Sp. Sess., ch. 15, § 1; 2010, ch. 47, § 3.

The 2010 amendment, rewrote the introductory language in (c)(i), and added (c)(i)(A) and (c)(i)(B).

Laws 2010, ch. 47, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2010.

CHAPTER 13

Facilities in Public Buildings for Physically Handicapped

Article 1. In General

Section

35-13-101 through 35-13-104. [Renumbered.]
35-13-105. [Repealed.]

Article 2. Protection and Rights of Blind and Disabled Persons

35-13-201. Generally; use of service dogs.
35-13-202. Drivers to take precautions; liability.
35-13-203. Interfering with rights; penalty.
35-13-204. Additional provisions on use of service dogs; penalty.
35-13-205. Definitions.
35-13-206. Injuring or killing a service dog prohibited; penalties.

2301 Capitol Avenue Cheyenne, WY 82002

Wyoming Rules of Civil Procedure

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General Information

Date Created: 07/02/1957
Date Effective: 12/01/1957

Text of Rules

I. SCOPE OF RULES; ONE FORM OF ACTION [top]

Rule 1. Scope and purpose of rules.

These rules govern procedure in all courts of record in the State of Wyoming, in all actions, suits or proceedings of a civil nature and in all special statutory proceedings except as provided in Rule 81. They shall be construed and administered to secure the just, speedy, and

inexpensive determination of every action.

(Amended December 21, 1965, effective March 21, 1966; amended October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992; amended August 31, 1994, effective November 28, 1994.)

Rule 2. One form of action.

There shall be one form of action to be known as "civil action".

(Amended December 20, 1991, effective March 24, 1992.)

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

[top]

Rule 3. Commencement of action.

(a) How commenced. - A civil action is commenced by filing a complaint with the court.

(b) When commenced. - For purposes of statutes of limitation, an action shall be deemed commenced on the date of filing the complaint as to each defendant, if service is made on the defendant or on a co-defendant who is a joint contractor or otherwise united in interest with the defendant, within 60 days after the filing of the complaint. If such service is not made within 60 days the action shall be deemed commenced on the date when service is made. The voluntary waiver, acceptance or acknowledgment of service, or appearance by a defendant shall be the same as personal service on the date when such waiver, acceptance, acknowledgment or appearance is made. When service is made by publication, the action shall be deemed commenced on the date of the first publication.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 3.1. Civil cover sheet.

(a) Civil Cover Sheet. - Every complaint or other document initiating a civil action shall be accompanied by a completed civil cover sheet form available on the Court's website or from the Clerk of Court. This requirement is solely for administrative purposes and has no legal effect in the action. If the complaint or other document is filed without a completed civil cover sheet, the Clerk of Court shall at the time of filing give notice of the omission to the party filing the document. If, after notice of the omission the coversheet is not filed within 11 calendar days, the court may impose an appropriate sanction upon the attorney or party filing the complaint or other document.

(Added August 23, 2012, effective November 1, 2012.)

Rule 4. Process.

(a) Issuance of summons. - Upon the filing of the complaint the clerk shall forthwith issue a summons to the plaintiff for service on the

defendant. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

(b) Same; form. - The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of he defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

(c) By whom served. - Except as otherwise ordered by the court, process may be served:

(1) Within the state, by any person of the age of majority, not a party to the action, or, at the request of the party causing same to be issued, by the sheriff of the county where the service is made or the sheriff's designee;

(2) In another state or United States territory, by any person of the age of majority, not a party to the action, or, at the request of the party causing same to be issued, by the sheriff of the county where the service is made or sheriff's designee, or by a United States marshal or marshal's designee;

(3) In a foreign country, by any citizen of the United States of the age of majority;

(4) In the event service is made by a person other than an officer, the amount of costs assessed therefor, if any, against any adverse party shall be within the discretion of the court.

(d) Personal service. - The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual other than a person under 14 years of age or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally, or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person over the age of 14 years then residing therein, or at the defendant's usual place of business with an employee of the defendant then in charge of such place of business, or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process;

(2) Upon a person under 14 years of age or an incompetent person, by serving the same upon the guardian or, if no guardian has been appointed in this state, then upon the person having legal custody and control or upon a guardian ad litem;

(3) Upon a partnership, or other unincorporated association, by

delivery of copies to one or more of the partners or associates, or a managing or general agent thereof, or agent for process, or by leaving same at the usual place of business of such defendant with any employee then in charge thereof;

(4) Upon a corporation, by delivery of copies to any officer, manager, general agent, or agent for process. If no such officer, manager or agent can be found in the county in which the action is brought such copies may be delivered to any agent or employee found in such county. If such delivery be to a person other than an officer, manager, general agent or agent for process, the clerk, at least 20 days before default is entered, shall mail copies to the corporation by registered or certified mail and marked "restricted delivery" with return receipt requested, at its last known address;

(5) Upon a department or agency of the state, a municipal or other public corporation, by delivering a copy of the summons and of the complaint to the chief executive officer thereof, or to its secretary, clerk, person in charge of its principal office or place of business, or any member of its governing body;

(6) Upon the secretary of state, as agent for a party, when and in the manner authorized by statute.

(e) Service by publication. - Service by publication may be had where specifically provided for by statute, and in the following cases:

(1) When the defendant resides out of the state, or the defendant's residence cannot be ascertained, and the action is:

(i) For the recovery of real property or of an estate or interest therein;

(ii) For the partition of real property;

(iii) For the sale of real property under a mortgage, lien or other encumbrance or charge;

(iv) To compel specific performance of a contract of sale of real estate;

(2) In actions to establish or set aside a will, where the defendant resides out of the state, or the defendant's residence cannot be ascertained;

(3) In actions in which it is sought by a provisional remedy to take, or appropriate in any way, the property of the defendant, when the defendant is a foreign corporation, or a nonresident of this state, or the defendant's place of residence cannot be ascertained, and in actions against a corporation incorporated under the laws of this state, which has failed to elect officers, or to appoint an agent, upon whom service of summons can be made as provided by these rules and which has no place of doing business in this state;

(4) In actions which relate to, or the subject of which is real or

personal property in this state, when a defendant has or claims a lien thereon, or an actual or contingent interest therein or the relief demanded consists wholly or partly in excluding the defendant from any interest therein, and such defendant is a nonresident of the state, or a dissolved domestic corporation which has no trustee for creditors and stockholders, who resides at a known address in Wyoming, or a domestic corporation which has failed to elect officers or appoint other representatives upon whom service of summons can be made as provided by these rules, or to appoint an agent as provided by statute, and which has no place of doing business in this state, or a domestic corporation, the certificate of incorporation of which has been forfeited pursuant to law and which has no trustee for creditors and stockholders who resides at a known address in Wyoming, or a foreign corporation, or defendant's place of residence cannot be ascertained;

(5) In actions against personal representatives, conservators, or guardians, when the defendant has given bond as such in this state, but at the time of the commencement of the action is a nonresident of the state, or the defendant's place of residence cannot be ascertained;

(6) In actions where the defendant, being a resident of this state, has departed from the county of residence with the intent to delay or defraud the defendant's creditors, or to avoid the service of process, or keeps concealed with like intent;

(7) When an appellee has no attorney of record in this state, and is a nonresident of, and absent from the same, or has left the same to avoid the service of notice or process, or the appellee keeps concealed so that notice or process cannot be served;

(8) In an action or proceeding under Rule 60 hereof, to modify or vacate a judgment after term of court, or to impeach a judgment or order for fraud, or to obtain an order of satisfaction thereof, when a defendant is a nonresident of the state or the defendant's residence cannot be ascertained;

(9) In suits for divorce, for alimony, to affirm or declare a marriage void, or the modification of any decree therefor entered in such suit, when the defendant is a nonresident of the state, or the defendant's residence cannot be ascertained, or the defendant keeps concealed in order to avoid service of process;

(10) In actions for adoption or for the termination of parental rights.

(11) In all actions or proceedings which involve or relate to the waters, or right to appropriate the waters of the natural streams, springs, lakes, or other collections of still water within the boundaries of the state, or which involve or relate to the priority of appropriations of such waters including appeals from the determination of the state board of control, and in all actions or

proceedings which involve or relate to the ownership of means of conveying or transporting water situated wholly or partly within this state, when the defendant or any of the defendants are nonresidents of the state or the defendant's residence or their residence cannot be ascertained.

(f) Requirements for service by publication. - Before service by publication can be made, an affidavit of the party, or the party's agent or attorney, must be filed stating that service of a summons cannot be made within this state, on the defendant to be served by publication, and stating the defendant's address, if known, or that the defendant's address is unknown and cannot with reasonable diligence be ascertained, detailing the efforts made to obtain an address, and that the case is one of those mentioned in subdivision (e); and when such affidavit is filed, the party may proceed to make service by publication. In any case in which service by publication is made when the address of a defendant is known, it must be stated in the publication. Immediately after the first publication the party making the service shall deliver to the clerk copies of the publication, and the clerk shall mail a copy to each defendant whose name and address is known by registered or certified mail and marked "Restricted Delivery" with return receipt requested, directed to the defendant's address named therein, and make an entry thereof on the appearance docket.

In all cases in which a defendant is served by publication of notice and there has been no delivery of the notice mailed to the defendant by the clerk, the party who makes the service, or the party's agent or attorney, at the time of the hearing and prior to entry of judgment, shall make and file an affidavit stating the address of such defendant as then known to the affiant, or if unknown, that the affiant has been unable to ascertain the same with the exercise of reasonable diligence, detailing the efforts made to obtain an address. Such additional notice, if any, shall then be given as may be directed by the court.

(g) Publication of notice. - The publication must be made by the clerk for four consecutive weeks in a newspaper published in the county where the complaint is filed; or if there is no newspaper published in the county, then in a newspaper published in this state, and of general circulation in such county; if it be made in a daily newspaper, one insertion a week shall be sufficient; and it must contain a summary statement of the object and prayer of the complaint, mention the court wherein it is filed, and notify the person or persons thus to be served when they are required to answer, and that judgment by default may be rendered against them if they fail to appear.

(h) When service complete; how proved. - Service by publication shall be deemed complete at the date of the last publication, when made in the manner and for the time prescribed in the preceding sections; and such service shall be proved by affidavit.

(i) Service upon unknown persons. - When an heir, devisee, or legatee of a deceased person, or a bondholder, lienholder or other person claiming an interest in the subject matter of the action is a necessary party, and it appears by affidavit that the person's name and address are unknown to the party making service, proceedings against the person may be had by designating the person as an unknown heir, devisee or legatee of a named decedent or defendant, or in other cases as an unknown claimant, and service by publication may be had as provided in these rules for cases in which the names of the defendants are known.

(j) Publication may be made in another county. - When it is provided by rule or statute that a notice shall be published in a newspaper, and no such paper is published in the county, or if such paper is published there and the publisher refuses, on tender of the publisher's usual charge for a similar notice, to insert the same in the publisher's newspaper, then a publication in a newspaper of general circulation in the county shall be sufficient.

(k) Costs of publication. - The lawful rates for any legal notice published in any qualified newspaper in this state in connection with or incidental to any cause or proceeding in any court of record in this state shall be and become a part of the court costs in such action or proceeding, which costs shall be paid to the clerk of the court in which such action or proceeding is pending by the party causing such notice to be published and finally assessed as the court may direct.

(l) Other service; personal service outside the state; service by registered or certified mail. - In all cases where service by publication can be made under these rules, or where a statute permits service outside this state, the plaintiff may obtain service without publication by either of the following methods:

(1) Personal Service Outside the State. - By delivery to the defendant of copies of the summons and complaint.

(2) Service by Registered or Certified Mail. - Upon the request of any party the clerk shall send by registered or certified mail a copy of the complaint and summons addressed to the party to be served at the address given in the affidavit required under subdivision (f) of this rule. The mail shall be sent marked "Restricted Delivery", requesting a return receipt signed by the addressee or the addressee's agent who has been specifically authorized in writing by a form acceptable to, and deposited with, the postal authorities. When such return receipt is received signed by the addressee or the addressee's agent the clerk shall file the same and enter a certificate in the cause showing the making of such service.

(m) Return; proof of service.

(1) Return. - The person serving the process shall make proof of

service thereof to the court promptly and in any event within the time during which the person served must respond to the process. Failure to make proof of service does not affect the validity of the service.

(2) Proof of Service. - Proof of service of process shall be made as follows:

(i) If served by a Wyoming sheriff, undersheriff or deputy by a certificate with a statement as to date, place and manner of service, except that a special deputy appointed for the sole purpose of making service shall make proof by the special deputy's affidavit containing such statement;

(ii) If by any other person, by the person's affidavit thereof with a statement as to date, place and manner of service;

(iii) If by registered or certified mail, by the certificate of the clerk showing the date of the mailing and the date the clerk received the return receipt;

(iv) If by publication, by the affidavit of publication together with the certificate of the clerk as to the mailing of copies where required;

(v) By the written admission, acceptance or waiver of service by the person to be served, duly acknowledged.

(n) Amendment. - At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(o) Waiver of service; duty to save costs of service; request to waive.

(1) A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

(2) An individual, corporation, or partnership or other unincorporated association that is subject to service under subdivision (d)(1), (d)(3), or (d)(4) and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request:

(A) Shall be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer, manager, general agent, or agent for process, if a corporation, or else to one or more of the partners or associates, or a managing or general agent, or agent for process, if a partnership or other

unincorporated association;

(B) Shall be dispatched through first-class mail or other reliable means;

(C) Shall be accompanied by a copy of the complaint and shall identify the court in which it has been filed;

(D) Shall inform the defendant, by means of a text prescribed in an official form promulgated pursuant to Rule 84, of the consequences of compliance and of a failure to comply with the request;

(E) Shall set forth the date on which the request is sent;

(F) Shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed outside the United States; and

(G) Shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing.

If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

(3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside the United States.

(4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and complaint had been served at the time of filing the waiver, and no proof of service shall be required.

(5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under subdivision (d)(1), (d)(3), (d)(4), (e), (f), (g), or (l), together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.

(Amended November 7, 1960, effective March 21, 1961; amended October 21, 1970, effective February 11, 1971; amended July 15, 1975, effective November 13, 1975; amended December 20, 1991, effective March 24, 1992; amended January 11, 1995, effective, April 11, 1995; amended February 3, 2003, effective May 1, 2003.)

Rule 5. Service and filing of pleadings and other papers.

(a) Service; when required.

(1) Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(2) In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) Making service. -

(1) Service under Rules 5(a) and 77(d) on a party represented by an attorney is made on the attorney unless the court orders service on the party.

