



Notice of Intent to Adopt Rules

A copy of the proposed rules may be obtained at <http://rules.wyo.gov>

Revised November 2016

1. General Information

a. Agency/Board Name*		
b. Agency/Board Address	c. City	d. Zip Code
e. Name of Agency Liaison	f. Agency Liaison Telephone Number	
g. Agency Liaison Email Address		
h. Date of Public Notice	i. Comment Period End Date	
j. Public Comment URL or Email Address:		
k. Program		

* By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.

2. Legislative Enactment

For purposes of this Section 2, "new" only applies to regular rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

No. Yes. Please provide the Enrolled Act Numbers and Years Enacted:

3. Rule Type and Information

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.
Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification.

Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed

4. Public Comments and Hearing Information

a. A public hearing on the proposed rules has been scheduled. No. Yes. Please complete the boxes below.

Date:	Time:	City:	Location:
-------	-------	-------	-----------

b. What is the manner in which interested persons may present their views on the rulemaking action?

By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members. Requests for a public hearing may be submitted:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Agency Liaison listed in Section 1 above.

5. Federal Law Requirements

a. These rules are created/amended/revoked to comply with federal law or regulatory requirements. No. Yes. Please complete the boxes below.

Applicable Federal Law or Regulation Citation:
--

Indicate one (1):

The proposed rules meet, but do not exceed, minimum federal requirements.

The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

6. State Statutory Requirements

a. Indicate one (1):

The proposed rule change *MEETS* minimum substantive statutory requirements.

The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b. Indicate one (1):

The Agency has complied with the requirements of W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:

By contacting the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

Not Applicable.

7. Additional APA Provisions

a. Complete all that apply in regards to uniform rules:

These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):

_____ (Provide chapter numbers)

These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Principal Reasons).

_____ (Provide chapter numbers)

b. Checklist

The Statement of Principal Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

If applicable: In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Chapter 3, *Types of Rules Filings*, Section 1, Proposed Rules, of the Rules on Rules).

8. Authorization

a. I certify that the foregoing information is correct.

<i>Printed Name of Authorized Individual</i>	
<i>Title of Authorized Individual</i>	
<i>Date of Authorization</i>	



Additional Rule Information

Revised November 2016

<u>1. General Information</u>		
a. Agency/Board Name*		
b. Agency/Board Address	c. City	d. Zip Code
e. Name of Agency Liaison	f. Agency Liaison Telephone Number	
g. Agency Liaison Email Address		
h. Program		

<u>2. Rule Type and Information, Cont.</u>

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.		
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed

**BEFORE THE ENVIRONMENTAL QUALITY
COUNCIL STATE OF WYOMING**

IN THE MATTER OF REVISIONS TO)	
CHAPTER ONE OF THE RULES AND)	PRINCIPAL REASONS
REGULATIONS OF THE)	FOR ADOPTION
INDUSTRIAL SITING COUNCIL,)	DOCKET DEQ/ISC 18-04

1. The Industrial Siting Council (“Council”), pursuant to the authority vested in it by the Industrial Development Information and Siting Act (“Act”) at W. S. § 35-12-101 et seq., has revised the following chapter of the Rules and Regulations of the Industrial Siting Council: Chapter 1, Section 17.
2. On September 6, 2016, the Department of Administration and Information promulgated uniform public records rules for the use of all state agencies, as required by W. S. § 16-4-204(e).
3. Pursuant to W. S. § 16-3-103 (j) (ii), Chapter 1, of the Rules and Regulations of the Industrial Siting Council has been revised to adopt the Uniform Rules. Section 17 was revised in Chapter 1 to include the rule and the effective date that is incorporated by reference and remove contrary language.

The Council finds that these regulations are necessary to accomplish the policy and purpose of the Act and that they have been promulgated in accordance with rulemaking provisions of the Wyoming Administrative Procedure Act.

Dated this 21st day of February, 2018.

CHAPTER 1
INDUSTRIAL DEVELOPMENT INFORMATION AND SITING
RULES AND REGULATIONS

Section 1. **Authority.**

These rules and regulations are promulgated by the Wyoming Industrial Siting Council (Council), pursuant to the authority granted the Council by the Wyoming Industrial Development Information and Siting Act; W.S. 35-12-101 through 35-12-119. If any provision of these rules or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of these rules which can be given effect without the invalid provision or application and to this end the provisions of these rules are declared to be severable.

