MATERIALS FOR JOINT MINERALS COMMITTEE MEETING

October 10 and 11, 2016

ENVIRONMENTAL QUALITY ACT

CURRENT AS OF 2016 SESSION

SUBMITTED BY THE ENVIRONMENTAL QUALITY COUNCIL

CHAPTER 11
ENVIRONMENTAL QUALITY

ARTICLE 1
GENERAL PROVISIONS

35-11-101. Short title.

This act shall be known and may be cited as the "Wyoming Environmental Quality Act".

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.

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, 35-11-1801 through 35-11-1803 and 35-11-2001 through 35-11-2004.

(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, 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 x 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. 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) Repealed by Laws 1994, ch. 87, § 2.

(xxix) Repealed by Laws 1994, ch. 87, § 2.

(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.

(j) Specific definitions applying to nuclear regulatory functions of the state as provided in article 20 of this chapter:

(i) "Byproduct material" means the tailings or wastes produced by the extraction or concentration of uranium and thorium from any ore processed primarily for its source material content as defined in section 11(e)(2) of the Atomic Energy Act of 1954, 42 U.S.C. § 2014(e)(2), as amended;

(ii) "Recovery or milling" means as defined in 10 C.F.R. part 40.4, as amended, to include any activity that generates byproduct material as defined in section 11(e)(2) of the Atomic Energy Act of 1954, 42 U.S.C. § 2014(e)(2), as amended;

(iii) "Source material" means uranium or thorium, or any combination thereof, in any physical or chemical form or ores which contain by weight one-twentieth of one percent (0.05%) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

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.

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.

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.

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) Repealed by Laws 1992, ch. 60, § 4.

(c) Repealed by Laws 1992, ch. 60, § 4.

(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.

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.

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.

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.

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 seventy-five percent (75%) 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.

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 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.

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. 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.

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.

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.

ARTICLE 2
AIR QUALITY

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.

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.

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.

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.

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 (1/3) 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).

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).

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.

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.

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;

(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.

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.

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.

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.

(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.

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) Repealed By Laws 2013, Ch. 39, § 2.

(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) Repealed By Laws 2013, Ch. 39, § 2.

(ii) Repealed By Laws 2013, Ch. 39, § 2.

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.

ARTICLE 3
WATER QUALITY

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.

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 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 (1/4) mile of a water well permitted for current domestic purposes without the written consent of the owner of the well;

(V) One-quarter (1/4) 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.

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.

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.

35-11-305. 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.

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.

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".

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.

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.

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.

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.

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, or injects carbon dioxide for the primary purpose of long term storage that results in an increased risk to an underground source of drinking water as compared to enhanced oil 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. When determining whether an oil and gas recovery operation is injecting carbon dioxide for the primary purpose of long term storage that results in an increased risk to an underground source of drinking water as

compared to enhanced oil recovery operations, the director shall consider the findings and recommendations of the supervisor of the Wyoming oil and gas conservation commission. The supervisor shall make his determination following a hearing of the oil and gas conservation commission examiners held under the commission's rules and regulations promulgated under Title 30, Chapter 5 of the Wyoming statutes. The supervisor shall provide the operator and director with notice of the supervisor's findings and recommendations under this subsection and an opportunity for a public hearing before the Wyoming oil and gas conservation commission. Within fifteen (15) days of receiving notice as provided in this subsection, the operator may request a hearing before the Wyoming oil and gas conservation commission. If both a change in primary purpose to long term storage and an increased risk to an underground source of drinking water as compared to enhanced oil recovery operations are found to have occurred, the commission shall recommend transfer of regulation of the operation to the department.

(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.

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.

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.

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 determination 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.

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.

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.

ARTICLE 4
LAND QUALITY

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, 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) Repealed By Laws 2013, Ch. 44, § 2.

(viii) Repealed By Laws 2013, Ch. 44, § 2.

(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.

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 (1/2) of the shrubs in the post-mining standard.

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.

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.

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) 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.

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.

(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 (1/2) 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) Repealed by Laws 1980, ch. 64, § 3.

(xiii) Repealed by Laws 1980, ch. 64, § 3.

(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, 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.

(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.

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.

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.

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.

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.

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.

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.

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.

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) of the statutes.

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 (1/2) 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 (1/2) 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.

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.

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.

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.

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.

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.

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.

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.

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 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.

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.

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.

(h) This section shall operate independently of all other sections of the act except as to the application of the Wyoming Administrative Procedure Act.

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.

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).

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.

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.

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.

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.

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.

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.

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.

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.

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.

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, 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.

ARTICLE 5
SOLID WASTE MANAGEMENT

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.

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 (1/2) 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 (1/2) 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.

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.

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;

(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.

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.

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.

35-11-507. 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.

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).

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 1/2) 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.

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).

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.

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).

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.

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, 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.

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, 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.

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.

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, 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.

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, as amended by the hazardous and solid waste amendments of 1984, P.L. 98-616, and as they may be hereafter amended.

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.

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.

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.

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.

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).

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).

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.

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.

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) Except as provided in subsection (h) of this section, 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.

(h) Upon a showing that a local operator has exhausted all reasonably available funding sources, the director may recommend to the state loan and investment board funding in the form of

grants and loans for up to one hundred percent (100%) of the total cost of cease and transfer activities of the municipal solid waste facility. In addition to the requirements contained in subsection (d) of this section, the state loan and investment board shall base its determination of a grant or loan award under this subsection on whether the local operator:

(i) Has any additional funding sources reasonably available to allocate to project costs;

(ii) Is charging sufficient gate or use fees to fully fund the operational costs of transfer facilities constructed under the program.

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.

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.

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.

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.

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.

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.

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.

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.

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.

ARTICLE 6
VARIANCES

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.

(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.

ARTICLE 7
COMPLAINTS

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.

ARTICLE 8
PERMITS

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.

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 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.

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.

ARTICLE 9
PENALTIES

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) Repealed by Laws 1995, ch. 28, § 4.

(c) Repealed by Laws 1995, ch. 28, § 4.

(d) Repealed by Laws 1995, ch. 28, § 4.

(e) Repealed by Laws 1995, ch. 28, § 4.

(f) Repealed by Laws 1995, ch. 28, § 4.

(g) Repealed by Laws 1995, ch. 28, § 4.

(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) Repealed by Laws 1995, ch. 28, § 4.

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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.

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.

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, 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.

ARTICLE 10
JUDICIAL REVIEWS

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.

(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, 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.

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.

ARTICLE 11
MISCELLANEOUS PROVISIONS

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.

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.

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.

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.

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) Repealed By Laws 1998, ch. 80, § 2.

(vi) Repealed By Laws 1998, ch. 80, § 2.

(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.

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.

ARTICLE 12
ABANDONED MINE RECLAMATION PROGRAM

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 in accordance with an approved state reclamation plan and annual approved applications for implementation of specific reclamation projects.

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) Repealed by Laws 1991, ch. 72, § 2.

(E) Repealed by Laws 1991, ch. 72, § 2.

(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.

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.

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.

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.

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.

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.

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).

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;

(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.

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).