(2) Service under Rule 5(a) is made by:

(A) Delivering a copy to the person served by:

(i) handing it to the person;

(ii) leaving it at the person's office with a clerk or other person in charge, or, if no one is in charge, leaving it in a conspicuous place in the office; or

(iii) if the person has no office or the office is closed, leaving it at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

(B) Mailing a copy to the last known address of the person served. Service by mail is complete on mailing.

(C) If the person served has no known address, leaving a copy with the clerk of court.

(D) Delivering a copy by any other means, including electronic means, consented to in writing by the person served. Service by electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. If authorized by the clerk of the court, a party may make service under this subparagraph (D) through the court's transmission facilities. Service by electronic means under Rule

5(b)(2)(D) is not effective if the party making service learns that the attempted service did not reach the person to be served.

(c) Same; numerous defendants. - In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing; certificate of service. - All papers after the complaint required to be served upon a party, together with a certificate of service, must be filed with the court either before service or within a reasonable time thereafter, but disclosures under Rule 26(a)(1), (1.1), or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions; interrogatories; requests for documents or to permit entry upon land; and requests for admission. A notice of discovery proceedings may be filed concurrently with service of discovery papers to demonstrate substantial and bona fide action of record to avoid dismissal for lack of prosecution.

(e) Filing with the court defined. - The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Papers may be filed, signed, or verified by electronic means if the necessary equipment is available to the clerk. No documents shall be transmitted to the court by facsimile or electronic means for filing without prior telephonic notification to the clerk of court. Only under emergency circumstances shall documents be filed by facsimile transmission. Any paper filed by electronic means must be followed by an identical signed or otherwise duly executed original, or copy of any electronic transmission other than facsimile transmission, together with the fee as set forth in the Rules For Fees and Costs for District Court or the Rules For Fees and Costs For Circuit Court, mailed within 24 hours of the electronic transmission. The clerk upon receiving the original or copy shall note its date of actual delivery, and shall replace the facsimile or other electronic transmission in the court file. A paper filed by electronic means in compliance with this rule constitutes a written paper for the purpose of applying these rules. No document which exceeds ten (10) pages in length may be filed by facsimile. All format requirements contained in applicable rules must be followed. The court may reject any paper filed not in compliance

with this rule.

(Amended July 13, 1964, effective October 11, 1964; amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981; amended December 20, 1991, effective March 24, 1992; amended October 22, 1992, effective January 12, 1993; amended August 5, 1997, effective October 29, 1997; amended March 28, 2005, effective July 1, 2005; amended January 8, 2008, effective July 1, 2008.)

Rule 6. Time

(a) Computation. - In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statutes, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes any day officially recognized as a legal holiday in this state by designation of the legislature or appointment as a holiday by the governor.

(b) Enlargement. - When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court, or a commissioner thereof, for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them. Provided, however, a motion served before the expiration of the time limitations set forth by these rules for an extension of time of not more than 15 days within which to answer or move to dismiss the complaint, or answer, respond or object to discovery under Rules 33, 34, and 36, if accompanied by a statement setting forth, (1) the specific reasons for the request, (2) that the motion is timely filed, (3) that the extension will not conflict with any scheduling or other order of the court, and (4) that there has been no prior extension of time granted with respect to the matter in question, may be granted once by the clerk of court, ex parte and routinely, subject to the right of the opposing party to move to set aside the order so extending time. Motions for further extensions of time with

respect to matters extended by the clerk shall be presented to the court, or a commissioner thereof, for determination.

(c) Motions and motion practice. –

(1) Unless these rules or an order of the court establish time limitations other than those contained herein, all motions, except (A) motions for enlargement of time, (B) motions made during hearing or trial, (C) motions which may be heard ex parte, and (D) motions described in subdivisions (3) and (4) below, together with supporting affidavits, if any, shall be served at least 10 days before the hearing on the motion. Except as otherwise provided in Rule 59(c), or unless the court by order permits service at some other time, a party affected by the motion may serve a response, together with affidavits, if any, at least three days prior to the hearing on the motion or within 20 days after service of the motion, whichever is earlier. Unless the court by order permits service at some other time, the moving party may serve a reply, if any, at least one day prior to the hearing on the motion or within 15 days after service of the response, whichever is earlier. Unless the court otherwise orders, any party may serve supplemental memoranda or rebuttal affidavits at least one day prior to the hearing on the motion.

(2) A request for hearing may be served by the moving party or any party affected by the motion within 20 days after service of the motion. The court may, in its discretion, determine such motions without a hearing. Any motion, under Rules 50(b) and (c)(2), 52(b), 59 and 60(b), not determined within 90 days after filing shall be deemed denied unless, within that period, the determination is continued by order of the court, which continuation may not exceed 60 days, at which time, if the motion has not been determined, it shall be deemed denied.

(3) A party moving for a protective order under Rule 26(c) or to compel discovery under Rule 37(a) may request an immediate hearing thereon. An immediate hearing may be held if the court finds that a delay in determining the motion will cause undue prejudice, expense or inconvenience.

(4) A motion relating to the exclusion of evidence may be filed at any time. Absent a request for hearing by a moving party or any party affected by the motion, the court may, in its discretion, determine the motion without a hearing.

(d) Additional time after service by mail. - Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party, and the notice or paper is served upon the party by mail or by delivery to the clerk for service, three days shall be added to the prescribed period, provided however, this rule shall not apply to service of process by registered or certified mail under Rule 4(l)(2).

(Amended July 13, 1964, effective October 11, 1964; amended December 21, 1965, effective March 21, 1996; amended July 12, 1971, effective November 18, 1971; amended March 24, 1987, effective June 16, 1987; amended December 20, 1991, effective March 24, 1992; amended October 22, 1992, effective January 12, 1993; amended November 30, 1992, effective February 25, 1993; amended December 19, 2006, effective March 1, 2007; amended January 18, 2007, effective March 1, 2007; amended July 14, 2014, effective October 1, 2014.)

III. PLEADINGS AND MOTIONS [top]

Rule 7. Pleadings allowed; form of motions.

(a) Pleadings. - There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) Motions and other papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall have a title which identifies the party serving the paper and briefly describes its contents, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. All motions filed pursuant to Rules 12 and 56 shall, and all other motions may, contain or be accompanied by a memorandum of points and authority.

(2) The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11.

(c) Demurrers, pleas, etc. abolished. - Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

(Amended July 13, 1964, effective October 11, 1964.)

Rule 8. General rules of pleading.

(a) Claims for relief. - A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to

support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) Defenses; form of denials. - A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he pleader may make denials as specific denials of designated averments or paragraphs or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative defenses. - In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of failure to deny. - Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to be concise and direct; consistency. -

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or

defenses as the party has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of pleadings. - All pleadings shall be so construed as to do substantial justice.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 9. Pleading special matters.

(a) Capacity. - It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud; mistake; condition of the mind. - In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions precedent. - In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official document or act. - In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. - In pleading a judgment or decision of a court, judicial or quasi judicial tribunal, or of a board or officer rendered within the United States or within a territory or insular possession subject to the dominion of the United States, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and place. - For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special damage. - When items of special damage are claimed, they shall be specifically stated.

(h) Municipal ordinance. - In pleading a municipal ordinance or a right derived therefrom, it shall be sufficient to refer to such ordinance by its title or other applicable designation and the name of the

municipality which adopted the same.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 10. Form of pleadings.

(a) Caption; names of parties. - Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) Paragraphs; separate statements. - All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by reference; exhibits. - Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 11. Signing of pleadings, motions, and other papers; representations to court; sanctions.

(a) Signature. - Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address, telephone number, and attorney number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to court. - By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the

extension, modification, or reversal of existing law or the establishment of new law;

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. - If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How initiated.

(A) By motion. - A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On court's initiative. - On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of sanction; limitations. - A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a

represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. - When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to discovery. - Subdivisions (a) through (c) of this rule do not apply to discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

(Amended January 29, 1987, effective April 21, 1987; amended December 20, 1991, effective March 24, 1992; amended August 31, 1994, effective November 29, 1994; amended November 15, 2007,effective July 1, 2008.)

Rule 12. Defenses and objections; when and how presented; by pleading or motion; motion for judgment on pleadings.

(a) When presented. - A defendant shall serve an answer within 20 days after the service of the summons and complaint upon that defendant, or if service be made without the state, or by publication, within 30 days after such service or within 30 days after the last day of publication; or, if service of the summons has been timely waived on request under Rule 4(o), within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside the United States. A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How presented. - Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4)

insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for judgment on the pleadings. - After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary hearings. - The defenses specifically enumerated (1) - (7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for more definite statement. - If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to strike. - Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of defenses in motion. - A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) Waiver or preservation of certain defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

(Amended October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992; amended January 11, 1995, effective April 11, 1995.)

Rule 13. Counterclaim and cross-claim.

(a) Compulsory counterclaims. - A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction, but the pleader need not state the claim if, (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this rule.

(b) Permissive counterclaims. - A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the

opposing party's claim.

(c) Counterclaim exceeding opposing claim. - A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim against the state. - These rules shall not be construed to enlarge beyond the limits fixed by law the right to assert counterclaims or claim credits against the state or against a county, municipal corporation or other political subdivision, public corporation, or any officer or agency thereof.

(e) Counterclaim maturing or acquired after pleading. - A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted counterclaim. - When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(g) Cross-claim against co-party. - A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of additional parties. - Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(i) Separate trials; separate judgments. - If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

(Amended October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992.)

Rule 14. Third-party practice.

(a) When defendant may bring in third-party. - At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third party-plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not

later than 10 days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) When plaintiff may bring in third-party. - When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third-party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(Amended July 13, 1964, effective October 11, 1964; amended October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992.)

Rule 15. Amended and supplemental pleadings.

(a) Amendments. - A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served, or if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to conform to the evidence. - When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be

necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation back of amendments. - An amendment of a pleading relates back to the date of the original pleading when:

(1) Relation back is permitted by the law that provides the statute of limitations applicable to the action; or

(2) The claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading; or

(3) The amendment changes the party or the naming of the party against whom a claim is asserted if the forgoing provision (2) is satisfied and, within 120 days after the filing of the complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

(d) Supplemental pleadings. - Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

(Amended July 13, 1964, effective October 11, 1964; amended October 22, 1992, effective January 12, 1993.)

Rule 16. Pretrial conferences; scheduling; management.

(a) Pretrial conferences; objectives. - In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as:

(1) Expediting the disposition of the action;

(2) Establishing early and continuing control so that the case will

not be protracted because of lack of management;

(3) Discouraging wasteful pretrial activities;

(4) Improving the quality of the trial through more thorough preparation; and

(5) Facilitating the settlement of the case.

(b) Scheduling and planning. - The judge, or a court commissioner when authorized by the Uniform Rules for the District Courts, may, after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail or other suitable means, enter a scheduling order that limits the time:

(1) To join other parties and to amend the pleadings;

(2) To file and hear motions; and

(3) To complete discovery.

The scheduling order also may include:

(4) Modifications of the times for disclosures under Rules 26(a) and 26(e)(1) and of the extent of discovery to be permitted;

(5) Provisions for disclosure or discovery of electronically stored information;

(6) Any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after production;

(7) The date or dates for conferences before trial, a final pretrial conference, and trial; and

(8) Any other matters appropriate in the circumstances of the case.

A schedule shall not be modified except by leave of the judge or a court commissioner upon a showing of good cause.

(c) Subjects to be discussed at pretrial conferences. - The participants at any conference under this rule may consider and take action with respect to:

(1) The formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) The avoidance of unnecessary proof and of cumulative evidence, and limitations or restrictions on the use of testimony under Rule 702 of the Wyoming Rules of Evidence;

(5) The appropriateness and timing of summary adjudication under Rule 56;

(6) The control and scheduling of discovery, including orders affecting discovery pursuant to Rule 26 and Rules 29 through 37;

(7) The identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(8) The advisability of referring matters to a court commissioner or master;

(9) Settlement and the use of special procedures to assist in resolving the dispute under Rule 40(b) or other alternative dispute resolution procedures;

(10) The form and substance of the pretrial order;

(11) The disposition of pending motions;

(12) The need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(13) An order for a separate trial pursuant to Rule 42(b) with respect to a claim, counterclaim, cross-claim, or third-party claim, or with respect to any particular issue in the case;

(14) An order directing a party or parties to present evidence early in the trial with respect to a manageable issue that could, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c);

(15) An order establishing a reasonable limit on the time allowed for presenting evidence; and

(16) Such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. If appropriate, the court may require that a party or its representative be present or reasonably available by telephone in order to consider possible settlement of the dispute.

(d) Final pretrial conference. - Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties

and by any unrepresented parties.

(e) Pretrial orders. - After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

(f) Sanctions. - If a party or a party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), and (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

(Amended December 20, 1991, effective March 24, 1992; amended August 31, 1994, effective November 29, 1994; amended April 21, 2010, effective July 1, 2010.)

IV. PARTIES [top]

Rule 17. Parties plaintiff and defendant; capacity.

(a) Real party in interest. - Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Capacity to sue or be sued. - A married woman may sue or be sued in all respects as if she were single. A partnership or other unincorporated association may sue or be sued in its common name.

(c) Minors or incompetent persons. - Whenever a minor or an

incompetent person has a representative, such as a guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. If a minor or an incompetent person does not have a duly appointed representative, or such representative fails to act, the minor or the incompetent person may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for a minor or an incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or the incompetent person.

(d) Suing person by fictitious name. - When the identity of a defendant is unknown, such defendant may be designated in any pleading or proceeding by any name and description, and when the true name is discovered the pleading or proceeding may be amended accordingly; and the plaintiff in such case must state in the complaint that the plaintiff could not discover the true name, and the summons must contain the words, "real name unknown", and a copy thereof must be served personally upon the defendant.

(Amended October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992.)

Rule 18. Joinder of claims and remedies.

(a) Joinder of claims. - A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as the party has against an opposing party.

(b) Joinder of remedies; fraudulent conveyances. - Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money.

(Amended October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992.)

Rule 19. Joinder of persons needed for just adjudication.

(a) Persons to be joined if feasible. - A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if, (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may, (i) as a practical matter impair or impede the person's ability to protect that interest, or (ii) leave any of the persons already parties

subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

(b) Determination by court whenever joinder not feasible. - If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading reasons for nonjoinder. - A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(a)(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of class actions. - This rule is subject to the provisions of Rule 23.

(Amended October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992.)

Rule 20. Permissive joinder of parties.