Section 2. **Definitions.**

Definitions contained in W.S. 35-12-102, shall be applicable, where appropriate. The following terms used in these regulations shall have the following meanings, unless the context otherwise requires:

(a) “Act” means the Industrial Development Information and Siting Act, W.S. 35-12-101 through 35-12-119.

(b) “Area or local government primarily affected by the proposed industrial facility” means:

(i) Any defined geographical area in which the construction or operation of the industrial facility may significantly affect the environment, population, level of economic well-being, level of social services, or may threaten the health, safety or welfare of present or expected inhabitants.

(ii) Any such county, incorporated municipality, school district, or combination thereof formed under the Wyoming Joint Powers Act within (i) above.

(c) “Areas of site influence” means the areas which may be affected environmentally, socially, or economically, in any significant degree, by the location of the industrial facility at the proposed site. A separate “area of influence” may be considered for each resource identified in Section 8(i) of these rules.

(d) “Complete application” means an application which contains all of the information required by W.S. 35-12-109 and Section 8 of these rules, except those portions of the application requirements that the Council has waived pursuant to W.S. 35-12-107; excluding proprietary information. If proprietary information is withheld, it must be stated in the application.

(e) “Construction schedule” means the schedule of events by time, from the commencement of construction through completion of construction and commencement of commercial operation of the facility, as described in the application and any approved updates.

(f) “Cumulative impacts” means the combined impacts upon the environment or the social or economic conditions resulting from construction and operation of the proposed industrial facility and from construction and operation of other on-going or proposed developments in the area of site influence. Proposed developments to be considered in cumulative impacts include those

facilities which have public information available, or are actively permitting.

(g) “Decommissioning” means the removal from service, disassembly, and proper off-site disposal of the facility components.

(h) “Dependent component” means any ancillary facility to be constructed by the applicant that is necessary and essential to the construction or operation of the industrial facility. Dependent components are considered part of the industrial facility. Facilities described at W.S. 35-12-119 as exempt are not dependent components.

(i) “District or Special District” means the following:

(i) A special purpose local government created pursuant to W. S. 16-1-101 et seq. (Joint Powers Act) and whose registry as such is maintained by the Wyoming Secretary of State; or

(ii) A public school district.

(j) “Effective date of the Act” means May 30, 1975.

(k) “Environment” means the physical conditions existing within the affected area, including, but not limited to, land, air, water, minerals, flora, wildlife, noise, and objects of historic, aesthetic, or recreational impacts over which the Council has jurisdiction.

(l) “Estimated construction costs” means the anticipated total costs and expenses attributable directly to the planning, design, erection and construction of the applicant’s proposed facility. The estimate shall be based upon current cost projections within the possession of the applicant. Such costs and expenses shall include, but are not limited to, the following: costs of materials, supplies and equipment, including allocable construction equipment costs; labor and management personnel compensation and salaries; contract and subcontract fees; employee benefits; employment; sales and use taxes; per diem and subsistence allowances; and all other costs necessary and incident to the construction of the proposed facility. For purposes of estimating construction costs, the proposed facility shall be described and considered to include all units and components at the proposed site location, and which are or have been included in current plans for development of the proposed site. Exempt activities and site acquisition expenditures including the acquisition costs of mineral rights and interests are not to be included in the estimated construction cost.

(i) In computing an estimate pursuant to Section 2(l) above, the estimated costs for materials, supplies, equipment and allocable construction equipment shall include:

(A) The total costs of materials, supplies, and equipment incorporated into or otherwise necessary to construct the facility;

(B) The total costs of equipment used in site preparation and construction, which is further required to place the proposed facility into operation; and

(C) The allocable costs of that equipment used in site preparation and construction of the proposed facility, but which is not retained on site, and is not required to place the proposed facility into operation.

(ii) The proposed facility's estimated construction cost shall include the costs of access roads including modifications and improvements to existing roadways when such modifications or improvements are necessitated by the proposed facility, the costs of any rail facilities constructed for the substantial use of the proposed facility, and costs of other dependent components.

(m) "Estimated materials costs" means the estimated costs of materials, supplies and equipment, including allocable construction equipment costs, necessary and incident to the construction of the proposed facility.

(n) "Financial assurance" means a security serving as collateral in the form of a surety bond, certificate of deposit, corporate guarantee, letter of credit, deposit account, insurance policy or other form acceptable to the Director to insure proper decommissioning and reclamation activities.

(o) "Financial capability" means evidence of the financial strength of the applicant to construct, maintain, operate, decommission and reclaim the facility.

(p) "Health" shall mean the state of being sound in body or mind and includes psychological as well as physical well-being.