ARTICLE 13
MINE SUBSIDENCE LOSS INSURANCE

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.

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 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.

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.

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.

ARTICLE 14
STORAGE TANKS

35-11-1401. Repealed by Laws 1990, ch. 98, § 3.

35-11-1402. Repealed by Laws 1990, ch. 98, § 3.

35-11-1403. Repealed by Laws 1990, ch. 98, § 3.

35-11-1404. Repealed by Laws 1990, ch. 98, § 3.

35-11-1405. Repealed by Laws 1990, ch. 98, § 3.

35-11-1406. Repealed by Laws 1990, ch. 98, § 3.

35-11-1407. Repealed by Laws 1990, ch. 98, § 3.

35-11-1408. Repealed by Laws 1990, ch. 98, § 3.

35-11-1409. Repealed by Laws 1990, ch. 98, § 3.

35-11-1410. Repealed by Laws 1990, ch. 98, § 3.

35-11-1411. Repealed by Laws 1990, ch. 98, § 3.

35-11-1412. Repealed by Laws 1990, ch. 98, § 3.

35-11-1413. 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.

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.

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.

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.

35-11-1418. 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.

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.

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.

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.

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.

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.

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.

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.

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.

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; 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.

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.

35-11-1430. W.S. 35-11-1430(b) repealed this section effective June 30, 2009. (Laws 2007, Ch. 172, § 1.)

ARTICLE 15
RADIOACTIVE WASTE STORAGE FACILITIES

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.

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.

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.

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.

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, including any right to disapprove any site or siting.

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. 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).

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.

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 and impose a penalty for violation of the act under article 9 of this act.

(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.

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;

(v) Radioactive waste storage facilities subject to article 15 of this act;

(vi) Abandoned mine land sites subject to article 12 of this act; or

(vii) Any site where a release resulted from continuous or repeated violations of any law, rule, regulation or order under this act.

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.

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.

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).

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

ARTICLE 19
INTEGRATED SOLID WASTE PLANNING

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.

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.

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.

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.

ARTICLE 20
NUCLEAR REGULATORY AGREEMENT

35-11-2001. Authorization to negotiate transfer of certain nuclear regulatory functions to the state.

(a) The governor, on behalf of the state, is authorized to contact the 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 regulatory authority over source material from recovery or milling and byproduct material included under section 274 of the Atomic Energy Act of 1954, 42 U.S.C. § 2021, as amended. The nuclear regulatory commission shall maintain regulation over the activities reserved under section 274 of the Atomic Energy Act of 1954, 42 U.S.C. § 2021, as amended.

(b) The department shall serve as the lead agency for the regulation of source material from recovery or milling and the byproduct materials generated pursuant to the requirements of this article in the state of Wyoming. The department is authorized to enforce the requirements of the Atomic Energy Act of 1954, 42 U.S.C. § 2011 et seq., as amended, under the agreement reached between the state and the nuclear regulatory commission as provided in section 274 of the Atomic Energy Act of 1954, 42 U.S.C. § 2021, as amended.

(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 nuclear regulatory commission. The governor is authorized to enter into a final agreement with the nuclear regulatory commission for the regulation of source material from recovery or milling and the byproduct material generated in the state of Wyoming pursuant to the requirements of this article.

(d) Repealed by Laws 2016, ch. 7, § 3.

35-11-2002. Authority of department to enforce article; rulemaking.

(a) Except as provided in this act, no person shall acquire, own, possess, transfer, offer or receive for transport or use any source material from recovery or milling and the created byproduct material without having been granted a license therefore from the department or the nuclear regulatory commission. The department is authorized to regulate and penalize any unlicensed activities involving source material from recovery or milling and the created byproduct material.

(b) The council, upon recommendation from the director, is authorized to promulgate reasonable rules and regulations necessary to effectuate the purposes of this article.

(c) To the extent it is not inconsistent with the provisions of this article, article 4 of this chapter shall apply to all licenses issued and actions taken under this article.

35-11-2003. Licensure; license requirements; enforcement actions.

(a) The director is authorized to issue licenses to implement the requirements of the Atomic Energy Act of 1954, 42 U.S.C. § 2011 et seq., as amended. Licenses issued under this section shall also authorize the possession and use of source materials from recovery or milling and byproduct material as provided in this article. The director is further authorized to enforce license provisions in accordance with this article. The department shall recognize existing and effective licenses issued by the nuclear regulatory commission.

(b) The director is authorized to use license conditions to address matters specific to particular licensees. The department may impose additional license conditions when required to protect public health and safety.

(c) The director shall grant an exemption from a license requirement, including an exemption from the requirement to obtain a license, if the exemption provides adequate protection of public health and safety and is compatible with nuclear regulatory commission requirements.

(d) The department shall inspect a licensee's operation to ensure compliance with license conditions, as determined necessary by the administrator of the land quality division to protect public health and safety. The department shall also inspect proposed facilities and proposed expansion of existing

facilities to ensure that unauthorized construction is not occurring. Licensees, permittees and applicants for a license or permit shall obtain and grant the department access to inspect their mining operations, source material recovery or milling operations and byproduct material generated at such times and frequencies as determined necessary by the department to protect public health and safety.

(e) When issuing a license for byproduct material under this article, the director shall require licensees to provide an approved financial assurance arrangement consistent with nuclear regulatory commission requirements provided in 10 C.F.R. part 40, appendix A, criterion 9, as amended. The arrangement shall contain sufficient funds to cover the costs of decommissioning and, to the extent applicable, long-term surveillance and maintenance for conventional source material milling and heap leach facilities.

(f) The director is authorized to suspend licenses and conduct enforcement actions in accordance with this article, article 9 of this chapter and rules and regulations promulgated under this act. The director is authorized to suspend licenses and conduct enforcement actions in accordance with department rules and regulations and this article. In cases of an imminent threat to public health and safety, the director is authorized to issue an emergency order immediately suspending a license and any associated activity as provided in W.S. 35-11-115. The director is authorized to suspend or revoke a license for repeated or continued noncompliance with program requirements pursuant to its rules and regulations and this article. The director is also authorized to seek injunctive relief and impose civil or administrative monetary penalties as provided by law.

35-11-2004. License conditions; termination of licenses.

(a) The department shall prescribe conditions in licenses issued, renewed or amended for an activity that results in production of byproduct material to minimize or, if possible, eliminate the need for long-term maintenance and monitoring before the termination of the license.

(b) Prior to terminating any license the administrator of the land quality division shall obtain a determination from the nuclear regulatory commission that the licensee has complied with the commission's decontamination, decommissioning, disposal and reclamation standards.

(c) Prior to terminating a byproduct material license the department shall ensure the ownership of a disposal site and the byproduct material resulting from licensed activity are transferred to:

(i) The state of Wyoming; or

(ii) The federal government if the state declines to acquire the site, the byproduct material, or both the site and the byproduct material.

(d) Upon the transfer of a disposal site or the byproduct material resulting from licensed activity to the federal government, funds collected for decommissioning and long-term surveillance shall also be transferred to the federal government.