(a) Permissive joinder. - All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate trials. - The court may make such orders as will prevent

a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

(Amended October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992.)

Rule 21. Misjoinder and nonjoinder of parties and claims.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 22. Interpleader.

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 23. Class actions.

(a) Prerequisites to a class action. - One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class actions maintainable. - An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of:

(A) Inconsistent or varying adjudications with respect to individual members of the class which would establish

incompatible standards of conduct for the party opposing the class, or

(B) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to

the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate, (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in conduct of actions. - In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or compromise. - A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

(Amended October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992.)

Rule 23.1. Derivative actions by shareholders.

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law. The complaint shall allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort.

The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

(Added October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992.)

Rule 23.2. Actions relating to unincorporated associations.

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

(Added October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992.)

Rule 24. Intervention; notification of claim of unconstitutionality.

(a) Intervention of right. - Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive intervention. - Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental official or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its

(c) Procedure. - A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to

intervene.

(d) Constitutionality of state statute. - When the constitutionality of a Wyoming statute is drawn in question in any action to which the state or an officer, agency, or employee thereof is not a party, the party raising the constitutional issue shall serve the attorney general with a copy of the pleading or motion raising the issue.

(Amended July 13, 1964, effective October 11, 1964; amended October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992.)

Rule 25. Substitution of parties.

(a) Death. -

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. - If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against the party's representative.

(c) Transfer of interest. - In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

(d) Public officers; death or separation from office.

(1) When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be

entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) A public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name; but the court may require the officer's name to be added.

(e) Substitution at any stage. - Substitution of parties under the provisions of this rule may be made, either before or after judgment, by the court then having jurisdiction.

(Amended October 11, 1963, effective January 9, 1964; amended July 13, 1964, effective October 11, 1964; amended December 20, 1991, effective March 24, 1992.)

V. DEPOSITIONS AND DISCOVERY

[top]

Rule 26. General provisions governing discovery; duty of disclosure.

(a) Required disclosures; methods to discover additional matter. -

(1) Initial disclosures. Except in categories of proceedings specified in Rule 26 (a)(1)(E), or to the extent otherwise stipulated in writing or directed by order, a party must, without awaiting a discovery request, provide to other parties:

(A) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

(B) A copy of, or a description by category and location of, all documents, electronically stored information, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment;

(C) A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(E) The following categories of proceedings are exempt from initial disclosure under Rules 26 (a) (1) (A), (B), (C) and (D):

(i) cases arising under Title 14 of the Wyoming Statutes;

(ii) cases in which the court sits in probate;

(iii) divorce actions [for which the required initial disclosures are set forth in Rules 26 (a)(1.1) (A), (B), (C), (D), (E), (F), (G) and (H)] , and custody and support actions where the parties have never been married [for which the required initial disclosures are set forth in Rule 26 (a)(1.2) (A)];

(iv) a forfeiture action in rem arising from a Wyoming statute;

(v) a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence;

(vi) an action brought without counsel by a person in custody of the State, county or other political subdivision of the State;

(vii) an action to enforce or quash an administrative summons or subpoena; and

(viii) a proceeding ancillary to proceedings in the court of original jurisdiction or other courts.

Unless a different time is set by stipulation in writing or by court order, these disclosures must be made within 30 days after a party's answer is required to be served under Rule 12(a) or as that period may be altered as described in Rule 12(a) by the party's service of a dispositive motion as described in Rule 12(b). Any party later served or otherwise joined must make these disclosures within 30 days after being served or joined unless a different time is set by stipulation in writing or by court order. A party must make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(1.1) Initial disclosures in divorce actions. In divorce actions the following initial disclosures are required in pre-decree proceedings, and in post-decree proceedings to the extent that they pertain to a particular claim or defense:

(A) A schedule of non-financial assets, owned by the party individually or jointly, which schedule shall include: (i) the purchase price and the date of acquisition; (ii) the present market value; (iii) any indebtedness relating to such asset; (iv) the state of record ownership; (v) whether purchased from marital_assets jointly or obtained by gift or inheritance; and (vi) whether acknowledged to be a marital asset or asserted to be a non-marital asset and, if asserted to be a non-marital asset, an explanation of the legal and factual basis for such assertion;

(B) A schedule of non-financial assets, owned by the party

individually or jointly, which schedule shall include: (i) the purchase price and the date of acquisition; (ii) the present market value; (iii) any indebtedness relating to such asset; (iv) the state of record ownership; (v) whether purchased from marital assets or obtained by gift or inheritance; and (vi) whether acknowledged to be a marital asset or asserted to be a non-marital asset and, if asserted to be a non-marital asset, an explanation of the legal and factual basis for such assertion;

(C) A schedule of all debts owed individually or jointly, identifying: (i) the date any obligation was incurred; (ii) the spouse in whose name the debt was incurred; (iii) the present amount of all debts and the monthly payments; (iv) the use to which the money was put which caused the debt to arise; (v) identification of any asset which serves as security for such debt; and (vi) an acknowledgement of whether each debt is a marital or non-marital debt and, if asserted to be a non-marital debt, an explanation of the legal and factual basis for such assertion;

(D) As to safe deposit boxes: (i) the name and address of the institution where the box is located; (ii) the box number; (iii) the name and address of the individual(s) who have access to the box; (iv) an inventory of the contents; and (v) the value of the assets located therein;

(E) Employment: (i) the name and address of the employer; (ii) gross monthly wage; (iii) payroll deduction(s), specifically identifying the type and amount; (iv) the amount of other benefits including transportation, employer contributions to health care, and employer contributions to retirement accounts; and (v) outstanding bonuses;

(F) Other income: list all sources of other income as defined by Wyo.Stat.Ann. § 20-6-202(a)(ix), including the name and address of the source and the amount and date received;

(G) As to retirement accounts or benefits: (i) the name and address of the institution holding such account or benefits; (ii) the present value if readily ascertainable; (iii) the initial date of any account; (iv) the expected payment upon retirement and the specific retirement date; and (v) the value of the account at the date of the marriage if the account existed prior to marriage;

(H) A party seeking custody or a change in custody shall set forth the facts believed to support the claim of superior entitlement to custody. In addition, as to a change of custody the party shall set forth any facts comprising a substantial change in circumstances and disclose any supporting documentation.

(1.2) Initial disclosures in custody and support actions where the parties have never been married. In custody and support actions where the parties have never been married, the following initial disclosures are required in original proceedings and in modification proceedings to the extent that they pertain to a particular claim or defense:

(A) A party seeking custody or a change in custody shall set forth the facts believed to support the claim of superior entitlement to custody. In addition, as to a change of custody, the party shall set forth any facts comprising a substantial change in circumstances and disclose any supporting documentation.

These disclosures in divorce actions and actions for custody and support where the parties have never been married must be made within 30 days after the defendant is served unless a different time is set by stipulation in writing or by court order. A party must make its disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of expert testimony.

(A) In addition to the disclosures required by paragraph (1) or (1.1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Wyoming Rules of Evidence.

(B) (i) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness or disclosure signed by counsel for the party. The report or disclosure shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(ii) Unless otherwise stipulated by the parties or ordered by the court, if the witness is expected to provide opinions but no report or disclosure under (B)(i) is required, a party must

provide a summary of the facts or opinions to which the witness is expected to testify and disclose the subject matter on which the witness is expected to present evidence under Rules 702, 703 or 705 of the Wyoming Rules of Evidence.

(C) These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (2)(B), within 30 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under subdivision (e)(1).

(3) Pretrial Disclosures. - In addition to the disclosures required by Rule 26 (a)(1), (1.1), and (2), a party must provide to other parties and promptly file with the court the following information regarding the evidence that it may present at trial other than solely for impeachment:

(A) The name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(B) The designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise directed by the court, these disclosures must be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and promptly file a list disclosing (i) any objections to the use under Rule 32 (a) of a deposition designated by another party under Rule 26(a)(3)(B), and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under Rule 26(a)(3)(C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Wyoming Rules of Evidence, are waived unless excused by the court for good cause.

(4) Form of disclosures. - Unless the court orders otherwise, all disclosures under Rules 26(a)(1), (1.1), (2), or (3) must be made in writing, signed, and served.

(5) Methods to discover additional matter. - Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property under Rule 34 or 45(a)(1)(C), for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery scope and limits. - Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. - Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of the party seeking discovery or to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26 (b)(2)(A), (B), and *(C).

(2) Limitations.

(A) By order, the court may alter the limits in these rules on the number of depositions and interrogatories or the length of depositions under Rule 30. By order, the court may also limit the number of requests under Rule 36.

(B) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C) The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into

account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c).

(3) Trial Preparation: Materials. - Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is:

(A) A written statement signed or otherwise adopted or approved by the person making it; or

(B) A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts. -

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report from the expert is required under subdivision (a)(2)(B), the deposition shall not be conducted until after the report is provided.

(B) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in

anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result:

(i) The court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subdivision; and

(ii) With respect to discovery obtained under subdivision (b)(4)(B) of this rule, the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of Privilege or Protection of Trial Preparation Materials. -

(A) Information Withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(B) Information Produced. If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

(c) Protective Orders. - Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the jurisdiction where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance,

embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the disclosure or discovery not be had;

(2) That the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) That certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the court;

(6) That a deposition, after being sealed, be opened only by order of the court;

(7) That a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way;

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

Pending resolution of any motion under Rule 26(c) or 30(d), neither the objecting party, witness, nor any attorney is required to appear at a deposition to which the motion is directed until the motion is ruled upon. The filing of a motion under either of these rules shall stay the disclosure or discovery at which the motion is directed pending further order of the court. Any motion for relief under this subdivision directed to a deposition must be filed and served as soon as practicable after receipt of the notice of deposition, but in no event less than three days prior to the scheduled deposition. Counsel seeking such relief shall request the court for a ruling or a hearing thereon promptly after the filing of such motion, so that disclosure or discovery shall not be delayed in the event such motion is not well taken.

(d) Sequence and timing of discovery. - Except in categories of proceedings exempted from initial disclosure under Rule 26(a)(1)(E), or when authorized under these rules or by order or agreement of the parties, a party may not seek discovery from any source before the period for initial disclosures has expired and that party has provided the disclosures required under Rule 26(a)(1), unless otherwise

ordered by the court. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, does not operate to delay any other party's discovery.

(e) Supplementation of disclosures and responses. - A party who has made a disclosure under subdivision (a) or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired, if ordered by the court or in the following circumstances:

(1) A party is under a duty to supplement, at appropriate intervals, its disclosures under subdivision (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under subdivision (a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert, and

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(f) Discovery conference. - At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any expansion or further limitation proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and each party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the court shall enter an order

tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.

(g) Signing of disclosures, discovery requests, responses, and objections.

(1) Every disclosure made pursuant to Rule 26(a)(1) or (1.1) shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(2) Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is

made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

(Amended July 13, 1964, effective October 11, 1964; amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981; amended December 20, 1991, effective March 24, 1992; amended and effective April 28, 1992; amended August 31, 1994, effective November 29, 1994; amended December 17, 2002, effective January 1, 2003; amended January 8, 2008, effective July 1, 2008; amended April 21, 2010, effective July 1, 2010; amended April 22, 2014, effective July 1, 2014; amended July 14, 2014, effective October 1, 2014.)

Rule 27. Depositions before action or pending appeal.

(a) Before action. -

(1) Petition. - A person who desires to perpetuate testimony regarding any matter that may be cognizable in any court of the state may file a verified petition in the district court of the district of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: (1) that the petitioner expects to be a party to an action cognizable in a court of the state but is presently unable to bring it or cause it to be brought, (2) the subject matter of the expected action and the petitioner's interest therein, (3) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it, (4) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and (5) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony. (2) Notice and Service. - The petitioner

(2) Notice and Service. - The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the state in the manner provided in Rule 4(d) for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4(d), an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine

the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17(c) apply.

(3) Order and Examination. - If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) Use of Deposition. If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a court of the state, in accordance with the provisions of Rule 32(a).

(b) Pending appeal. If an appeal has been taken from a judgment of a court or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court. In such case the party who desires to perpetuate the testimony may make a motion in the court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the court. The motion shall show: (1) the names and addresses of the persons to be examined and the substance of the testimony which the party expects to elicit from each; and (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in a court.

(c) Perpetuation by action. - This rule does not limit the power of a court to entertain an action to perpetuate testimony.

(Amended July 12, 1971, effective November 18, 1971; amended December 20, 1991, effective March 24, 1992; amended June 30, 2000, effective July 1, 2000.)

Rule 28. Persons before whom depositions may be taken.

(a) Within the United States. - Within the United States or within a

territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of this state or of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony. The term "officer" as used in Rules 30, 31 and 32 includes a person appointed by the court or designated by the parties under Rule 29.

(b) In foreign countries. - Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or (3) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (4) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in [here name the country]". When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

(c) Disqualification for interest. - No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

(Amended July 13, 1964, effective October 11, 1964; amended November 6, 1980, effective January 28, 1981; amended December 20, 1991, effective March 24, 1992; amended August 31, 1994, effective November 29, 1994.)

Rule 29. Stipulations regarding discovery procedure.

Unless the court orders otherwise, the parties may by written stipulation:

(1) Provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken

may be used like other depositions; and

(2) Modify other procedures governing or limitations placed upon discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court.

(Amended October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992; amended August 31, 1994, effective November 29, 1994.) Rule 30. Depositions upon oral examination.

Rule 30. Depositions upon oral examination.

(a) When depositions may be taken; when leave required. -

(1) A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) A proposed deposition would result in more than 10 depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) The person to be examined already has been deposed in the case; or

(C) A party seeks to take a deposition before the time specified in Rule 26(d) unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave the State of Wyoming and be unavailable for examination in this State unless deposed before that time.

(b) Notice of examination: general requirements; method of recording; production of documents and things; deposition of organization; deposition by telephone.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to, or included in, the notice.

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means.

(3) With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes: (A) the officer's name and business address; (B) the date, time, and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon

motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule and Rules 28(a), 37(a)(1), and 37(b)(1), a deposition taken by telephone is deemed to be taken at the place where the deponent is to answer questions.

(c) Examination and cross-examination; record of examination; oath; objections. - Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Wyoming Rules of Evidence except Rules 103 and 615. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subdivision (b)(2) of this rule. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, or to the evidence presented, or to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Schedule and duration; motion to terminate or limit examination. -

(1) Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion under Rule 30(d)(4).

(2) Unless otherwise authorized by the court or stipulated by the parties, a deposition is limited to one day of seven hours. The court must allow additional time consistent with Rule 26(b)(2) if needed for a fair examination of the deponent or if the deponent or another person, or other circumstance, impedes or delays the examination.

