

Wyoming Administrative Rules

Environmental Quality, Dept. of

Practice and Procedure

Chapter 9: Director Review of Actions Involving Surface Coal Mining Operations and All Hearings Before The Department

Effective Date: 04/24/2017 to Current

Rule Type: Current Rules & Regulations

Reference Number: 020.0008.9.04242017

CHAPTER 9
DIRECTOR REVIEW OF ACTIONS INVOLVING SURFACE COAL MINING
OPERATIONS AND ALL HEARINGS BEFORE THE DEPARTMENT

Section 1. Scope.

This Chapter shall apply to any hearings, informal conferences, or review before the Department, the Director, an Administrator, or any combination thereof. This Chapter does not apply to rulemaking hearings, contested case hearings, or other hearings before the Council.

Section 2. Requests for Informal Conferences Involving Surface Coal Mining Operations.

(a) Unless otherwise specified in the Wyoming Environmental Quality Act, and in accordance with W.S. 35-11-406, a request for an informal conference shall be in writing and, at a minimum, contain:

- (i) The name(s) and contact information of the person requesting the informal conference;
- (ii) A brief statement identifying the purpose of the request;
- (iii) A brief statement of the issues to be discussed or details supporting the written objection to the application for the surface coal mining operation;
- (iv) A brief statement on whether the person desires the informal conference to be held in the locality of the proposed mining operation; and
- (v) A brief statement on whether the person desires access to the proposed permit area.

(b) The Director shall inform the applicant, the person requesting the informal conference, and all persons who submitted timely public comments on the underlying application, whether the request is granted or denied.

(c) If requested, the Director may arrange with the applicant to grant parties to the informal conference access to the permit area for the purpose of gathering information relevant to the informal conference.

(d) The informal conference shall be held in accordance with W.S. 35-11-406(k) in the locality of the proposed mining operation or in Cheyenne, at the option of the requesting person.

(e) The procedure for the informal conference shall be informal. The Director may accept oral or written statements and any other relevant information from any party to the informal conference. An electronic or stenographic record shall be made of the informal

conference, unless waived by all parties. The record shall be maintained and shall be accessible to the parties until final release of the performance bond.

(f) If all parties requesting the informal conference withdraw their request before the conference is held, the informal conference may be cancelled.

Section 3. Requests for Informal Disposition Conferences and Conferences to Review Notices for Abatement and Cessation Orders Involving Surface Coal Mining Operations.

(a) Unless otherwise specified in the Wyoming Environmental Quality Act, and in accordance with W.S. 35-11-437, a request for the Director or his authorized representative to review and affirm, modify, vacate, or terminate a notice for abatement or cessation order shall be in writing and, at a minimum, contain:

(i) The name(s) and contact information of the person requesting the affirmation, modification, vacation, or termination of the notice for abatement or cessation order;

(ii) If applicable, the permit number;

(iii) A copy of the notice for abatement or cessation order; and

(iv) A brief statement identifying whether the person is requesting affirmation, modification, vacation, or termination of the notice or order, the facts on which that request is based, the reasoning for the request, and reference to any applicable statutes, rules, or orders supporting the request.

(b) Unless otherwise specified in the Wyoming Environmental Quality Act, and in accordance with W.S. 35-11-902, a request for an informal disposition conference shall be in writing and, at a minimum, contain:

(i) The name(s) and contact information of the person requesting the informal disposition conference;

(ii) If applicable, the permit number;

(iii) A copy of the notice for abatement or cessation order;

(iv) A copy of the notice of assessment of the penalty;

(v) A brief statement identifying whether the dispute is over the amount of the penalty or the occurrence of the violation; and

(vi) A brief statement describing why the violation or the amount of the penalty is unwarranted.

(c) A request for a conference to review a notice for abatement or cessation order shall be filed within thirty (30) days. A request for an informal disposition conference shall be filed within the time period provided under W.S. 35-11-902(d).

(d) If the Director grants a request under subsections (a) or (b) of this section, the Director shall inform the requesting person. If the Director denies a request under subsections (a) or (b) of this section, the denial shall be in writing.

(e) If an informal disposition conference or a conference to review a notice for abatement or cessation order is held, any person has the right to attend and participate in the conference. The procedure for the conference shall be informal with no pre-hearing conference, discovery, or cross-examination. The Director may record the conference by audio recording or court reporter and shall make any such recording available to all participants.

(f) The Director shall provide the participants:

(i) A written statement of any action taken or decisions rendered as a result of the conference; and

(ii) A notice of any available appeal to the Council.

(g) The terms of subsections (d), (e), and (f) of this section shall also apply to decisions made, or proceedings held, by the Director's authorized representative.

(h) At formal review proceedings before the Council that may follow an informal disposition conference or conference to review a notice for abatement or cessation order, no evidence as to statements made or evidence produced by one participant at the conference or review shall be introduced as evidence by another participant.

Section 4. Requests for Hearings Before the Department.

(a) Requests for hearings in accordance with Section 1 of this chapter before the Department, the Director, an Administrator, or any combination thereof provided for under the Wyoming Environmental Quality Act shall be in writing and contain:

(i) The name(s) and contact information of the person(s) requesting the hearing;

(ii) A brief statement identifying the purpose of the request; and

(iii) A brief statement of the issues to be discussed.

(b) Within thirty (30) days of the request, the Department shall grant or deny the request. If the Department grants the request, it shall schedule the hearing and notify the requesting party in writing. If the Department denies the request, it shall provide the requesting party a brief statement in writing of the reasons for denial.

Section 5. General Procedures for Hearings Before the Department.

(a) The Department shall designate a presiding officer for the hearing. The presiding officer shall adopt whatever procedures are reasonable and necessary for the conduct of the hearing.

(b) Unless otherwise stated in statute, such hearings are non-adversarial in nature and require no pleadings. Any interested persons shall be given the opportunity to appear and make their views known to the Department. Oral and written statements may be presented without regard to the rules of evidence.

(c) No cross-examination is permitted, but persons appearing to make statements or present information may answer questions from or through the presiding officer. Questions for the person appearing to make statements or present information may be submitted to the presiding officer orally or in writing, and the presiding officer may direct appropriate questions to the person presenting. The presiding officer may limit the questioning and length of oral statements in the interest of conducting the hearing in an efficient and orderly manner.

(d) The Department may record the meeting by audio recording or court reporter and shall make any such recording available to all participants.

(e) The Department shall designate a location for any hearing before the Department and may provide an opportunity for interested persons to attend a hearing remotely.

(f) At the conclusion of the hearing, the Department shall issue:

(i) A written statement of any action taken or decisions rendered as a result of the hearing, if applicable; and

(ii) A notice of any available appeal to the Director or to the Council.

Section 6. Hearing Notice.

(a) Unless otherwise specified in the Wyoming Environmental Quality Act, the Department shall provide written notice by email or regular mail to the person requesting the hearing and shall post a notice of the hearing on its website.

(b) The notice shall include:

(i) The name(s) of the person(s) requesting the hearing, if any;

(ii) A brief statement identifying the purpose of the hearing;

(iii) A brief statement of the issues to be discussed;

- (iv) The date, time, and location of the hearing;
- (v) The method for remote attendance, if applicable; and
- (vi) A copy of the request for a hearing. The Department shall redact personal contact information such as the requesting person's address and phone number.

Section 7. Variance Hearings Before the Department.

- (a) The Department shall hold variance hearings pursuant to W.S. 35-11-601.
- (b) Following the hearing, the relevant Administrator(s) shall consider the views of the persons who may be affected by the grant of the variance and approve or deny the variance with the Director's approval.