MATERIALS FOR JOINT MINERALS COMMITTEE MEETING

October 10 and 11, 2016

WYOMING ADMINISTRATIVE PROCEDURES ACT

CURRENT AS OF 2016 SESSION

SUBMITTED BY THE ENVIRONMENTAL QUALITY COUNCIL

TITLE 16
CITY, COUNTY, STATE AND LOCAL POWERS

CHAPTER 3
ADMINISTRATIVE PROCEDURE

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, the judiciary and the consensus revenue estimating group as defined in W.S. 9-2-1002;

(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.

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.

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).

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.

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).

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.

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.

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.

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.

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.

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.

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.

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) 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.

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.

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.

TITLE 16
CITY, COUNTY, STATE AND LOCAL POWERS

CHAPTER 3
ADMINISTRATIVE PROCEDURE

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, the judiciary and the consensus revenue estimating group as defined in W.S. 9-2-1002;

(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.

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.

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).

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.

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).

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.

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.

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.

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.

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.

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.

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.

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) 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.

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.

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.

MATERIALS FOR JOINT MINERALS COMMITTEE MEETING

October 10 and 11, 2016

RULES OF PRACTICE AND PROCEDURE

CURRENT AS OF 2016 SESSION

SUBMITTED BY THE ENVIRONMENTAL QUALITY COUNCIL

CHAPTER I
GENERAL RULES OF PRACTICE AND PROCEDURE

Section 1. **Authority.**

These rules are promulgated as authorized by the Wyoming Administrative Procedure Act (W.S. 94-101 through 9-4-115) and the Wyoming Environmental Quality Act (W.S. 35-11-101 through 35-11-1104). These rules shall apply in all proceedings before the Environmental Quality Council and its examiners. Existing Chapters I through IV are hereby repealed. These rules and regulations are effective upon final approval of a state program pursuant to P.L. 95-87.

Section 2. **Definitions.**

(a) All of the definitions set forth and contained in the Wyoming Environmental Quality Act and the Administrative Procedure Act are incorporated herein by reference. In addition, the following definitions are set forth:

(i) Applicant: Any person applying for a permit authorized under the Environmental Quality Act or any party petitioning for rulemaking in accordance with W.S. 9-4-106.

(ii) Protestant: Any person desiring to protest the application of a permit or any person requesting a hearing before the Environmental Quality Council in accordance with the Environmental Quality Act and who is objecting to an action of the Department of Environmental Quality and desiring affirmative relief.

(iii) Presiding officer: The officer designated by the Chairman of the Environmental Quality Council to conduct hearings.

(iv) The Wyoming Administrative Procedure Act: W.S. 9-4-101 through 9-4-115, as amended.

Section 3. **Initiation of Proceedings.**

(a) All hearings before the Council, appeals or others, shall be held pursuant to these rules, the provisions of the Environmental Quality Act W.S. 35-11-101 through 1104 and the Wyoming Administrative Procedure Act.

(b) All persons requesting a hearing or protesting a permit shall file two copies of a written petition directed to and served upon both the Chairman of the Council and the Director of the Department.

(i) Original service shall be by registered mail, return receipt requested. Thereafter, all service shall be proved in accordance with the Wyoming Rules of Civil Procedure.

(ii) Where protestant is objecting to a permit, he shall also serve the permit applicant with a copy of the petition and all other pleadings and motions.

(c) The petition for hearing shall set forth:

(i) Name and address of the person making the request or protest and the name and address of his attorney, if any.

(ii) The action, decision, order or permit upon which a hearing is requested or an objection is made.

(iii) A statement in ordinary, but concise language of the facts on which the request or protest is based, including whenever possible particular reference to the statutes, rules or orders that the Applicant or Protestant alleges have been violated.

(iv) A request for hearing before the Council.

(d) The filing of such petition shall constitute the commencement of the proceeding on the date filed.

(e) A copy of the petition shall be served on any party who appeared in prior proceedings pertaining to the same matter.

Section 4. **Notice.**

(a) Notice of hearings shall conform to W.S. 9-4-107(b). The manner and time for giving notice shall be as follows:

(i) When the Council determines that it shall hold a hearing on its own motion, it shall give notice as promptly as possible in advance of the hearing date to all parties by registered or certified mail, return receipt requested.

(ii) When a party desires that a hearing be held before the Council he shall file his petition and the Council shall forthwith set a date for hearing and notify the applicant thereof.

Section 5. **Attorney General Presence.**

(a) In all matters before the Council, the Council may request the Attorney General of the State of Wyoming or a representative of his staff to be present throughout the hearing.

(b) The Council, upon its own motion or the motion of any party, may certify an issue of law to the Attorney General for his opinion. Such opinion shall thereafter be part of the record of any proceeding before the Council, and may, if the court so directs, constitute a finding of the Council with respect to the issuance of final orders or decisions.

Section 6. **Record of Proceedings - Reporter.**

(a) Unless otherwise agreed by the parties and consented to by the Council, all hearings, including all testimony, shall be reported verbatim by a competent reporter. The compensation of such reporter shall be paid as required by law and as ordered by the Council. The Council may direct any party or parties to assume the cost of the transcript.

Section 7. **Record.**

(a) The record in all contested cases (Chapter II) shall include:

(i) All formal and informal notices.

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

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

(iv) Any proposed findings and objections thereto.

(v) The decision and order of the Council.

(vi) The transcript of all recorded proceedings.

(b) The record in hearings held under Chapter III shall include all relevant information presented to the Council.

(c) At the close of the hearing, the presiding officer may afford all interested parties time in which to submit additional written testimony or written proposed corrections of the transcript, pointing out errors that may have been made in transcribing the testimony. The presiding officer shall promptly thereafter order such corrections made as in his judgement are required to make the transcript conform to the testimony.

Section 8. **Appeals.**

(a) Appeals to the District Court from decisions of the Council are governed by W.S. 9-4-114 Rule 12 of the Wyoming Rules of Appellate Procedure, and W.S. 35-11-1001, and 1002.

(b) In case of an appeal of the District Court as above provided, the party appealing shall secure and file a transcript of the testimony and all other evidence offered at the hearing.

The compensation of the reporter for making the transcript of the testimony and all other costs involved in such appeal shall be borne by the party prosecuting such appeal.

Section 9. **Pre-Hearing Conference.**

(a) At a time on or before the day of any hearing, the Council may direct the parties to appear before the Council to consider:

(i) The implication of the issues.

(ii) The necessity or desirability of amending the pleadings.

(iii) The possibility of obtaining admissions of the fact and of documents to avoid unnecessary proof.

(iv) Formulating procedures to govern the hearing.

(v) Such other matters as may aid in the disposition of the case.

(b) Such conferences shall be conducted informally. An order will be prepared which recites the actions taken at the conference, amendments allowed, agreements of the parties and agreements of counsel and the parties. The pre-hearing order will control the court of the hearing unless modified by the presiding officer to prevent manifest injustice.

(i) If a party determines an order does not fully cover the issues presented, or is unclear, he may petition for a further ruling within ten days after receipt of the order.

Section 10. **Time.**

(a) When time prescribed by these rules or by order of the Council for doing any act expires on a Saturday or legal holiday, such time shall extend to and include the next succeeding business day.