(3) If the court finds that any impediment, delay, or other conduct has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(4) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the jurisdiction where

the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to make a motion for an order. The provisions of Rule 37 (a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Review by witness; changes; signing. - If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(f) Certification and delivery by officer; exhibits; copies.

(1) The officer must certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate must be in writing and accompany the record of the deposition. Unless otherwise ordered by the court, the officer shall then securely seal the deposition in an envelope or package indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and must promptly send it to the attorney who arranged for the transcript or recording, who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

Documents and things produced for inspection during the examination of the witness must, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to, and returned with, the deposition to the court, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties,

the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) Failure to attend or to serve subpoena; expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(Amended October 21, 1970, effective February 11, 1971; amended July 12, 1971, effective November 18, 1971; amended January 1, 1978 ; amended November 6, 1980, effective January 28, 1981; amended July 20, 1984, effective October 18, 1984; amended December 20, 1991, effective March 24, 1992; amended and effective April 28, 1992; amended October 22, 1992, effective January 12, 1993; amended August 31, 1994, effective November 29, 1994; amended December 17, 2002, effective January 1, 2003; amended January 8, 2008, effective July 1, 2008.)

Rule 31. Depositions upon written questions.

(a) Serving questions; notice; limitations.

(1) A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(1)(B), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) A proposed deposition would result in more than ten depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) The person to be examined already has been deposed in the case; or

(C) The plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e), except that such leave is not required (i) if a defendant has served a notice of taking deposition or otherwise sought discovery; or (ii) if special notice is given as provided in Rule 30(b)(3), in which event all provisions of Rule 30(b)(3) shall be applicable.

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating: (A) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; and (B) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

(4) Within 14 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within seven days after being served with cross questions, a party may serve redirect questions upon all other parties. Within seven days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to take responses, prepare record, and deliver deposition; notice of delivery. - A copy of the notice and copies of all questions served shall be delivered by the party initiating the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and deliver the deposition to the party initiating the deposition or as the parties otherwise agree, attaching thereto the copy of the notice and the questions received by the officer, and notifying all parties of the delivery.

(c) Custody of deposition. - The party to whom the original deposition is delivered or any person having possession of an original deposition shall retain it and shall deliver it upon request to any party for filing with the court or for use at trial or hearing.

(Amended October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992; amended and effective April 28, 1992; amended August 31, 1994, effective November 29, 1994.)

Rule 32. Use of depositions in court proceedings.

(a) Use of depositions. - At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Wyoming Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose;

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness is absent from the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used;

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or of any state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Wyoming Rules of Evidence.

(b) Objections to admissibility. - Subject to the provisions of Rule 28(b)

and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) [Abrogated].

(d) Effect of errors and irregularities in depositions.

(1) As to Notice. - All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Officer. - Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Deposition.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

(4) As to Completion and Return of Deposition. - Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(Amended October 21, 1970, effective February 11, 1971; amended August 26, 1977, effective January 1, 1978; amended November 6, 1980, effective January 28, 1981; amended December 20, 1991, effective March 24, 1992.)

Rule 33. Interrogatories to parties.

(a) Availability. - Without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 30 in number including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b)(2).

(b) Answers and Objections. -

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(c) Scope; use at trial. - Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(d) Option to Produce Business Records. - Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof and the burden of deriving or ascertaining the answer is substantially the same for the party serving

the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answers may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(Amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981; amended December 20, 1991, effective March 24, 1992; amended and effective April 28, 1992; amended August 31, 1994, effective November 29, 1994; amended January 8, 2008, effective July 1, 2008.)

Rule 34. Production of documents, electronically stored information, and things and entry upon land for inspection and other purposes.

(a) Scope. - Any party may serve on any other party a request:

(1) To produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy, test, or sample any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained translated, if necessary, by the respondent into reasonably usable form), or to inspect, copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or

(2) To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. - The request shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced. Without leave of court or written stipulation, a request may not be served before the time specified in Rule 26(d).

The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule

29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms for producing electronically stored information, stating the reasons for the objection. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. If objection is made to the requested form or forms for producing electronically stored information - or if no form was specified in the request - the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

Unless the parties otherwise agree, or the court otherwise orders:

(i) a party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request;

(ii) if a request does not specify the form or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable; and

(iii) a party need not produce the same electronically stored information in more than one form.

(c) Persons Not Parties. - A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

(Amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981; amended December 20, 1991, effective March 24, 1992; amended October 22, 1992, effective January 12, 1993; amended August 31, 1994, effective November 29, 1994; amended January 8, 2008, effective July 1, 2008.)

Rule 35. Physical and mental examination of persons.

(a) Order for examination. - When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause

shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of examiner.

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of a detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that the party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the court may exclude the examiner's testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other rule.

(Amended October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992.)

Rule 36. Requests for admission.

(a) Request for admission. - A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after

commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon that defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of admission. - Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of

the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

(Amended October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992.)

Rule 37. Failure to make disclosures or cooperate in discovery; sanctions.

(a) Motion for order compelling discovery. - A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

(1) Appropriate Court. - An application for an order to a party shall be made to the court in which the action is pending. An application for an order to a person who is not a party shall be made to the court where the discovery is being, or is to be, taken.

(2) Motion. -

(A) If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

(B) If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) Evasive or Incomplete Disclosure, Answer or Response. - For purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

(4) Expenses and Sanctions. -

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or

deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to comply with order.

(1) Sanctions by Court in Jurisdiction Where Deposition Is Taken. - If a deponent fails to be sworn or to answer a question after being directed to do so by a court in the jurisdiction in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by Court in Which Action Is Pending. - If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in subparagraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Failure to disclose; false or misleading disclosure; refusal to admit. -

(1) A party that without substantial justification fails to disclose information as required by Rule 26(a) or 26(e)(1) or to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees caused by the failure, these sanctions may include any of the actions authorized under Rule 37(b)(2)(A), (B), and (C) and may include informing the jury of the failure to make the disclosure.

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that:

(A) The request was held objectionable pursuant to Rule 36(a);

(B) The admission sought was of no substantial importance;

(C) The party failing to admit had reasonable ground to believe

that the party might prevail on the matter; or

(D) There was other good reason for the failure to admit.

(d) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails: (1) to appear before the officer who is to take the deposition, after being served with a proper notice; (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories; or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (A), (B) and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has a pending motion for a protective order as provided by Rule 26(c).

(e) Failure to participate in the framing of a discovery plan. - If a party or a party's attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after affording an opportunity to be heard, require such party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

(f) Electronically stored information. - Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

(Amended November 7, 1960, effective March 21, 1961; amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981; amended December 20, 1991, effective March 24, 1992; amended August 31, 1994, effective November 29, 1994; amended December 17, 2002, effective January 1, 2003; amended January 8, 2008, effective July 1, 2008.)

VI. TRIALS [top]

Rule 38. Jury trial of right.

(a) Right preserved.- Issues of law must be tried by the court, unless referred as hereinafter provided; and issues of fact arising in actions for the recovery of money only, or specific real or personal property, shall be tried by a jury unless a jury trial be waived, or a reference be ordered. All other issues of fact shall be tried by the court, subject to its power to order any issue to be tried by a jury, or referred.

(b) Demand.

(1) By Whom; Filing.-- Any party may demand a trial by jury of any issue triable of right by a jury by (A) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after service of the last pleading directed to such issue, and (B) filing the demand as required by Rule 5(d). Such demand may be indorsed upon a pleading of the party.

(2) Jury Fees.

A. All demands for trial by jury in district courts shall be accompanied by a deposit of $50.00, if a six person jury is demanded, or $150.00, if a twelve person jury is demanded. The jury fees in cases where jury trials are demanded shall be paid to the clerk of the court, and paid by the clerk into the county treasury at the close of each month, and the clerk shall tax costs in each such case, and in all other cases in which a jury trial is had, a jury fee of $50.00, if a six person jury trial is held, or $150.00, if a twelve person jury trial is held, to be recovered by the unsuccessful party, as other costs, and in case the party making such deposit is successful, that party shall recover such deposit from the opposite party, as part of the costs in the case.

B. All demands for trial by jury in circuit courts shall be accompanied by a deposit of $50.00. The jury fees in cases where jury trials are demanded shall be paid to the clerk of the court, and paid by the clerk to the State of Wyoming Treasurer at the close of each month, and the clerk shall tax as costs in each such case, and in all other cases in which a jury trial is had, a jury fee of $50.00, to be recovered of the unsuccessful party, as other costs, and in case the party making such deposit is successful, that party shall recover such deposit from the opposite party, as part of the costs in the case.

(c) Specification of issues. - In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any

other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. - The failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

(Amended December 20, 1991, effective March 24, 1992; amended August 31, 1994, effective November 29, 1994; amended and effective July 20, 2000; amended December 17, 2002, corrected June 23, 2003, effective July 1, 2003.)

Rule 39. Trial by jury or by the court.

(a) By jury. - When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury, or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist, or (3) when a party to the issue fails to appear at the trial, the parties appearing consent to trial by the court sitting without a jury.

(b) By the court. - Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) Advisory jury and trial by consent. - In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury, or, except in actions against the State of Wyoming when a statute provides for trial without a jury, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 39.1. Jury trial; jury note taking; juror notebooks.

(a) Juror note taking. - At the beginning of civil trials, the court shall instruct the jurors that they will be permitted to take notes during the trial if they wish to do so. The court shall provide each juror with appropriate materials for this purpose and shall give jurors appropriate instructions about procedures for note taking and restrictions on jurors' use of their notes. The jurors may take their notes with them for use during court recesses and deliberations, but jurors shall not be permitted to take their notes out of the courthouse.

The bailiff or clerk shall collect all jurors' notes at the end of each day of trial and shall return jurors' notes when trial resumes. After the trial has concluded and the jurors have completed their deliberations, the bailiff or clerk shall collect all jurors' notes before the jurors are excused. The bailiff or clerk shall promptly destroy these notes.

(b) Juror notebooks. - The court may provide all jurors with identical "Juror Notebooks" to assist the jurors in organizing materials the jurors receive at trial. Typical contents of a juror notebook include blank paper for note taking, stipulations of the parties, lists or seating charts identifying counsel and their respective clients, general instructions for jurors, and pertinent case specific instructions. Notebooks may also include copies of important exhibits (which may be highlighted), glossaries of key technical terms, pictures of witnesses, and a copy of the court's juror handbook, if one is available. During the trial, the materials in the juror notebooks may be supplemented with additional materials as they become relevant and are approved by the court for inclusion. Copies of any additional jury instructions given to jurors during trial or before closing arguments should also be included in juror notebooks before the jurors retire to deliberate. The trial court should generally resolve with counsel at a pretrial conference whether juror notebooks will be used and, if so, what contents will be included. The trial court may require that counsel meet in advance of the pretrial conference to confer and attempt to agree on the contents of the notebooks. The jurors may take their notebooks with them for use during court recesses and deliberations, but jurors shall not be permitted to take their notebooks out of the courthouse. The bailiff or clerk shall collect all jurors' notebooks at the end of each day of trial and shall return jurors' notebooks when trial resumes. After the trial has concluded and the jurors have competed their deliberations, the bailiff or clerk shall collect all jurors' notebooks before the jurors are excused. The bailiff or clerk shall promptly destroy the contents of the notebooks, except that one copy of the contents of the juror notebooks, excluding jurors' personal notes and annotations, shall be preserved and retained as part of the official trial record.

(Added October 26, 2000, effective March 1, 2001.)

Rule 39.2. Juror questionnaires.

In appropriate cases, the court may use case-specific juror questionnaires to gather information from prospective jurors in advance of jury selection. When case-specific questionnaires will be used, the court should require counsel to confer and attempt to reach agreement on the questions that will be included in the questionnaires. The court shall rule on inclusion or exclusion of any questions the court deems improper. The court shall note on the record the basis on which it overruled any objections to inclusion or exclusion of particular questions. The court shall confer with counsel concerning the timing and procedures to be used for disseminating

questionnaires and collecting completed questionnaires from prospective jurors, as well as to permit counsel adequate time and opportunity to review the completed questionnaires thoroughly before jury selection will begin. In its discretion, the court may require that the costs of copying, disseminating and collecting the questionnaires be borne (1) by both parties, (2) by the party requesting use of the questionnaires, or (3) by the court. In the alternative, these expenses may be assessed against the losing party as part of the costs.

(Added October 26, 2000, effective March 1, 2001.)

Rule 39.3. Copies of instructions for jurors.

The trial court shall provide each juror with the juror's own copy of all written instructions that the court reads to the jury before, during or at the conclusion of the trial. The court may include the copies of the instructions in the juror notebook provided to each juror, if juror notebooks will be used at trial. Jurors shall be permitted to take their copies of the instructions with them for reference during recesses and during their deliberations. Jurors shall not be permitted, however, to take their copies of the jury instructions out of the courthouse.

(Added October 26, 2000, effective March 1, 2001.)

Rule 39.4. Juror questions for witnesses.

At the beginning of civil trials, the court shall instruct jurors that they will be permitted to submit written questions for witnesses if they have questions about the witnesses' testimony that have not been answered after counsel for all parties have finished examining the witnesses. The court shall also instruct the jurors that some questions they submit may not be asked, as some jurors' questions may be legally improper or otherwise inappropriate. The court shall provide jurors with paper and a pen or pencil with which they may write down questions for submission to the court.

Before each witness is excused, the court shall determine whether any jurors have questions for that witness. The court shall review jurors' written questions with counsel, out of the hearing of the jury, making the question part of the record. The court shall permit counsel to interpose objections, including objections based on litigation strategy or stipulation of the parties. The court shall rule on any objections, noting the basis of the ruling on the record. If the court determines that the question is not improper or unfairly prejudicial, the court shall read the question to the witness or permit counsel to read the question to the witness. The question may be modified as deemed appropriate by the court in consultation with counsel. After the witness responds to the question, the court shall permit counsel for both sides to ask follow-up questions if such follow-up questions appear to be necessary or appropriate.

The court shall permit counsel to present additional rebuttal evidence at trial if necessary to prevent unfair prejudice attributable to

testimony that results from questions that jurors submit.

(Added October 26, 2000, effective March 1, 2001.)

Rule 40. Assignment for trial or alternative dispute resolution.

(a) Trial calendar. - The court shall place actions upon the trial calendar (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the court deems expedient. Precedence shall be given to actions entitled thereto by statute.

(b) Limited assignment for alternative dispute resolution. - The court may, or at the request of any party shall, assign the case to another active judge or to a retired judge, retired justice, or other qualified person on limited assignment for the purpose of invoking nonbinding alternative dispute resolution methods, including settlement conference and mediation. By agreement, the parties may select the person to conduct the settlement conference or to serve as the mediator. If the parties are unable to agree, they may advise the court of their recommendations, and the court shall then appoint a person to conduct the settlement conference or to serve as the mediator. A settlement conference or mediation may be conducted in accordance with procedures prescribed by the person conducting the settlement conference or mediation. A mediation also may be conducted in accordance with the following recommended rules of procedure:

(1) Prior to the session, the mediator may require confidential ex parte written submissions from each party. Those submissions should include each party's honest assessment of the strengths and weaknesses of the case with regard to liability, damages, and other relief, a history of all settlement offers and counteroffers in the case, an honest statement from plaintiff's counsel of the minimum settlement authority that plaintiff's counsel has or is able to obtain, and an honest statement from defense counsel of the maximum settlement authority that defense counsel has or is able to obtain.

(2) Prior to the session, a commitment must be obtained from the parties that their representatives at the session have full and complete authority to represent them and to settle the case. If any party's representative lacks settlement authority, the session should not proceed. The mediator may also require the presence at the session of the parties themselves.

(3) The mediator may begin the session by stating the objective, which is to seek a workable resolution that is in the best interests of all involved and that is fair and acceptable to the parties. The parties should be infomred of statutory provisions governing mediation, including provisions relating to confidentiality, privilege, and immunity.

(4) Each party or attorney may then make an opening statement

stating the party's case in its best light, the issues involved, supporting law, prospects for success, and the party's evaluation of the case.

(5) Each party or attorney may then respond to the other's presentation. From time to time, the parties and their attorneys may confer privately. The mediator may adjourn the session for short periods of time. After a full, open discussion, the mediator may summarize, identify the strong and weak points in each case, point out the risks of trial to each party, suggest a probable verdict or judgment range, and suggest a fair settlement of the case. This may be done in the presence of all parties or separately. If settlement results, it should promptly be reduced to a writing executed by the settling parties. The mediator may suggest to the parties such reasonable additions or requirements as may be appropriate or beneficial in a particular case.

(c) Fees and costs. - For those cases filed in court and assigned for settlement conference or mediation, compensation for services shall be arranged by agreement between the parties and the person conducting the settlement conference or serving as the mediator, and that person's statement shall be paid within 30 days of receipt by the parties.

(d) Other forms of alternative dispute resolution. - Nothing in this rule is intended to preclude the parties from agreeing to submit their dispute to other forms of alternative dispute resolution, including arbitration and summary jury trial.

(e) Retained jurisdiction. - Assignment of a case to alternative dispute resolution shall not suspend any deadlines or cancel any hearings or trial. The court retains jurisdiction for any and all purposes while the case is assigned to any alternative dispute resolution.

(Amended August 9, 1991, effective October 29, 1991; amended January 11, 1995, effective April 11, 1995; amended December 20, 1991, effective March 24, 1992; amended December 17, 2002, effective January 1, 2003; amended December 19, 2006, effective March 1, 2007; amended January 8, 2008, effective July 1, 2008.)

Rule 40.1. Transfer of trial and change of judge.

(a) Transfer of trial. -

(1) The court upon motion of any party made within 15 days after the last pleading is filed shall transfer the action to another county for trial if the court is satisfied that there exists within the county where the action is pending such prejudice against the party or the party's cause that the party cannot obtain a fair and impartial trial, or that the convenience of witnesses would be promoted thereby. All parties shall have an opportunity to be heard at the hearing on the motion and any party may urge objections to any county. If the motion is granted the court shall order that the action be

transferred to the most convenient county to which the objections of the parties do not apply or are the least applicable, whether or not such county is specified in the motion. After the first motion has been ruled upon, no party may move for transfer without permission of the court.

(2) When a transfer is ordered the clerk shall transmit to the clerk of the court to which the action has been transferred all papers in the action or duplicates thereof. The party applying for the transfer shall within 10 days pay the costs of preparing and transmitting such papers and shall pay a docket fee to the clerk of court of the county to which the action is transferred. The action shall continue in the county to which it is transferred as though it had been originally filed therein.

(3) The presiding judge may at any time upon the judge's own motion order a transfer of trial when it appears that the ends of justice would be promoted thereby.

(b) Change of judge. -

(1) Peremptory Disqualification. - A district judge may be peremptorily disqualified from acting in a case by the filing of a motion requesting that the judge be so disqualified. The motion designating the judge to be disqualified shall be filed by the plaintiff within five days after the complaint is filed; provided, that in multi-judge districts, the plaintiff must file the motion to disqualify the judge within five days after the name of the assigned judge has been provided by a representative of the court to counsel for plaintiff by personal advice at the courthouse, telephone call, or a mailed notice. The motion shall be filed by a defendant at or before the time the first responsive pleading is filed by the defendant or within 30 days after service of the complaint on the defendant, whichever first occurs, unless the assigned judge has not been designated within that time period, in which event the defendant must file the motion within five days after the name of the assigned judge has been provided by a representative of the court to counsel for the defendant by personal advice at the courthouse, telephone call, or a mailed notice. One made a party to an action subsequent to the filing of the first responsive pleading by a defendant cannot peremptorily disqualify a judge. In any matter, a party may exercise the peremptory disqualification only one time and against only one judge. This rule, and the procedures set forth herein, shall not apply to criminal cases or proceedings in juvenile court.

(2) Disqualification for Cause. - Whenever the grounds for such motion become known, any party may move for a change of district judge on the ground that the presiding judge (A) has been engaged as counsel in the action prior to being appointed as judge, (B) is interested in the action, (C) is related by consanguinity

to a party, (D) is a material witness in the action, or (E) is biased or prejudiced against the party or the party's counsel. The motion shall be supported by an affidavit or affidavits of any person or persons, stating sufficient facts to show the existence of such grounds. Prior to a hearing on the motion any party may file counter-affidavits. The motion shall be heard by the presiding judge, or at the discretion of the presiding judge by another judge. If the motion is granted, the presiding judge shall immediately call in another judge to try the action.

(3) Effect of Ruling. - A ruling on a motion for a change of district judge shall not be an appealable order, but the ruling shall be entered on the docket and made a part of the record and may be assigned as error in an appeal of the case.

(4) Motion by Judge. - The presiding judge may at any time on the judge's own motion order a change of judge when it appears that the ends of justice would be promoted thereby.

(5) Probate Matters. - In any controverted matter arising in a probate proceeding, a change of judge, or in cases where a jury is demandable, a transfer of trial, or both, may be had for any cause authorizing such change in a civil action. The procedure for such change shall be in accordance with this rule. Except for the determination of such controverted matter, the judge having original jurisdiction of such probate proceeding shall retain jurisdiction in all other matters in connection with said proceeding.

(Added July 12, 1971, effective November 18, 1971; amended February 11, 1975, effective June 5, 1975; amended January 25, 1982, effective May 1, 1982; amended March 10, 1983, effective June 13, 1983; amended August 9, 1984, effective October 31, 1984; amended December 20, 1991, effective March 24, 1992; amended October 22, 1992, effective January 12, 1993; amended November 26, 2013, effective November 26, 2013.)

Rule 41. Dismissal of actions.

(a) Voluntary dismissal; effect thereof.

(1) By Plaintiff; By Stipulation. - Subject to the provisions of Rule 23(c), of Rule 66, and of any statute, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court an action in which service was obtained based on or including the same claim.

(2) By Order of Court. - Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the counterclaim shall remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary dismissal; effect thereof.

(1) By Defendant. - For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(2) By the Court. - Upon its own motion the court may dismiss without prejudice any action not prosecuted or brought to trial with due diligence. (See Rule 203, D. Ct.)

(c) Dismissal of counterclaim, cross-claim, or third-party claim. - The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served, or, if there is none, before the introduction of evidence at the trial, or hearing.

(d) Costs of previously dismissed action. - If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

(Amended October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992; amended October 22, 1992, effective January 13, 1993.)

Rule 42. Consolidation; separate trials.

(a) Consolidation. - When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate trials. - The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to

expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues. (Amended December 20, 1991, effective March 24, 1992.)

Rule 43. Evidence.

(a) Form and admissibility. - In every trial, the testimony of witnesses shall be taken in open court, unless these rules, a statute, the Wyoming Rules of Evidence, or other rules adopted by the Supreme Court of Wyoming provide otherwise. The court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location.

(b), (c) [Abrogated].

(d) Affirmation in lieu of oath. - Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on motions. - When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(f) Interpreters. - The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

(Amended October 21, 1970, effective February 11, 1971; amended August 26, 1977, effective January 1, 1978; amended December 20, 1991, effective March 24, 1992; amended August 5, 1997, effective October 29, 1997.)

Rule 44. [Abrogated].

Rule 44.1. Determination of foreign law.

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Wyoming Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

(Added October 21, 1970, effective February 11, 1971; amended August 26, 1977, effective January 1, 1978; amended December 20, 1991, effective March 24, 1992.)

Rule 45. Subpoena.

(a) Form; issuance. -

(1) Every subpoena shall:

(A) State the name of the court from which it issued; and

(B) State the title of the action, the name of the court in which it is pending, and its civil action number; and

(C) Command each person to whom it is directed to attend and give testimony, or to produce and permit inspection, copying, testing, or sampling of designated books, documents, electronically stored information, or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subdivisions (c), (d) and (e) of this rule.

A command to produce evidence or to permit inspection, copying, testing, or sampling may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(2) A subpoena must issue as follows:

(A) For attendance at a trial or hearing, from the court for the district in which the action is pending;

(B) For attendance at a deposition, from the court in which the action is pending, stating the method for recording the testimony; and

(C) For production, inspection, copying, testing, or sampling, if separate from a subpoena commanding a person's attendance, from the court for the district where the production or inspection is to be made.

(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as officer of the court may also issue and sign a subpoena on behalf of

(A) a court in which the attorney is authorized to practice; or

(B) a court for a district in which a deposition or production is compelled by the subpoena, if the deposition or production pertains to an action pending in a court in which the attorney is authorized to practice.

(b) Service; place of attendance; notice before service.

(1) A subpoena may be served by the sheriff, by a deputy sheriff, or by any other person who is not a party and is not a minor, at

any place within the State of Wyoming. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law. The party subpoenaing any witness residing in a county other than that in which the action is pending shall pay to such witness, after the hearing or trial, the statutory per diem allowance for state employees for each day or part thereof necessarily spent by such witness in traveling to and from the court and in attendance at the hearing or trial. If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served, a notice must be served on each party.

(2) Proof of service when necessary shall be made by filing with the clerk of the court by which the subpoena is issued a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(3) A subpoena for trial or hearing may require the person subpoenaed to appear at the trial or hearing irrespective of the person's place of residence, place of employment, or where such person regularly transacts business in person.

(4) A person commended by subpoena to appear at a deposition may be required to attend only in the county wherein that person resides or is employed or regularly transacts business in person, or at such other convenient place as is fixed by an order of court. A nonresident of the state may be required to attend only in the county wherein that nonresident is served with a subpoena or at such other convenient place as is fixed by an order of court.

(c) Protection of persons subject to subpoenas. -

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing,

or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises - or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel outside that person's county of residence or employment or a county where that person regularly transacts business in person except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to

whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in responding to subpoena. -

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information or material subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return,

sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. - Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(a).

(Amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981; amended December 20, 1991, effective March 24, 1992; amended October 22, 1992, effective January 12, 1993; amended January 8, 2008, effective July 1, 2008; amended June 9, 2009, effective October 1, 2009.)

Rule 46. Exceptions unnecessary.

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party. (Amended December 20, 1991, effective March 24, 1992.)

Rule 47. Trial jurors.

(a) Qualifications. - All prospective jurors must answer as to their qualifications to be jurors; such answers shall be in writing, signed under penalty of perjury and filed with the clerk of the court. The written responses of the prospective jurors shall be preserved by the clerk of the court for the longer of the following:

(1) One year after the end of the jury term; or

(2) Until all appeals from any trial held during that term of court have been finally resolved.

The judge shall inquire of the jurors in open court on the record to insure that they are qualified.

(b) Excused jurors. - For good cause but within statutory limits a judge may excuse a juror for a trial, for a fixed period of time, or for the term. All excuses shall be written and filed with the clerk or granted in open court on the record.

(c) Examination of jurors. - After the jury panel is qualified, the attorneys, or a pro se party, shall be entitled to conduct the examination of prospective jurors, but such examination shall be under the supervision and control of the judge, and the judge may conduct such further examination as the judge deems proper. The judge may assume the examination if counsel or a pro se party fail to follow this rule. If the judge assumes the examination, the judge may permit counsel or a pro se party to submit questions in writing.

(1) The only purpose of the examination is to select a panel of jurors who will fairly and impartially hear the evidence and render a just verdict.

(2) The court shall not permit counsel or a pro se party to attempt to precondition prospective jurors to a particular result, comment on the personal lives and families of the parties or their attorneys, or question jurors concerning the pleadings, the law, the meaning of words, or the comfort of jurors.

(3) In voir dire examination, counsel or a pro se party shall not:

(A) Ask questions of an individual juror that cannot be asked of the panel or a group of jurors collectively;

(B) Ask questions answered in a juror questionnaire except to explain an answer;

(C) Repeat a question asked and answered;

(D) Instruct the jury on the law or argue the case; or

(E) Ask a juror what the juror's verdict might be under any hypothetical circumstances.

Notwithstanding the restrictions set forth in subsections 47(c)(3)(A)-(E), counsel or a pro se party shall be permitted during voir dire examination to preview portions of the evidence from the case in a non-argumentative manner when a preview of the evidence would help prospective jurors better understand the context and reasons for certain lines of voir dire questioning.

(d) Alternate jurors. - The court may direct that not more than six jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged when the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those

otherwise allowed by law if one or two alternate jurors are to be impanelled, two peremptory challenges if three or four alternate jurors are to be impanelled, and three peremptory challenges if five or six alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

(e) Peremptory challenges. - Each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the making of challenges or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly.

(Amended December 20, 1991, effective March 24, 1992; amended November 30, 1992, effective February 25, 1993; amended October 26, 2000, effective March 1, 2001.)

Rule 48. Juries; majority verdict.

The parties may stipulate that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 49. Special verdicts and interrogatories.