(b) For good cause shown, extensions and continuances of time may be granted or denied in the discretion of the Council.

Section 11. **Settlement.**

(a) Informal dispositions may be made of any hearing by stipulation, agreed settlement, consent, order or default, upon approval of the Council.

Section 12. **Deviation and Amendment.**

(a) The Council may permit deviations from these rules insofar as it may find compliance therewith to be impossible or impracticable.

(b) Any amendments to these rules shall become effective as provided by W.S. 9-4-103 and 9-4-104.

Section 13. **Exclusion.**

(a) Nothing in these Rules shall be construed as prohibiting the Environmental Quality council and the Administrators of the Divisions of Land, Air, or Water Quality or their designee from holding informational proceedings, hearings, or conferences for the purpose of aiding the Council or the Administrator in ascertaining and determining facts necessary for the performance of their respective duties. Any person believing himself aggrieved by a determination made by the Administrator or his designee following an informational proceeding, hearing, or conference and who is otherwise entitled thereto, may upon filing a petition or complaint with the Council, obtain a full hearing or review upon the merits, which matter shall be heard and tried de novo.

(b) Disrespectful, disorderly or contumacious language or contemptuous conduct, refusal to comply with directions, continued use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct, at any hearing before the Council, shall constitute grounds for immediate exclusion before the hearing.

Section 14. **Meeting of Council and Advisory Boards.**

(a) All meetings of the Council and the Advisory Board shall be conducted in accordance with Robert's Rules of Order.

(b) The four regular meetings of the Council and the Advisory Boards required by W.S. 35-11-113 and W.S. 35-11111(d) of the Act shall be called by the Chairman after consultation and coordination with the Administrator or Director, respectively.

Section 15. **Contested Water Discharge Permit Hearings.**

Members of the Environmental Quality Council who do not comply with the requirements set forth in 40 C.F.R. 123.25 (July 2003) shall recuse themselves from contested case proceedings in which the approval of a surface water discharge permit, or portions of a permit, is being considered by the Council.

Section 16. **Appeals to Council.**

(a) Unless otherwise provided by these Rules or the Environmental Quality Act, all appeals to Council from final actions of the Administrators or Director shall be made within sixty (60) days of such action.

(b) Within 30 days after notification of any administrative decision following an informal conference relating to a surface coal mining operation, the applicant or any person with an interest which is or may be adversely affected may appeal the decision to the Council for a hearing in accordance with Chapters I and II. The Council shall make a final written decision within thirty (30) days after the hearing and furnish the decision to the applicant and all parties to the hearing.

CHAPTER II

RULES OF PRACTICE AND PROCEDURE APPLICABLE TO HEARINGS IN CONTESTED CASES

Section 1. Answer or appearance.

(a) The Director or Applicant shall promptly file a responsive pleading to the petition directed to and served upon the opposing party and the Council, not later than five days before the hearing date.

Section 2. Docket.

(a) When a hearing is instituted, it shall be assigned a number and entered with the date of its filing on a separate page of a docket provided for such purpose. The Council shall establish a separate file for each such docketed case, in which shall be systematically placed all papers, pleadings, documents, transcripts, evidence and exhibits pertaining thereto, and all such items shall have noted thereon the docket number assigned, and the date of filing.

Section 3. Motions.

(a) The Council or presiding officer may, upon reasonable notice to all parties, hear orally, or otherwise, any motion filed in connection with hearings under these rules.

Section 4. Order of Procedure at Hearings.

(a) As nearly as possible, hearings shall be conducted in accordance with the following order of procedure:

(i) The presiding officer shall announce that the Council is open to transact business and call by docket number and title the case to be heard.

(ii) The parties will each be allowed an opening statement to briefly explain their position to the Council and outline the evidence they propose to offer together with purpose thereof.

(iii) Parties' evidence will be heard. Witnesses may be cross-examined by the opposing party or his attorney and by members of the Council and legal counsel for the Council.

(iv) The presiding officer may offer any evidence necessary on behalf of the Council subject to cross examination.

(v) The presiding officer may allow, in his discretion, evidence to be offered in any order.

(vi) The Council may allow, after service of copies on all parties of record, the direct testimony of a witness to be in writing, either narrative or question and answer form, upon the witness being sworn and identifying the written testimony. It may be received into the record as if read, in accordance with W.S. 9-4-108. The witness giving such testimony in writing shall be subject to cross-examination and such evidence shall be received into the record subject to a motion to strike. The written testimony must be served on all other parties in advance to allow a reasonable time to prepare cross-examination.

(vii) Closing arguments of the parties will be made in the manner set by the hearing officer.

(viii) Time for oral argument may be limited by the presiding officer.

(ix) The presiding officer may recess the hearing as required.

(x) After all interested parties have been offered the opportunity to be heard, the presiding officer shall declare the evidence closed and excuse all witnesses. The evidence may be reopened at a later date, for good cause shown, by order of the Council upon motion by a party or on the Council's own motion.

(b) The presiding officer may, at his discretion, require parties to tender written briefs and set the time for filing such briefs.

(c) The presiding officer may declare that the matter is taken under advisement and that the decision and order of the Council will be announced at a later date.

(d) The Council may, at its discretion, appoint a presiding officer, who will then preside during the course of such hearing.

(i) The presiding officer shall, for purposes of that hearing, have all necessary powers normally vested in the Chairman.

Section 5. Witnesses at Hearings to be Sworn.

(a) All persons testifying at any hearing before the Council shall stand and be administered the following oath or affirmation by the presiding officer:

"Do you swear (or affirm) to tell the truth, the whole truth, and nothing but the truth in the matter now before the Council, so help you God?"

(i) No testimony will be received from a witness except under oath or affirmation.

Section 6. Appearance.

(a) Appearances and representation of parties shall be made as follows:

(i) An individual may appear and be heard in his own behalf.

(ii) A co-partnership may appear and be represented by a co-partner.

(iii) A corporation may appear and be represented by a corporate officer or a full-time employee of said corporation.

(iv) A municipal corporation or its Board of Public Utilities may appear and be represented by a municipal officer, a member of said Board or a full-time employee of said municipality or Board.

(v) An unincorporated association may appear and be represented by any bona fide general officer or full-time employee of such association.

(vi) The Department of Environmental Quality may appear and be represented by the Director or Administrator of the relative division, or by the Attorney General or his representative.

(vii) Any party to a proceeding may appear and be represented therein by an attorney at law who is duly admitted to practice in Wyoming and an active member of the Wyoming State Bar. Any attorney who is not duly licensed to practice law in Wyoming shall not be entitled to enter his appearance in, prosecute or defend any action or proceeding pending before the Council unless he shall have associated with him in such action or proceeding an active member of the Wyoming State Bar.

(b) Any person appearing in a proceeding before the Council shall conform to the recognized standards of ethical conduct.

Section 7. Intervention.

(a) Any person interested in obtaining the relief sought by a party or otherwise interested in the determination of a proceeding relating to other than surface coal mining operations pending before the Council may petition for leave to intervene in such proceeding prior to or at the date of hearing, but not thereafter except for good cause shown. The petition shall set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and if affirmative relief is sought, the same should conform to the requirements for a formal petition. Leave will not be granted unless Council shall determine that the party requesting to intervene is adversely affected by the action, has a legal right under the Environmental Quality Act or the Wyoming Administrative Procedure Act.

(b) For proceedings related to surface coal mining operations, any person may petition for leave to intervene as a full party or, if desired in a limited capacity, at any stage of a proceeding conducted by the Council. The petition shall include the basis for intervention and shall be granted to any person who either could have initiated the proceeding or has an interest which may be adversely affected by the outcome of the proceeding. Regardless of these bases, intervention may be granted whenever appropriate, after consideration of the nature of the issues, the adequacy of the existing parties representation of petitioner's interest, the ability of the petitioner to present relevant evidence and argument, and the effect of intervention on the implementation of the Act. The extent

and terms of participation by an intervenor in a limited capacity shall be determined by the Council.

(c) If leave is granted, the petitioner becomes an intervenor and a party to the proceeding with the right to have notice, appear at the taking of testimony, produce and crossexamine witnesses, and be heard on the argument of the case.

(d) The party intervening must give notice of such intervention to all other parties to the appeal.

Section 8. General Hearing Rules.

(a) Every party shall be accorded the right to appear and testify in person or by counsel or other duly qualified representative. If testifying on behalf of another person or several persons, such person shall present to the hearing officer evidence he is a qualified representative thereof.

(b) Every person testifying shall, at the Council's discretion, be qualified prior to testifying. Such qualification will include ascertaining the residency, occupation, background, education, and expertise of said person.

(c) All parties shall have the right to respond and present evidence and argument on all issues involved.

(d) No person shall be required to report, inspect, or perform any investigative act except as authorized by law.

(e) All persons required to submit data or evidence shall be either entitled to retain the data or evidence or upon payment of a reasonable cost may procure a copy thereof.

(f) All irrelevant, immaterial, or unduly repetitious evidence may be excluded.

(g) Effect to the rules of privilege shall be given as recognized by law. Documentary evidence may be received in the form of copies of excerpts, if the original is not available. All copies are subject to being compared with the original.

(h) The presiding officer shall:

(i) Administer oaths and affirmations.

(ii) Issue subpoenas.

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

(iv) Take or cause to be taken depositions.

(v) Preside over the hearing and regulate its proceedings.

(vi) Preside over and set the time for such pre-hearing conferences as he deems necessary.

(vii) Dispose of procedural requests. The presiding officer may be assisted by a representative of the Attorney General's Office when such assistance is deemed necessary.

(viii) The presiding officer shall officially open and officially close the hearing.

Section 9. Subpoenas.

(a) Subpoenas requiring the attendance of witnesses from any place in the State of Wyoming at any designated place of hearing or for the production of books, papers, or other documents may be issued by the presiding officer upon written application of any party or upon motion of the presiding officer in accordance with the Wyoming Rules of Civil Procedure and Administrative Procedure Act.

(i) Items sought shall be set forth with particularity.

(ii) All subpoenas shall be served by personal delivery or by certified mail return receipt required, to the party served.

(iii) Cost of the subpoenas shall be paid by the party requesting the service.

Section 10. Depositions.

(a) In all contested areas coming before the Council, the taking of depositions and discovery shall be available to the parties and to the Council on its own motion in accordance with the provisions of W.S. 9-4-107(g).

(b) The Council, for the purposes of allowing orderly presentation of evidence, may govern the conduct of discovery and the time limitations involved.

Section 11. Witness Fees.

(a) Witnesses who are summoned before the Council are entitled to the same fees as are paid for like service in the District Courts of the State of Wyoming. Such fees shall be paid by the party at whose insistence the testimony was taken.

Section 12. Decision and Order.

(a) The Council shall make a written decision and order in all cases, which decision shall contain findings of fact and conclusions of law based exclusively on the record and include the vote on the decision. The decision and order of the Council shall be placed in the record of the case which shall be retained by the Council.

Section 13.

(a) The Council may, in its discretion, allow any pleadings to be amended or corrected, or any omission therein to be supplied.

Section 14. Applicability of Rule of Civil Procedure.

(a) The Wyoming Rules of Civil Procedure, insofar as the same may be applicable and not inconsistent with the laws of the state and these rules shall apply to matters before the Council.

envqlty/pracproc/03_Rule-Making_Hearings_or_Hearings_by_Administrator_of_a_Division Agency ENVQLTY
Program PRAC&PROC Practice and Procedure
Chapter Name Rule-Making Hearings or Hearings by Administrator of a Division Chapter No.3

Date Filed 02/14/94 Expr Date
Supr Date Repeal Date
Document Type RULES

CHAPTER III

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

Section 1.

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

(a) Any hearings conducted pursuant to a petition (within the meaning of W.S. 9-4-106) for the promulgation, amendment, or repeal of any rules (as defined in W.S. 9-4-101(a)(vii)).

(b) Any hearings conducted pursuant to W.S. 9-4-103 for the promulgation of rules and regulations recommended by the Director or Administrator.

(c) Any hearings by the Administrator on land, air or water quality or solid waste management permits held because of significant public comment.

(d) Any hearings by the Administrator for a variance under W.S. 35-11-601, excluding SO2 variances.

(e) Any hearings by the Council to consider the designation of areas of unique and irreplaceable historical, archaeological, scenic or natural value pursuant to W.S. 35-11-112(a)(v).

(f) Any informal conference held by the administrator of Land Quality on a permit application. However, a record shall be made of the conference, unless waived by all parties. Such record shall be maintained and shall be accessible to the parties until final release of the performance bond.

Section 2.

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

(a) Each petition must be submitted in duplicate to the Chairman of the Environmental Quality Council and to the Director of the Department of Environmental Quality.

(b) Except as otherwise provided by the Council, the filing of a petition under this section shall not stay the effectiveness of any rule or rules.

(c) After filing of the petition, the Council may hold a prehearing conference to review the petition and its persuasiveness.

(d) As soon as practicable, the Council shall deny the petition in writing (stating its reasons for the denial) or initiate rule-making procedures.

(e) Before the adoption, issuance, amendment, or repeal of any rule, or the commencement of any hearing on such proposed rule-making, the Council shall cause notice to be given in accordance with the provisions of W.S. 9-4-103.

Section 3. Informal Conference.

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

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

(i) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(ii) The person requesting that relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding;

(iii) Such relief will not adversely affect the

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

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

Section 4.

(a) The provisions of W.S. 9-4-107 through 9-4-112 (relating to the conduct of hearings for contested cases) do not apply to hearings held under this Chapter (III) of these Rules. As a fact-finding legislative proceeding, each hearing is nonadversary and there are no formal pleadings or adverse parties.

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

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

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

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

Section 5. Witnesses.

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

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

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

Section 6. Comments.

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

Section 7. Decision.

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

CHAPTER IV

REHEARING

Section 1. Petition for Rehearing.