(a) Special verdicts. - The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General verdict accompanied by answer to interrogatories. - The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written

answers and to render a general verdict. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict or may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment but may return the jury for further consideration of its answers and verdict or may order a new trial.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 50. Judgment as a matter of law in jury trials; alternative motion for new trial; conditional rulings.

(a) Judgment as a matter of law. -

(1) In General. If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) Resolve the issue against a party; and

(B) Grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) Motion. A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(b) Renewing the motion after trial; alternative motion for a new trial. If the court does not grant a motion for judgment as a matter of law made under subdivision (a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after the entry of judgment or, if the motion addresses a jury issue not decided by a verdict, no later than 10 days after the jury was discharged. The movant may alternatively request a new trial or join a motion for a new trial under Rule 59. In ruling on a renewed motion, the court may:

(1) If a verdict was returned:

(A) Allow the judgment to stand,

(B) Order a new trial, or

(C) Direct entry of judgment as a matter of law; or

(2) If no verdict was returned:

(A) Order a new trial, or

(B) Direct entry of judgment as a matter of law.

(c) Granting renewed motion for judgment as a matter of law; conditional rulings; new trial motion.

(1) If the renewed motion for judgment as a matter of law is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered shall be filed no later than 10 days after entry of the judgment.

(d) Same; denial of motion for judgment as a matter of law. - If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

(Amended July 13, 1964, effective October 11, 1964; amended December 21, 1965, effective March 21, 1966; amended April 12, 1978, effective August 1, 1978; amended December 20, 1991, effective March 24, 1992; amended October 22, 1992, effective January 12, 1993; amended August 31, 1994, effective November 29, 1994; amended April 3, 1996, effective July 2, 1996; amended April 21, 2010, effective July 1, 2010.)

Rule 51. Instructions to jury; objections.

(a) General instructions. - At any time the court may give to the jury such general instructions as to the duties and functions of the court and jury, and the manner of conducting the trial, as it may deem desirable to assist the jury in performing its functions. Such

instructions, exclusive of rulings which are recorded by the court reporter for inclusion in any record, shall be reduced to writing, numbered and delivered to the jury with the other instructions and shall be a part of the record in the case.

(b) Further instructions; objections. - At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. Before the argument of the case to the jury has begun, the court shall give to the jury such instructions on the law as may be necessary and the same shall be in writing, numbered and signed by the judge, and shall be taken by the jury when it retires. No party may assign as error the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

(c) Preliminary instructions. - Before opening statements, the court shall provide jurors with any general and case-specific instructions that would seem likely to help jurors understand their functions during trial, and the issues that they will be required to decide. These preliminary instructions should include any pertinent case-specific instructions that the court anticipates including in the final instructions, if the court concludes that it would be helpful to jurors to receive the instructions both at the beginning of the case and again before closing arguments. The court shall confer with counsel at the pretrial conference to determine which instructions should be given to jurors before opening statements. For preliminary instructions, the court shall follow the procedures set forth in subsections (a) and (b) with respect to objections and use of written instructions.

(Amended December 21, 1965, effective March 21, 1966; amended July 20, 1984, effective October 16, 1984; amended December 20, 1991, effective March 24, 1992; amended October 26, 2000, effective March 1, 2001.)

Rule 52. Findings by the court; judgment on partial findings.

(a) General and special findings by court. - Upon the trial of questions of fact by the court, or with an advisory jury, it shall not be necessary for the court to state its findings, except generally for the plaintiff or defendant, unless one of the parties requests it before the introduction of any evidence, with the view of excepting to the decision of the court upon the questions of law involved in the trial, in which case the court shall state in writing its special findings of fact separately from its conclusions of law; provided, that without such request the court may make such special findings of fact and conclusions of law as it deems proper and if the same are preserved

in the record either by stenographic report or by the court's written memorandum, the same may be considered on appeal. Requests for findings are not necessary for purposes of review. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this rule.

(b) Amendment or additional findings. - On a party's motion filed no later than 10 days after entry of judgment; the court may amend special findings - or make additional findings - and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59. When special findings of fact are made in actions tried without a jury, the sufficiency of the evidence supporting the findings may be later questioned whether or not in the court the party raising the question objected to the findings, moved to amend them, or moved for partial findings.

(c) Judgment on partial findings. - If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. The party against whom entry of such a judgment is considered shall be entitled to no special inference as a consequence of such consideration, and the court may weigh the evidence and resolve conflicts. Such a judgment shall be supported by findings as provided in subdivision (a) of this rule.

(d) Reserved questions. - In all cases in which a court reserves an important and difficult constitutional question arising in an action or proceeding pending before it, the court, before sending the question to the supreme court for decision, shall (1) dispose of all necessary and controlling questions of fact and make special findings of fact thereon, and (2) state its conclusions of law on all points of common law and of construction, interpretation and meaning of statutes and of all instruments necessary for a complete decision of the case. No constitutional question shall be deemed to arise in an action unless, after all necessary special findings of fact and conclusions of law have been made by the court, a decision on the constitutional question is necessary to the rendition of final judgment. The question reserved shall be specific, and shall identify the constitutional provision to be interpreted. The special findings of fact and conclusions of law required by this subdivision of this rule shall be deemed to be a final order from which either party may appeal, and such appeal may be considered by the supreme court simultaneously with the reserved question.

(Amended December 21, 1965, effective March 21, 1966; amended April 12, 1978, effective August 1, 1978; amended December 20,

1991, effective March 24, 1992; amended October 22, 1992, effective January 12, 1993; amended August 19, 1994, effective November 29, 1994; amended April 3, 1996, effective July 2, 1996; amended June 30, 2000, effective July 1, 2000.)

Rule 53. Masters.

(a) Appointment and compensation. - The court in which any action is pending may appoint a master therein. As used in these rules the word "master" includes a referee, an auditor, or an examiner. The compensation to be allowed to a master shall be fixed by the court, and may be charged against such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain the master's report as security for the master's compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) Reference. - A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) Powers. - The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order. The master may require the production before the master of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence received, offered and excluded in the same manner and subject to the same limitations as provided in the Wyoming Rules of Evidence for a court sitting without a jury.

(d) Proceedings.

(1) Meetings. - When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon

receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make the master's report. If a party fails to appear at the time and place appointed, the master may proceed ex parte, or in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) Witnesses. - The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, the witness may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(3) Statement of Accounts. - When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the master directs.

(e) Report.

(1) Contents and Filing. - The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the clerk of the court and serve on all parties notice of the filing. In an action to be tried without a jury, unless otherwise directed by the order of reference, the master shall file with the report a transcript of the proceedings and of the evidence and the original exhibits. Unless otherwise directed by the order of reference, the master shall serve a copy of the report on each party.

(2) In Non-Jury Actions. - In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto

upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). The court, after hearing, may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) In Jury Actions. - In an action to be tried by a jury the master shall not be directed to report the evidence. The master's findings upon the issues submitted to the master are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) Stipulation as to Findings. - The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) Draft of Report. - Before filing the master's report, a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

(Amended December 20, 1991, effective March 24, 1992; amended November 30, 1992, effective February 25, 1993.)

VII. JUDGMENT [top]

Rule 54. Judgment; costs.

(a) Definition; form. - A judgment is the final determination of the rights of the parties in action. "Judgment" as used in these rules includes a decree. A judgment need not contain a recital of pleadings, the report of a master, or the record of prior proceedings. A court's decision letter or opinion letter, made or entered in writing, is not a judgment.

(b) Judgment upon multiple claims or involving multiple parties. - When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for judgment. - A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

(d) Costs; Attorney's Fees.

(1) Costs Other Than Attorney's Fees. Except when express provision therefor is made either in a statute or in these rules, costs other than attorney's fees shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the State of Wyoming, its officers or agencies, shall be imposed only to the extent permitted by law.

(2) Attorney's Fees.

(A) When allowed by law, claims for attorney's fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.

(B) Unless otherwise provided by statute or order of the court, the motion must be filed and served no later than 20 days after entry of judgment; must specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.

(C) On request of a party or class member, the court shall afford an opportunity for adversary submissions with respect to the motion in accordance with Rule 43(e). The court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the court. The court shall find the facts and state its conclusions of law as provided in Rule 52(a), and a judgment shall be set forth in a separate document as provided in Rule 58.

(D) The court may establish special procedures by which issues relating to such fees may be resolved without extensive evidentiary hearings. In addition, the court may refer issues relating to the value of services to a master under Rule 53 without regard to the provisions of subdivision (b) thereof.

(E) The provisions of subparagraphs (A) through (D) do not apply to claims for fees and expenses as sanctions for violations of these rules.

(Amended October 11, 1963, effective January 9, 1964; amended

December 20, 1991, effective March 24, 1992; amended August 31, 1994, effective November 29, 1994; amended April 21, 2010, effective July 1, 2010.)

Rule 55. Default.

(a) Entry. - When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

(b) Judgment. - Judgment by default may be entered as follows:

(1) By the Clerk. - When the plaintiff's claim against a defendant is for a sum certain, or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and is not a minor or an incompetent person;

(2) By the Court. - In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against a minor or an incompetent person unless represented in the action by a guardian, guardian ad litem, trustee, conservator, or other such representative who has appeared therein. If the party against whom a judgment by default is sought has appeared in the action the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute.

(c) Setting aside default. - For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) Plaintiffs; counterclaimants; cross-claimants. - The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(Amended December 20, 1991, effective March 24, 1992.)

Rule 56. Summary judgment.

(a) For claimant. - A party seeking to recover upon a claim,

counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For defending party. - A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and proceedings thereon. - Unless the court otherwise orders, the motion and any response and other papers relating thereto shall be served pursuant to Rule 6(c). The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case not fully adjudicated on motion. - If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of affidavits; further testimony; defense required. - Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the

adverse party.

(f) When affidavits are unavailable. - Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits made in bad faith. - Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(Amended December 20, 1991, effective March 24, 1992; amended July 13, 1964, effective October 11, 1964.)

Rule 56.1. Summary judgment -- Required statement of material facts.

Upon any motion for summary judgment pursuant to Rule 56 of the Rules of Civil Procedure, in addition to the materials supporting the motion, there shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried.

In addition to the materials opposing a motion for summary judgment, there shall be annexed a separate, short and concise statement of material facts as to which it is contended that there exists a genuine issue to be tried.

Such statements shall include pinpoint citations to the specific portions of the record and materials relied upon in support of the parties' position.

(Adopted January 8, 2008, effective July 1, 2008.)

Rule 57. Declaratory judgment.

The procedure for obtaining a declaratory judgment pursuant to statute shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 58. Entry of judgment or order.

(a) Presentation. - Subject to the provisions of Rule 55(b) and unless otherwise ordered by the court, if the parties are unable to agree on the form and content of a proposed judgment or order, it shall be presented to the court and served upon the other parties within 10 days after the court's decision is made known. Any objection to the form or content of a proposed judgment or order, together with an alternate form of judgment or order which cures the objection(s), shall be filed with the court and served upon the other parties within 5 days after service of the proposed judgment or order. If no written objection is timely filed, the court may sign the judgment or order. If objection is timely filed, the court will resolve the matter with or without a hearing.

(b) Form and entry. - Subject to the provisions of Rule 54(b), in all cases, the judge shall promptly settle or approve the form of the judgment or order and direct that it be entered by the clerk. Every judgment shall be set forth on a separate document, shall be identified as such, and may include findings of fact and conclusions of law. The names of all parties shall be set out in the caption of all final orders, judgments and decrees. All judgments and orders must be entered on the journal of the court and specify clearly the relief granted or order made in the action.

(c) Time of entry. - A judgment or final order shall be deemed to be entered whenever a form of such judgment or final order, signed by the trial judge, is filed in the office of the clerk of the court in which the case is pending. Entry of the judgment shall not be delayed, nor the time for appeal extended, in order to tax costs or award fees, except that, when a timely motion for attorney's fees is made under Rule 54(d)(2), the court, before the appellate court acquires jurisdiction, may order that the motion have the same effect on the time for appeal for all parties as a timely motion under Rule 59.

(Amended December 20, 1991, effective March 24, 1992; amended November 30, 1992, effective February 25, 1993; amended August 31, 1994, effective November 29, 1994; amended July 14, 2014, effective October 1, 2014.)

Rule 59. New trials; amendment of judgments.

(a) Grounds. - A new trial may be granted to all or any of the parties, and on all or part of the issues. On a motion for a new trial in an action tried without a jury, the court may open the judgment, if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment. Subject to the provisions of Rule 61, a new trial may be granted for any of the following causes:

(1) Irregularity in the proceedings of the court, jury, referee, master or prevailing party, or any order of the court or referee, or abuse of discretion, by which the party was prevented from having a fair trial;

(2) Misconduct of the jury or prevailing party;

(3) Accident or surprise, which ordinary prudence could not have guarded against;

(4) Excessive damages appearing to have been given under the influence of passion or prejudice;

(5) Error in the assessment of the amount of recovery, whether too large or too small;

(6) That the verdict, report or decision is not sustained by sufficient evidence or is contrary to law;

(7) Newly discovered evidence, material for the party applying, which the party could not, with reasonable diligence, have discovered and produced at the trial;

(8) Error of law occurring at the trial.

(b) Time for motion. - Any motion for a new trial shall be filed no later than 10 days after entry of the judgment.

(c) Time for serving affidavits. - When a motion for new trial is based on affidavits, they shall be filed with the motion. The opposing party has 10 days after service to file opposing affidavits, but that period may be extended for up to 20 days, either by the court for good cause or by the parties' written stipulation. The court may permit reply affidavits.

(d) On court's initiative; notice; specifying grounds. - No later than 10 days after entry of judgment the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.

(e) Motion to alter or amend judgment. - Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

(Amended December 21, 1965, effective March 21, 1966; amended October 21, 1970, effective February 11, 1971; amended April 12, 1978, effective August 1, 1978; amended December 20, 1991, effective March 24, 1992; amended April 3, 1996, effective July 2, 1996.)

Rule 60. Relief from judgment or order.

(a) Clerical mistakes. - Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the

court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the Supreme Court, and thereafter while the appeal is pending may be so corrected with leave of the Supreme Court.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. - On motion, and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding as provided by statute, or to grant relief to a party against whom a judgment or order has been rendered without other service than by publication as provided by statute. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action. (Amended December 20, 1991, effective March 24, 1992.)

(Amended December 20, 1991, effective March 24, 1992.)

Rule 61. Harmless Error.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 62. Stay of proceedings to enforce a judgment.