(a) Any party seeking any change in any decision of the Council may file a petition for rehearing within twenty (20) days after the written decision of the Council has been issued.

(b) Any petition for rehearing filed under this section must be confined to new questions raised by the decision and upon which the petitioner had no opportunity to argue before the Council.

(c) Any petition for rehearing must specify whether the prayer is for reconsideration, rehearing, further hearing, modification of effective date, vacation, suspension or otherwise.

(d) Except as the Council may otherwise direct, the filing of a petition under this section shall not stay the effectiveness of any decision respecting the promulgation, amendment, or repeal of any rule or rules.

Section 2. Scope.

(a) A petition for rehearing may be filed in hearings conducted under Chapter II or Chapter III.

(b) The granting of a petition to rehear is solely within the discretion of the Council.

CHAPTER V

PETITIONS FOR AWARD OF COSTS AND EXPENSES UNDER W.S. 35-11-437(f)

Section 1. Petition and Answer.

(a) As described in W.S. 35-11-437(f), any person may file a petition for award of costs and expenses within forty five (45) days of receipt of a final order from the Council. Any person served with a copy of the petition shall have thirty (30) days from service within which to file an answer to the petition. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

(b) The petition shall contain the petitioner's name and a detailed accounting, including receipts, of all costs and expenses authorized under W.S. 35-11-437(f). Where attorneys' fees are claimed, the petition shall include evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual(s) performing the services.

Section 2. Who May Receive an Award.

(a) Appropriate costs and expenses including attorneys' fees may be awarded:

(i) From the permittee to any person if he initiates or participates in any administrative proceeding reviewing enforcement actions, but only if the Council finds that:

(A) A violation of the Act, regulations or permit has occurred, or that an imminent hazard existed; and

(B) The petitioner substantially contributed to a full and fair determination of the issues.

(ii) To a permittee from any person, but only if the Council finds that:

(A) The person initiated or participated in enforcement action in bad faith for the purpose of harassing or embarrassing the permittee.

(iii) To any person, other than a permittee or his representative, from the Department if the person initiates or participates in any contested case proceeding under the Act as it provides for regulation of surface coal mining and reclamation operations in accordance with P.L. 95-87, who prevails in whole or part, achieving at least some degree of success on the merits and the Council finds that the person substantially contributed to a full and fair determination of the issues.

(iv) To a permittee from the Department when the Council finds that the Department issued an order of cessation, a notice of violation or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee.

(v) To the Department where it demonstrates that a person initiated or participated in reviewing of any enforcement action in bad faith for the purpose of harassing or embarrassing the Department.

Section 3. Awards.

(a) An award under this chapter may include:

(i) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result or initiation and/or participation in a proceeding under the Act as it provides for regulation of surface coal mining and reclamation operations in accordance with P.L. 95-87.

(ii) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award before the council.

CHAPTER VI

REVIEW BY THE DIRECTOR

Section 1. Review by the Director.

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

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

Section 2. Initiation of Review.

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

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

Section 3. Conduct of Conference and Decision.

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

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

Section 4. Appeal to the Council.

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

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

Section 5. Miscellaneous.

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

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

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

CHAPTER VII

DESIGNATION OF AREAS PURSUANT TO W.S. §35-11-112(a)(v)

Section 1. Authority.

These rules are promulgated by authority of the Environmental Quality Act, W.S. §35-11-112 and W.S. §16-3-103.

Section 2. Purpose.

These rules are intended to provide a process to implement W.S. §35-11-112(a)(v) of the Environmental Quality Act which provides that the Council shall designate those areas of the state that are very rare or uncommon and have particular historical, archaeological, wildlife, surface geological, botanical or scenic value. These rules apply only to the Land Quality Article, Article 4., of the Environmental Quality Act. The scope of these rules is limited to areas sought to be designated for purposes related to the permit approval and denial process contained in W.S. §35-11-406(m) for noncoal mining operations. Included in these rules are criteria to be used in evaluating lands of the state that are being considered for this designation. The hearing procedure is similar to that of Chapter III of these rules, and is authorized by W.S. §16-3-103.

Section 3. Applicability.

(a) Areas designated pursuant to these rules are subject to the limitation contained in Section §35-11-406(m). A designation under Chapter VII shall not bar issuance of a coal mining permit under Section §35-11-406(n).

(b) No areas subject to existing mining operations for which the Department of Environmental Quality shall have issued a permit shall be affected by a designation so long as the permit remains in effect.

(c) No area subject to an application for a noncoal mining permit shall be considered for designation if the petition to designate is filed after the close of the public comment period allowed by Section §35-11-406(k).

(d) A designation as very rare or uncommon shall not restrict non-mining agricultural operations. Nor shall such designation restrict activities excluded from the Environmental Quality Act, Section §35-11-401(e) and Section §35-11-1104.

Section 4. Definitions.

(a) “Critical habitat” as defined in Section §35-11-103(e)(xxix) means only that fish and wildlife habitat designated as critical by the United States Secretary of the Interior or Secretary of Commerce, for the survival and recovery of listed threatened and endangered species.

(b) “Important habitat” or “Crucial habitat” as defined in Section §35-11-103(e)(xxx) means

that fish and wildlife habitat, exclusive of agricultural lands, which in limited availability, increases the species diversity of a localized area and fulfills one (1) or more of the essential living requirements of important wildlife species.

(c) "Fragile lands" means geographic areas containing natural, ecologic, scientific or aesthetic resources that could be damaged or destroyed by mining operations. For examples of fragile lands see Section 1.(a), Chapter XXVIII, Land Quality Rules and Regulations.

Section 5. General Procedure.

(a) The rules in this Chapter shall supersede the rules of Chapter III, Section 1.e. for petitions for designation of lands pursuant to W.S. §35-11-112(a)(v).

(b) The hearing under this chapter is not a contested case proceeding but is a non-adversarial legislative proceeding except where the surface and/or mineral owner objects to the designation. Under those circumstances all parties shall be entitled to cross-examine witnesses and proceed under contested case procedures.

(c) The Council, on its own motion or on the motion of any person, in the interests of developing information about the area considered for designation, may adopt one or more of the provisions contained in Chapter II of the rules governing procedures in contested cases. Such action by the Council shall not constitute a finding that the proceeding before the Council is in the nature of a contested case.

Section 6. Initiation of Proceedings.