(a) Injunctions; receiverships. - Unless otherwise ordered by the court,

a judgment or final order in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on motion for new trial or for judgment. - In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) Injunction pending appeal. - When an appeal is taken from a judgment or final order granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay upon appeal. - The appellant, when an appeal is taken, by giving a supersedeas bond may obtain a stay, subject to the exceptions contained in subdivision (a) of this rule and the limitations contained in the Wyoming Rules of Appellate Procedure. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) Power of supreme court not limited. - The provisions in this rule do not limit any power of the supreme court or of a justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(f) Stay of judgment as to multiple claims or multiple parties. - When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(Amended November 7, 1960, effective March 21, 1961; amended October 11, 1963, effective January 9, 1964; amended December 20, 1991, effective March 24, 1992.)

Rule 63. Disability of a judge.

(a) During trial or hearing. - If a trial or hearing has been commenced

and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

(b) After verdict or filing of findings of fact and conclusions of law. - If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge sitting in or assigned to the district in which the action was tried or any active or retired district judge or supreme court justice designated by the supreme court may perform those duties; but if the successor judge cannot perform those duties because the successor judge did not preside at the trial or for any other reason, the successor judge may grant a new trial.

(Amended December 20, 1991, effective March 24, 1992.)

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

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Rule 64. Seizure of person or property.

At the commencement of and during the course of an action, all remedies provided by statute for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under these rules.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 65. Injunctions.

(a) Preliminary injunction.

(1) Notice. - No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of Hearing With Trial on Merits. - Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) Temporary restraining order; notice; hearing; duration. - A

temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On two days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security. - No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

> The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

(d) Form and scope of injunction or restraining order. - Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) When inapplicable. - This rule shall not apply to suits for divorce,

alimony, separate maintenance, or custody of minors.

(Amended October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992.)

Rule 65.1. Security; proceedings against sureties.

Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

(Added October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992.)

Rule 66. Receivers.

An action wherein a receiver has been appointed shall not be dismissed except by order of the court. The practice in the administration of estates by receivers shall be in accordance with the practice heretofore followed in the courts of Wyoming. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 67. Deposit in court.

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. Money paid into court under this rule shall be held by the clerk of the court subject to withdrawal in whole or in part at any time thereafter upon order of the court or written stipulation of the parties. The fund shall be deposited in an interest-bearing account or invested in an interest-bearing instrument approved by the court.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 68. Offer of settlement.

At any time more than 60 days after service of the complaint and more than 30 days before the trial begins, any party may serve upon the adverse party an offer, denominated as an offer under this rule, to settle a claim for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the

offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. As used herein, "costs" does not include attorney's fees. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of settlement under this rule, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

(Amended October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992; amended January 11, 1995, effective April 11, 1995.)

Rule 69. Execution.

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. In aid of the judgment or execution, and in addition to the proceedings provided by statute, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

(Amended October 21, 1970, effective February 11, 1971; amended December 20, 1991, effective March 24, 1992.)

Rule 70. Judgment for specific acts; vesting title.

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution upon application to the clerk.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 71. Process in behalf of and against persons not parties.

When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 71.1. Condemnation of property.

(a) Applicability of rules. - The Wyoming Rules of Civil Procedure govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in this rule.

(b) Joinder of properties. - The plaintiff may join in the same action any number of separate parcels of property, rights or interests situated in the same county and the compensation for each shall be assessed separately by the same or different appraisers as the court may direct.

(c) Complaint.

(1) Contents. - The complaint shall contain a short and plain statement of:

(i) The authority for the taking, the use for which the property is to be taken, and the necessity for the taking, a description of the property sufficient for its identification, the interests to be acquired,

(ii) The efforts made to comply with W.S. 504, 505, 509 and 510,

(iii) As to each separate piece of property, a designation of the defendants who have been joined as owners thereof of some interest therein, together with their residences, if known, and whether the plaintiff demands immediate possession or desires to continue in possession,

(iv) If plaintiff is a public entity, facts demonstrating compliance with W.S. 1-26-512, and

(v) If plaintiff seeks a court order permitting entry upon the property for any of the purposes set out in W.S. 1-26-506, plaintiff shall set forth in the complaint or in a separate application to the court a short and plain statement that it has made reasonable efforts to enter the property, that such entry has been obstructed or denied, and that a court order permitting entry is sought pursuant to W.S. 1-26-507.

(2) Joinder. - Upon the commencement of the action the plaintiff shall join as defendants those persons having or claiming an interest in the property as owner, lessee or encumbrancer whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in that property as owner, lessee or encumbrancer whose names can be ascertained by a reasonably diligent search of the records, considering the character and value of the property involved and the interests to be acquired, and also those whose names have otherwise been learned. Other defendants, as described in Rule 4(i), shall be made defendants when they are necessary parties.

(3) Informal Procedure. - If plaintiff desires that the amount of compensation be determined by informal procedure, pursuant to W.S. 1-26-601, et seq., it shall allege that the amount in dispute is less than $20,000 or that the difference between plaintiff's latest offer and the total amount demanded is less than $5,000, and shall request that the court proceed informally.

(4) Deposit at Commencement of Action. - Condemnor shall make the deposit required by W.S. 1-26-513.

(d) Order for hearing; process; answer.

(1) Order for Hearing. - If plaintiff seeks a court order permitting immediate entry upon the property pursuant to W.S. 1-26-507, it shall apply to the court for an order fixing time for a hearing, and the court shall direct defendant or defendants to appear at the time and place set for the hearing to show cause why such an order should not be entered. If plaintiff does not seek such an order, it shall apply to the court for an order fixing the time and place for a hearing upon the complaint.

(2) Process. - Summons shall be issued and served and proof of service shall be made in accordance with Rule 4. The summons and complaint shall be served together. The summons shall state the time and place of the hearing at which the defendant is to appear and defend, and shall further notify the defendant that if the defendant fails to appear at said time and place, judgment will be rendered for plaintiff condemning defendant's interest in the property therein described, appointing appraisers to ascertain the compensation to be paid therefor, and permitting plaintiff, if application therefor has been made as provided in subdivision (e) of this rule, to take possession or to continue in possession thereof upon the payment into court of such sum of money as may be required, or upon the giving of such approved security as may be determined by the court, and shall further notify the defendant that if the defendant desires to contest the plaintiff's right to take the property, or the necessity therefor, the defendant shall, prior to the time set for hearing, file with the court an answer to the complaint.

(3) Answer.

(i) No answer is required unless defendant desires to contest the plaintiff's right to take the property or the necessity therefor, in which event the answer shall be filed five days prior to the time set for the hearing on the complaint.

(ii) If no answer is filed, defendant may file an appearance with the clerk describing the property in which the defendant claims an interest so as to facilitate prompt receipt of notices by the defendant.

(iii) If defendant desires that the amount of compensation be determined by informal procedure, the defendant shall allege that the amount in dispute is less than $20,000 or that the difference between plaintiff's latest offer and the total amount demanded is less than $5,000, and shall request that the court proceed informally.

(e) Hearings.

(1) Show Cause Hearing. - If plaintiff has requested an order authorizing immediate entry, a show cause hearing shall be held not sooner than 15 days after service of the order to show cause upon the defendant or defendants.

(i) At the hearing, the district judge shall require evidence that notice and an order to show cause has been served upon the defendant as required, and shall hear and determine questions of plaintiff's right to enter the property, the purposes for which entry is sought, plaintiff's efforts to enter under notice to the owner and the owner's prior agreement thereto, if any; and shall require defendant or defendants to show good cause why an order authorizing entry should not be entered.

(ii) If plaintiff prevails on these points, the district judge shall enter an order permitting entry. Any order permitting immediate entry shall describe the purpose therefor, setting forth the nature and scope of activities determined to be reasonably necessary and authorized by law, and including terms and conditions respecting time, place, and manner of entry, and authorized activities by plaintiff, all in order to facilitate the purpose of entry and to minimize damage, hardship, and burden upon the parties.

(iii) An order permitting entry where the purpose does not contemplate condemnation shall include a determination of the amount, if any, that will fairly compensate defendant or defendants or any other person in lawful possession or physical occupancy for damages for physical injury to the property or substantial interference with its possession or use, if such damage or interference are found likely to be caused by entry. The district judge will require plaintiff to deposit cash or other

security with the court in any such amount.

(2) Hearing on Complaint for Condemnation. - The hearing shall be held not sooner than 15 days after service of the complaint for condemnation upon the defendant, unless the defendant otherwise consents in writing.

(i) At the hearing, which may be adjourned from time to time, the district judge shall require evidence that notice of hearing has been given as provided in this rule, and shall hear and determine the questions of the plaintiff's right to make the appropriation, plaintiff's inability to agree with the owner, the necessity for the appropriation, and shall hear proofs and allegations of all parties interested touching the regularity of the proceedings.

(ii) If the district judge determines these questions in favor of the plaintiff as to any or all of the property and persons interested therein, the judge shall first decide whether a request by any party to proceed informally should be granted.

(iii) If the judge decides to proceed informally, the judge shall determine compensation without jury in an informal manner on the basis of such oral and documentary evidence as the parties shall offer which the court deems sufficient.

(iv) If the judge determines not to proceed informally, the judge shall make an order appointing three disinterested appraisers, residents of the county in which the complaint is filed, to ascertain the compensation to be made to the defendant, or defendants, for the taking or injuriously affecting the property described in the complaint, and specifying a time and place for the first meeting of such appraisers, and the time within which the said appraisers shall make such assessment.

(v) At the hearing, or at any stage of the proceedings under this rule after the questions previously mentioned have been heard and determined, the district judge may, by order in that behalf made and if demanded by plaintiff in the plaintiff's complaint or in any amendment thereto, authorize the plaintiff, if already in possession, and if not in possession, to take possession of, and use said property during the pendency and until the final conclusion of such proceedings, and may stay all actions and proceedings against the plaintiff on account thereof; provided,

(vi) Unless exempted by statute and subject to the deposit provision of W.S. 1-26-513, plaintiff shall pay a sufficient sum into the court, or give approved security to pay the compensation in that behalf when ascertained; and

(vii) In every case where possession shall be so authorized, it shall be lawful for the defendant, or defendants, to conduct the proceedings to a conclusion if the same shall be delayed by the

plaintiff.

(f) Amendment of pleadings. - With the leave of court, the plaintiff may amend the complaint at any time before the award of compensation is made, and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by subdivision (k). The plaintiff shall serve a copy of any amendment, as provided in Rule 5(b), upon any party affected thereby who has appeared. If a party has not appeared in the action and is affected by the amendment, then a notice directed to that party shall be served personally or by publication or other substituted service in the manner provided in subdivision (d).

(g) Substitution of parties. - Substitution of parties may be made in accordance with Rule 25.

(h) Appraisers; procedure.

(1) The appraisers appointed by the court, before entering upon the duties of their office, shall take an oath to faithfully and impartially discharge their duties as said appraisers.

(2) The court shall instruct them in writing as to their duties and as to the applicable and proper law to be followed by them in making their ascertainment.

(3) They shall carefully inspect and view the property sought to be taken or affected and shall thereupon ascertain and certify the compensation proper to be made to the defendant, or defendants, for the real or personal property to be taken or affected, according to the rule of damages as set forth in the written instructions given by the court.

(4) They shall make, subscribe and file with the clerk of the district court in which the action is pending a certificate of their said ascertainment and assessment in which the real or personal property shall be described with convenience, certainty and accuracy. In addition, supporting data for the amounts set forth in the certificate shall be included with said certificate.

(5) Fees allowed the appraisers shall be fixed by the court.

(i) Order of award.

(1) Upon proceeding informally to a determination of the amount of compensation to be paid, under subdivision (e)(2) above, and if neither party rejects the judgment of the district court, as authorized by W.S. 1-26-604, or

(2) Upon filing of the certificate of appraisers under subdivision (h) above, or

(3) Upon entry of the jury verdict under subdivision (j) below,

(i) The district judge shall upon receiving due proof that such

compensation and separate sums, if any be certified, have been paid to the parties entitled to the same, or have been deposited to the credit of such parties in the county treasury, or other place for that purpose approved by the court, make and cause to be entered an order describing the real or personal property taken, the compensation ascertained, and the mode of making compensation or deposit thereof as aforesaid; and

(ii) A certified copy of said order shall be recorded and indexed in the office of the register of deeds of the proper county; and

(iii) Upon the entry of such order, the plaintiff shall have such rights in the condemned property as are granted to the plaintiff by the statutes of this state authorizing the exercise of the power of eminent domain by plaintiff and which have been the subject matter of the action.

(j) Formal trial; jury trial. - If a judgment has been entered on the basis of informal proceedings, any party may file, within 30 days after such entry of judgment, a written demand for a formal trial to the court or for a jury trial, whereupon the action shall proceed as though no informal proceedings had occurred. If an assessment has been made by appraisers, any party not satisfied with the award may file, within 30 days after the certificate of assessment has been filed, a written demand for a trial by jury on the issue of just compensation, whereupon the action shall proceed to a jury trial on that issue.

(1) Demand. - The demand, whether for a formal trial to the court or for a jury trial, shall be filed with the clerk and served upon the other parties in accordance with Rule 5(b).

(2) Procedure. - The formal trial or trial by jury shall be conducted in the same manner as other civil actions.

(3) Decision; Verdict. - If the action is tried without jury, the court shall determine the compensation to be made to the defendant or defendants, and shall render its decision in writing, and enter its judgment accordingly. If the action is tried with jury, the jury shall determine these matters, and shall render its verdict in writing, signed by the foreman, and the verdict shall be entered in the record.

(k) Dismissal of action.

(1) As of Right. - If no certificate of appraisers has been filed and the plaintiff has not acquired the title or a lesser interest in or taken possession, the plaintiff may dismiss the action as to that property, without an order of the court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

(2) By Stipulation. - Before the entry of any judgment vesting the plaintiff with title or a lesser interest in or possession of property,

the action may be dismissed in whole or in part without an order of the court as to any property by filing a stipulation of dismissal by the plaintiff and defendant affected thereby; and, if the parties so stipulate, the court may vacate any judgment that has been entered.

(3) By Order of the Court. - At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the court for good cause shown may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, but shall award just compensation for the possession, title or lesser interest so taken. The court at any time may drop a defendant unnecessarily or improperly joined.

(4) Effect. - Except as otherwise provided in the notice, or stipulation of dismissal or order of the court, any dismissal is without prejudice.

(l) Deposit and its distribution. - The plaintiff shall deposit with the court any money or bond required by law as a condition to the exercise of the power of eminent domain, or as a condition to the right of continuing or obtaining immediate possession. In such cases the court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. Interest shall not accrue as to the sum deposited by the plaintiff from and after the time the deposit becomes available for distribution to the defendant or defendants. If the compensation finally awarded to any defendant exceeds the amount which has been paid to that defendant on distribution of the deposit, the court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to that defendant, the court shall enter judgment against that defendant and in favor of the plaintiff for the overpayment.