(a) Any person may file a petition to designate lands as very rare or uncommon pursuant to W.S. §35-11-112(a)(v) or a petition to modify or terminate an existing designation. The petition shall contain the following:

(i) The name, address, phone number, and fax number for the petitioner;

(ii) The location by legal description, including section, township and range, of the area the petitioner is proposing for designation;

(iii) The names, if any, by which an area may be known locally;

(iv) The distance of the area to the nearest city or town, and the county in which the area is located;

(v) An original USGS topographic map showing the area in question which reflects the surface land ownership pattern (private, state, federal) in the area;

(vi) A list of the names and addresses of the surface and mineral owners whose lands are included within the area proposed for designation, modification, or termination with a description of the ownership interest of each surface and mineral owner, including a legal description of the lands in which each person has an interest;

(vii) A concise statement of the reasons the area is alleged to be very rare or uncommon and a description of the archaeological, surface geological, historical, wildlife, botanical, or scenic attributes of the area, or, if the petition seeks to modify or terminate an existing designation, a concise statement of the reasons for the modification or termination including an explanation of the substantial change in circumstances that has occurred since the designation;

(viii) A description of the current and historical land use in the area;

(ix A list of any special designations or descriptions of the area made by other governmental)agencies, including, but not limited to, designations by the Department of Interior Bureau of Land Management or Office of Surface Mining, designations by the U.S. Fish and Wildlife Service, and designations by the Wyoming Department of Game and Fish;

(x) The names and addresses of all expert witnesses whose work or whose testimony may be offered by the petitioner to support the petition;

(xi) The names and addresses of the surface owners of lands contiguous to the area proposed for designation, modification, or termination;

(xii) A list of any scientific documents to be offered by the petitioner to support the petition that discuss the area to be designated, modified, or terminated; and

(xiii) At the time of filing, eight (8) copiers of the petition shall be submitted to the Chairman of the Environmental Quality Council at the Council's office in Cheyenne, Wyoming. The petition shall be considered to be filed in the Council's office as of the date it is received in that office.

(b) Upon receipt of a petition under these rules, the Council shall consider the petition at a regularly scheduled Council meeting and shall notify the petitioner and surface and mineral owners whose lands or minerals are within the area proposed for designation of the time, date, and location of the meeting. The Council's consideration shall be limited to whether the petition should be accepted or dismissed.

(c) The Council may dismiss a petition if, after a review of the petition, the Council determines that it does not provide the information required by these rules or that the petition does not provide sufficient information to support the conclusion that the area may be designated, modified, or terminated if the Council were to proceed.

(d) If the Council votes to dismiss the petition, a brief statement of the reasons for dismissal of a petition shall be served on the petitioner. The petitioner may file an amended petition at any time.

(e) If the Council votes to consider a petition, the Council shall initiate formal hearing procedures in accordance with these rules.

Section 7. Hearing and Notice.

(a) The Council shall:

(i) Set the time, date, and location of a hearing on the petition, and

(ii) Schedule the hearing within the county in which the lands or a major portion thereof are located.

(b) Subject to the review and approval of the form of the public notice by the Council, the petitioner shall:

(i) Publish notice of the hearing once per week for 4 consecutive weeks with the notice beginning 45 days in advance of the hearing in a newspaper of statewide circulation and a newspaper of general circulation in the vicinity of the area proposed for designation, modification, or termination;

(ii) Serve notice of the hearing by personal service or by certified mail, which notice shall include a copy of the petition, to all surface and mineral owners whose lands and/or mineral interests are included within the area proposed for designation, modification, or termination;

(iii) Serve notice of the hearing by regular mail to all surface owners whose lands are contiguous to the area proposed for designation, modification, or termination;

(iv) Serve notice of the hearing by regular mail to the county commissioners of the counties wherein lands proposed to be designated, or a designation may be modified or terminated, lie, the Attorney General's Office, and the Governor's Office; and

(v) Except as otherwise provided in these rules, notice shall be served in accordance with the Wyoming Rules of Civil Procedure.

(c) Costs of the publication and mailing of notice of the proceedings shall be borne by the petitioner.

Section 8. Witnesses.

(a) Any person may comment on a proposed designation, modification, or termination either by appearing at the hearing and entering comments into the record orally, or by submitting written comments within a time period set by the Council.

(b) Witnesses submitting testimony in writing shall submit one (1) copy, and are requested to submit 8 copies, of their complete testimony to the Council.

(c) Witnesses will not be cross-examined except by the Council, the Council's staff, or other persons designated by the Council.

(d) Whenever the Council allows testimony to be submitted in writing, the testimony shall be considered to be timely filed if it is received in the office of the Environmental Quality Council by the end of the business day on the date set by the Council. Late submittals shall not be considered by Council members unless the Council votes to reopen the record.

(e) Witnesses may be called by the Council, and expenses of these witnesses will be paid by the Council.

(f) The Council may impose time limitations on oral presentations at hearings.

Section 9. Record.

The hearing proceedings including all testimony shall be reported verbatim stenographically or by other appropriate means determined by the Council. A copy of the proceedings will be furnished to any person upon written request and the payment of a reasonable fee. If a person elects to have the hearing transcribed by a certified court reporter, he or she must make the necessary arrangements and bear the cost thereof.

Section 10. Decision.

(a) The Council, in its discretion, may direct the petitioner, the Council's staff, or others to analyze the oral and written comments.

(b) An analysis of comments shall be in writing, shall be submitted at a time to be set by the Council, and shall be a part of the record of the designation proceedings. The analysis may include recommendations to modify the petition to designate.

(c) The Council shall issue a written decision. The decision may be to designate all or a portion of the area or to deny the petition. The Council shall issue a written statement of reasons for the decision.

(d) The petitioner shall be served with a copy of the Council's decision and statement of reasons.

Section 11. Criteria for Designation.

(a) In considering designations, the Council shall follow a two-tiered review process. First, the Council must determine whether the area is eligible for designation by virtue of the existence of one or more of the particular values specified in the statute. Secondly, the Council must determine whether any particular value that is found to exist is very rare or uncommon.

(b) For an area to be eligible for designation, the Council must make an initial finding that the area at issue possesses particular historical, archaeological, wildlife, surface geological, botanical or scenic value. For purposes of making the initial finding, or refusing to make the initial finding, the Council shall consider the significance and the weight of all specifically identified factors that are set forth in these criteria.

(c) For purposes of determining whether an area of the State may be considered to have particular historical, prehistorical, or archaeological value the Council shall consider the following factors:

(i) Whether the area is mentioned prominently in historic journals or other historic literature;

(ii) Whether the area is important because it is associated with cultural or religious traditions and practices;

(iii) Whether the area has received designation pursuant to state or federal laws that provide for special protection and management due to outstanding historic or prehistoric values such as national historic landmarks, national historic sites, or the National Register of Historic Places; or

(iv) Whether the area contains buildings, structures, artifacts, or other features that are significant in the history or prehistory of the state.

(d) For purposes of determining whether an area has particular wildlife value the Council shall consider the following factors:

(i) Whether the area includes lands that are considered irreplaceable fish or wildlife habitat;

(ii) Whether the area includes preserves or easements which have been established and used for the protection for habitat for wildlife;

(iii) Whether the area includes lands that the Game and Fish Department has designated as crucial or vital habitat for resident species;

(iv) Whether the area contains or may affect fisheries classified as class I by the Wyoming Game and Fish Department;

(v) Whether the area includes fragile lands that offer unique wildlife or scientific values;

(vi) Whether the area includes federally designated critical habitat for threatened or endangered plant or animal species which is determined by the U.S. Fish and Wildlife Service or the Wyoming Game and Fish Department to be of essential value and where the presence of threatened or endangered species has been scientifically documented;

(vii) Whether the area contains a bald or golden eagle nest or nest site that is determined to be active and includes all or a portion of a buffer zone of land around the nest which has been evaluated and approved by the U.S. Fish and Wildlife Service;

(viii) Whether the area includes bald and golden eagle roost and concentration areas used during migration and wintering;

(ix) Whether the area contains a falcon (excluding kestrel) cliff nesting site with an active nest and a buffer zone around the nest site which has been evaluated and approved by the U.S. Fish and Wildlife Service; or

(x) Whether the area includes lands which are high priority habitat for migratory birds of high federal interest on a regional or national basis as determined by the U.S.Fish and Wildlife Service.