(m) Costs. - In any proceeding under this rule costs may be allowed and apportioned between the parties on the same or adverse sides in the discretion of the court as authorized by statute or by rule of this court.

(Added December 21, 1965, effective March 21, 1966; amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981; amended November 24, 1987, effective February 23, 1988; amended December 20, 1991, effective March 24, 1992.)

IX. APPEALS

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Rules 72 through 76. [Superseded].

X. DISTRICT COURTS AND CLERKS [top]

Rule 77. District courts and clerks.

(a) District courts always open. - The district courts shall be deemed always open for the purpose of filing any pleading or other paper, of issuing and returning any mesne or final process, and of making and directing all interlocutory motions, orders and rules. Each term shall be deemed open and continuous until the commencement of the next succeeding term.

(b) Trials and hearings; orders in chambers. - All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted in chambers without the attendance of the clerk or other court officials and at any place within the state; but no hearing, other than one ex parte, shall be conducted outside of the county in which the action is pending without the consent of all parties affected thereby who are not in default.

(c) The clerk's office. - The clerk's office with the clerk or a deputy in attendance shall be open during all business hours. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but the clerk's action may be suspended, altered or rescinded by the court upon cause shown.

(d) Service of orders or judgments. - Immediately upon the entry of an order or judgment the clerk shall provide and serve a copy thereof to every party who is not in default for failure to appear. The clerk shall note in the docket the date of service and the parties served. Service by the clerk may be accomplished by mail, hand delivery, clerk's boxes, or electronic means. The clerk shall provide envelopes and postage for the mailings. If service is accomplished by electronic means, this rule supersedes the requirements of W.S. § 5-3-210 to attach the seal of the court to all writs and orders. Any party may in addition serve a notice of such entry in the manner provided in Rule 5(b) for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by the Wyoming Rules of Appellate Procedure.

(Amended December 20, 1991, effective March 24, 1992; amended November 30, 1992, effective February 25, 1993; amended January 8, 2008, effective July 1, 2008; amended April 21, 2010, effective July 1, 2010.)

Rule 78. Motion day.

Each district court may establish regular times and places, at intervals

sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and determined. (Amended December 20, 1991, effective March 24, 1992.)

(Amended December 20, 1991, effective March 24, 1992.)

Rule 79. Books and records kept by the clerk and entries therein.

(a) Books and records. - Except as herein otherwise specifically provided, the clerk of court shall keep books and records as provided by statute.

(b) Other books and records. - The clerk of court shall also keep such other books, records, data and statistics as may be required from time to time by the Supreme Court or the judge of the district in which the clerk is acting.

(Amended March 24, 1980, effective July 1, 1980; amended December 20, 1991, effective March 24, 1992.)

Rule 80. Stenographic report or transcript as evidence.

Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial it may be proved by the transcript thereof duly certified by the person who reported the testimony.

(Amended December 20, 1991, effective March 24, 1992.)

XI. GENERAL PROVISIONS

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Rule 81. Applicability in general.

Statutory provisions shall not apply whenever inconsistent with these rules, provided, (1) that in special statutory proceedings any rule shall not apply insofar as it is clearly inapplicable, and (2) where the statute creating a special proceeding provides the form, content, time of service or filing of any pleading, writ, notice or process, either the statutory provisions relating thereto or these rules may be followed.

(Amended December 21, 1965, effective March 21, 1966; amended December 20, 1991, effective March 24, 1992.)

Rule 82. Jurisdiction and venue unaffected.

These rules shall not be construed to extend or limit the jurisdiction of any court or the venue of actions therein.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 83. Rules of district courts.

The district courts, by action of a majority of the judges of the District Court Division of the Judicial Council and approval of the supreme court, may make and amend uniform rules governing district court practice. A uniform rule shall be consistent with - but not duplicative of

- these rules. Approved uniform rules shall be published in the Wyoming Court Rules volume. A district court may not establish rules of procedure applicable only in that district.

(Amended December 20, 1991, effective March 24, 1992; amended April 3, 1996, effective July 2, 1996.)

Rule 84. Forms.

The forms contained in the appendix of forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

Form No. 22B (Motion to bring in third-party defendant) and Form No. 27 (Notice of appeal to the supreme court) are deleted.

Form No. 15 (Divorce) is revised, as attached hereto.

Form No. 29 (Summons for condemnation) shall be retained with a notation that the form should be used if there is a contest of the necessity for the taking of the property. In all other condemnation cases, the normal summons form should be used.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 85. Title.

These rules may be known and cited as Wyoming Rules of Civil Procedure.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 86. Effective date.

(a) Rules. - These rules shall take effect 60 days after their publication in the Pacific Reporter Advance Sheets. They shall govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(b) Amendments and additions. - Amendments or additions to these rules shall take effect on dates to be fixed by the supreme court subject to the exception above set out as to pending actions.

(Amended December 20, 1991, effective March 24, 1992.)

Rule 87. [Abrogated]

Appendices

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Appendix of Forms (../../Documents/CourtRules/Appendices/CivilProcedure.pdf)

Revision / Amendment History

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Order	Date Signed	Effective Date

Order Adopting Amendments to Rules 6, 26, and 58 of the Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_2014071400.pdf)	07/14/2014	10/01/2014
Order Adopting Amendments to Rule 26 of the Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_2014042200.pdf)	04/22/2014	07/01/2014
Order Repealing Rule 21.1(a) of The Wyoming Rules of Criminal Procedure and Order Amending Rule 40.1 of the Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\mult\mult_2013112600.pdf)	11/26/2013	11/26/2013
In the Matter of the Suspension of Rule 21.1(a) of the Wyoming Rules of Criminal Procedure and the Suspension, in Juvenile Cases, of Rule 40.1(b)(1) of the Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\mult\mult_2012120400.pdf)	12/04/2012	12/04/2012
Order Adopting Rule 3.1 of the Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_2012082300.pdf)	08/23/2012	11/01/2012
Order Adopting Amendments to Rules 16, 26, 50, 54, and 77 of the Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_2010042100.pdf)	04/21/2010	07/01/2010
Order Adopting Amendments to Rule 45 of the Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_2009060900.pdf)	06/09/2009	10/01/2009
Order Adopting Amendments to Rules 5, 26, 30, 33, 34, 37, 40, 45, and 77 of the Wyoming Rules of Civil Procedure and Order Adopting Rule 56.1 of the Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_2008010800.pdf)	01/08/2008	07/01/2008
Order Adopting Amendment to Rule 11 of the Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_2007111500.pdf)	11/15/2007	07/01/2008
Order Nunc Pro Tunc Adopting Amendments to Rule 6 of the Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_2007011800.pdf)	01/18/2007	03/01/2007
Order Adopting Amendments to Rule 6 and Rule 40 of the Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_2006121900.pdf)	12/19/2006	03/01/2007
Order Adopting Amendment to Rule 5 of the Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_2005032800.pdf)	03/28/2005	07/01/2005
In the Matter of the Adoption of Amendments to the Wyoming Rules of Civil Procedure, Rule 38(b)(2)(A) (../../Documents/CourtRules/Orders\civpro\civpro_2003062300.pdf)	06/23/2003	07/01/2003

Order Adopting Amendments to the Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_2003020300.pdf)	02/03/2003	05/01/2003
Order Adopting Amendments to the Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_2002121700.pdf)	12/17/2002	01/01/2003
Order Adopting Amendments to the Wyoming Rules of Civil and Criminal Procedure (Jury Reform) (../../Documents/CourtRules/Orders\mult\mult_2000102600.pdf)	10/26/2000	03/01/2001
Order Adopting Amendment to Rule 38 of The Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_2000072000.pdf)	07/20/2000	07/20/2000
Order Adopting Amendments to the Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_2000063000.pdf)	06/30/2000	07/01/2000
Order Adopting Uniform Petition for Order of Protection, Ex Parte Order of Protection, and 90 Day Order of Protection (../../Documents/CourtRules/Orders\civpro\civpro_1999021800.pdf)	02/18/1999	02/18/1999
Order Reinstating Rule 40.1(b)(1) of the Wyoming Rules of Civil Procedure and Reinstating Rule 21.1(a) of the Wyoming Rules of Criminal Procedure Providing for Change of Judge, Peremptory Disqualification (../../Documents/CourtRules/Orders\mult\mult_1998113000.pdf)	11/30/1998	11/30/1998
In the Matter of the Suspension of Rule 40.1(b)(1) of the Wyoming Rules of Civil Procedure and the Suspension of Rule 21.1(a) of the Wyoming Rules of Criminal Procedure (../../Documents/CourtRules/Orders\mult\mult_1998031600.pdf)	03/16/1998	03/16/1998
In the Matter of Amendments to Rules 5(e) and 43(a), Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1997080500.pdf)	08/05/1997	10/29/1997
Order Amending Rules 50, 52, 59, and 83, Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1996040300.pdf)	04/02/1996	06/01/1996
Order Amending Rules 4, 12, 40 and 68, Wyoming Rules of Civil Procedure; Rule 601, Uniform Rules for District Courts of the State of Wyoming; and the Adoption of Forms 1A and 1B, Civil Forms (../../Documents/CourtRules/Orders\mult\mult_1995011100.pdf)	01/11/1995	04/11/1995
Order Amending Rules 1, 11, 16, 26, 28, 29, 30, 31, 33, 34, 37, 38, 50, 52, 54, and 58, Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1994083100.pdf)	08/31/1994	11/29/1994
Order Amending Rules 6(c)(1), 47, 53(e), 58(a), 77(d) and Forms No. 3 through 18 and 22-A, Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1992113000.pdf)	11/30/1992	02/15/1993

Order Amending Rules 5(d), 6(c)(1)(2), 15(c), 34(c), 40.1(b), 41(b)(1), 45, 50 and 52(a)(c)(d), Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1992102200.pdf)	10/22/1992	01/12/1993
Order Amending Rules 26, 30, 31 and 33, Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1992042800.pdf)	04/28/1992	04/28/1992
Order Adopting the Revised Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1991122000.pdf)	12/20/1990	02/20/1991
In the Matter of the Amendment of Rule 71.1, Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1987112400.pdf)	11/24/1987	01/23/1988
In the Matter of the Amendments of Rule 6(a), Wyoming Rules of Civil Procedure; Rule 43(a), Wyoming Rules of Criminal Procedure; Rule 14.02, Wyoming Rules of Appellate Procedure and Rule 14, Wyoming Rules of Appellate Procedure for Courts of Limited Jurisdiction (../../Documents/CourtRules/Orders\mult\mult_1987032400.pdf)	03/24/1987	05/23/1987
In the Matter of the Amendment to Rule 11, Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1987012900.pdf)	01/29/1987	03/30/1987
In the Matter of Amending Rule 40.1, Wyoming Rules of Civil Procedure; and Rule 23, Wyoming Rules of Criminal Procedure. (../../Documents/CourtRules/Orders\mult\mult_1984080900.pdf)	08/09/1984	10/31/1984
In the Matter of the Amendments of Rules 4.02 and 4.05, Wyoming Rules of Appellate Procedure; Rules 30(b)(4) and 51, Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\mult\mult_1984072000.pdf)	07/20/1984	10/18/1984
In the Matter of Amending Rule 40.1, Wyoming Rules of Civil Procedure; Rule 23, Wyoming Rules of Criminal Procedure; Rules 12.09, 12.11 and 14, Wyoming Rules of Appellate Procedure. (../../Documents/CourtRules/Orders\mult\mult_1983031000.pdf)	03/10/1983	06/13/1983
In the Matter of Amending Rule 40.1(b)(1), Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1982012500.pdf)	01/25/1982	05/01/1982
In the Matter of the Amendment of Rules 5, 26, 28, 30, 32, 33, 34, 37, 45, and 71.1, Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1980110600.pdf)	11/06/1980	02/26/1981
In the Matter of Amending Rules 2.01, 2.03, 2.04, 2.06, 2.09, 3.02, 4.06, 5.06, 11.01, 12.07, 15 and 16, Wyoming Rules of Appellate Procedure; Rule 79(b), Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\mult\mult_1980032400.pdf)	03/24/1980	07/01/1980
In the Matter of Amending Certain Sections in the Rules of Civil Procedure and Rules of Criminal Procedure (../../Documents/CourtRules/Orders\mult\mult_1978041400.pdf)	04/12/1978	08/01/1978

In the Matter of Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1975071500.pdf)	07/15/1975	10/13/1975
In the Matter of Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1975021200.pdf)	02/11/1975	05/12/1975
In the Matter of Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1974022600.pdf)	02/26/1974	05/27/1974
In the Matter of Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1972091800.pdf)	09/18/1972	12/17/1972
In the Matter of Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1971071200.pdf)	07/12/1971	10/10/1971
In the Matter of Wyoming Rules of Civil Procedure (2) (../../Documents/CourtRules/Orders\civpro\civpro_1970102101.pdf)	10/21/1970	01/19/1971
In the Matter of Wyoming Rules of Civil Procedure (1) (../../Documents/CourtRules/Orders\civpro\civpro_1970102100.pdf)	10/21/1970	10/21/1970
In the Matter of Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1966010600.pdf)	01/06/1966	04/06/1966
In the Matter of Wyoming Rules of Civil Procedure and Rules of the Supreme Court of Wyoming (../../Documents/CourtRules/Orders\mult\mult_1965122200.pdf)	12/22/1965	03/22/1966
In the Matter of Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1965122100.pdf)	12/21/1965	03/21/1966
In the Matter of Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1964071300.pdf)	07/13/1964	10/11/1964
In the Matter of Wyoming Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1963101100.pdf)	10/11/1963	01/09/1964
In the Matter of Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1960110700.pdf)	11/07/1960	01/06/1961
In the Matter of Rules of Civil Procedure (../../Documents/CourtRules/Orders\civpro\civpro_1958092600.pdf)	09/26/1958	11/25/1958
In the Matter of the Adoption of Rules of Civil Procedure and Rules of the Supreme Court (../../Documents/CourtRules/Orders\mult\mult_1957070200.pdf)	07/02/1957	12/01/1957
In the Matter of the Adoption of the Wyoming Rules of Civil Procedure and the Rules of the Supreme Court. (../../Documents/CourtRules/Orders\civpro\civpro_1957070201.pdf)	07/02/1957	12/01/1957

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State of Wyoming

Executive Branch (http://www.wyoming.gov/)
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Tenth Circuit Court of Appeals (https://www.ca10.uscourts.gov/)
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