(e) For purposes of determining whether an area has particular surface geological value the Council shall consider the following factors:

(i) Whether the area has unique surface geological formations that expose upheavals and faults that are indicative of sub-surface geological features;

(ii) Whether the area has significant paleontological resources; or

(iii) Whether the area has geologic features with unusual or substantial recreational, aesthetic, or scientific value.

(f) For purposes of determining whether an area has particular botanical value the Council shall consider the following factors:

(i) Whether the area is critical habitat for endangered or threatened plant species as designated by state or federal agencies;

(ii) Whether the area contains stands of a rare native vegetation type, or contains stands of a native vegetation type that is now rare, or contains stands of a native vegetation type in pristine condition for which pristine stands are unusual; or

(iii) Whether the area contains plant species and habitat determined to be crucial or vital for resident wildlife species.

(g) For purposes of determining whether an area has particular scenic value the Council shall consider the following factors:

(i) Whether the area incudes lands within or adjacent to a corridor for a river designated as a National Wild and Scenic River or a corridor for a National Scenic Byway;

(ii) Whether the area has been the subject of substantial artistic attention in the works of artists, sculptors, photographers, or writers; or

(iii) Whether the area has substantial aesthetic value and its value would be apparent to a reasonable person.

(h) An area shall be designated pursuant to W.S. §35-11-112(a)(v) if, in addition to finding that the area is eligible for designation pursuant to Section 11.a., the Council finds that the area is very rare or uncommon. For purposes of determining if an area is very rare or uncommon the Council shall consider the following:

(i) Whether the area exhibits historical, archaeological, wildlife, surface geological, botanical, or scenic values that are very rare of uncommon when compared with other areas of the state or a region therein;

(ii) Whether the area contains historical, archaeological, wildlife, surface geological, botanical, or scenic values seldom found within the state or a region therein; or

(iii) Whether the area contains historical, archaeological, wildlife, surface geological, botanical, or scenic values known or suspected to be declining which, if left unprotected, could become extinct or extirpated.

CHAPTER 8

SMALL BUSINESS VOLUNTARY DISCLOSURE INCENTIVE

Section 1. **PURPOSE**

This Rule sets forth the requirements for waiving penalties against small businesses that voluntarily disclose environmental non-compliance to the Department or discover violations through compliance assistance or outreach seminars, and then, correct those violations in accordance with this rule. It is the Department's objective to provide small businesses with an incentive to approach the agency for assistance by reducing the fear of penalties.

Section 2. **DEFINITION OF A SMALL BUSINESS**

(a) A small business includes any person, as defined in W.S. § 35-11-103(vi), with 100 or fewer employees in all of its facilities or operations, whether located in or outside of the State of Wyoming, except that:

(i) Businesses seeking a penalty waiver for air quality violations under Article 2 of the Environmental Quality Act, W.S. §§ 35-11-201 through 212, must meet the definition of a small business stationary source found in W.S. § 35-11-209 and cannot be a major source of hazardous pollutants under W.S. § 35-11-203(a)(i)(B);

(ii) Businesses regulated under Article 5 of the Environmental Quality Act, W.S. §§ 35-11-501 through 520, are not entitled to a penalty waiver under this rule for violations of W.S. §§ 35-11-501 through 520 if they are a large quantity generator or are classified as a treatment, storage or disposal facility under the state hazardous waste regulations; and

(iii) Businesses under control or ownership of a large parent organization that does not qualify under this rule, are not small businesses.

(b) The number of employees shall be calculated by determining the full-time equivalents on an annual basis and does not include contractors and consultants. The Department shall not consider employees who work less than 35 hours per week as full-time equivalents.

Section 3. **QUALIFICATIONS FOR PENALTY WAIVER**

(a) The Department will not seek civil penalties from a small business that voluntarily discloses in writing to the Department non-compliance with the Act, any rule, regulation or standard promulgated under the Act, within 60 days of discovering the violation, provided that the business has corrected the violation or corrects the violation in accordance with a compliance schedule approved by the Department. The burden will be on the business to demonstrate that it has disclosed the violation within 60 days of discovery. If the business is unable to correct the violation within 180 days or violates a compliance schedule issued by the Department establishing a shorter period for correcting the violation, the business will no longer qualify for the penalty waiver. Upon good cause shown by the small business, the Director may grant an extension of the deadline for correcting the violation.

(b) The Department will not seek civil penalties from a small business that has made a good faith effort to operate in compliance prior to discovery of the violation, as evidenced by a request for compliance assistance from the Department or attendance at one or more compliance assistance seminars; and as evidenced by prompt correction of any violations discovered through such efforts and implementation of good environmental management practices. To qualify for the waiver, the business must document its participation in compliance assistance or outreach seminars and the steps it has taken as a result to improve compliance or correct the violations. In the event that the Department believes the small business needs to take further steps to correct a violation, the Department shall issue a compliance schedule. The small business must meet the requirements of the compliance schedule to maintain the penalty waiver.

Section 4. **EXCEPTIONS TO PENALTY WAIVER**

(a) The penalty wavier is unavailable if:

(i) The Department has previously issued a warning letter, a notice of violation or taken other enforcement action against the small business for violation of the same standard disclosed to the Department;

(ii) The small business has been subject to three or more enforcement actions for any non-compliance of environmental regulations within the last 5 years;

(iii) The small business violates a Department permit or order of the Council;

(iv) The small business is under investigation for any violation of the Act at the time it discloses the violation to the Department, seeks compliance assistance from the Department or participates in an outreach seminar;

(v) The violation involves criminal conduct;

(vi) The violation results in a significant economic advantage for the business;

(vii) The violation was committed willfully;

(ix) The violation presents a significant threat or imminent and substantial endangerment to public health or the environment;

Section 5. **MANDATORY DISCLOSURE**

Notwithstanding Sections 1 through 4 above, disclosure of a violation is mandatory and not subject to a penalty waiver under this rule when the Environmental Quality Act, any rule, regulation, standard, federal law or regulation, local ordinance, order of the Council or any court, or any Department permit requires reporting of the violation to the Department.

Section 6. **LIMITATIONS OF THE RULE**

(a) Nothing in this rule diminishes the Department's authority to conduct investigations, investigate complaints, or to issue notices of violation and orders under Article 7 of the Environmental Quality Act, W.S. § 35-11-701, or to seek injunctive relief under W.S. § 35-11-115 or Article 9 of the Environmental Quality Act, W.s. §§ 35-11-901 through 904.

(b) Nothing in this rule prohibits a small business that otherwise qualifies for a penalty waiver from declining to exercise the waiver and allowing the Department to seek a penalty.