(q) "Information applicant" means any person who intends to initiate a construction activity with an estimated construction cost of at least ninety-six million nine hundred thousand dollars (\$96,900,000.00) adjusted by applicable cost indices as provided in W.S. 35-12-102(a)(vii), which construction activity also falls within W.S. 35-12-119.

(r) "Job classification" means those of the 2010 Standard Occupational Classification System of the U. S. Department of Labor.

(s) "Mineral rights" means fee, leasehold, or mining claim interests in the mineral estate.

(t) "Mitigated impacts" means impacts that are minimized by limiting the magnitude of the impact, or are compensated for by replacing or providing substitute resources or supplemental environmental projects.

(u) "Oil and gas drilling facilities" are any and all activities in connection with or associated with drilling, testing, or completing oil and gas wells including well access roads and any electrical service, mobile and fixed equipment, and services used for drilling, completing, testing, maintaining and repairing oil or gas wells and related activities.

(v) "Oil and gas producing facilities" are any and all activities necessary to extract oil or gas or both from a naturally occurring underground reservoir containing a common accumulation of oil or gas or both. Producing facilities include the oil or gas well downhole equipment, well heads, flow controls, and artificial lift equipment including compressors. Producing facilities also include those facilities used for pressure maintenance, enhanced recovery, or produced water disposal.

(w) "Permit termination" means cessation or termination of a permit and all permit conditions, which were issued by the Council for the construction and operation of an industrial facility.

(x) "Phase" or "phase of construction" means any future expansion or

modification of the facility described in the application pursuant to W.S. 35-12-109 (a)(vi), and interpreted for jurisdiction by the Division.

(y) “Projection period” means the period of time over which projections of socioeconomic factors are made. The projection period shall not exceed five (5) years beyond the period during which stable operation of the industrial facility is achieved.

(z) “Reclamation” means the process of restoring all lands affected by the proposed industrial facility or its dependent components to a use for grazing, agriculture, recreational, wildlife purpose, or any other purpose of greater or equal value which satisfies the landowner or land management agency. The process may require removal of structures, backfilling, grading, contouring, compaction, stabilization, revegetation and drainage control.

(aa) “Safety” shall mean freedom from injury or threat of injury. Such injury or threat of injury may be premised on crime rates, traffic accident rates, dangers of industrial accidents or mishaps, or other similar considerations.

(ab) “Studies” shall include all social, economic or environmental reports, analyses, evaluations or compilations dealing with the impact of the industrial facility whether prepared by the applicant, the applicant’s employees, or consultants retained by the applicant. Where such studies are part of a longer report or study, the applicant may sever such study from the larger document for purposes of submission to the Council.

(ac) “Study Area” is the geographic and political boundary, as designated by the Administrator for the required governmental, social, and economic studies required for applications.

(ad) “Unmitigated impacts” means identified impacts that are not minimized by limiting the magnitude of the impact, or are not compensated for by replacing or providing substitute resources or supplemental environmental projects.

(ae) “Welfare” shall mean considerations of public convenience, public wellbeing and general prosperity. The term also properly covers those subjects encompassed under health and safety.

(af) “Wellfield activity” means any and all activity directly associated with the development, operation, or abandonment of oil and gas drilling or producing facilities. Wellfield activity includes but is not limited to construction of flow lines, heaters, treaters, dehydrators, fluid separators and stabilizers. Storage tanks not within the definable boundaries of an industrial facility are wellfield activities.

Section 3. **Certificate of Insufficient Jurisdiction.**

No person shall commence to construct an industrial facility unless an application has been filed in conformity with these rules and regulations and a permit has been issued by the Council.

(a) Any person who intends to initiate construction activity which may qualify as an industrial facility under the Act shall submit to the Division an application for a Certificate of Insufficient Jurisdiction which shall demonstrate that the proposed construction activity does not qualify as an industrial facility under the Act, and that the Council lacks sufficient jurisdiction to require that an application for a permit be submitted.

(b) Industrial facilities that meet one of the following criteria shall not need a certificate of insufficient jurisdiction:

(i) The estimated construction cost is less than eighty percent (80%) of the current threshold construction cost.

(ii) A commercial waste incineration or disposal facility is not physically capable of receiving four hundred (400) short tons or more per day of household or mixed household and industrial waste.

(c) An application for a Certificate of Insufficient Jurisdiction shall contain the following information:

(i) A description of the proposed construction activity.

(ii) An estimated construction cost for the proposed construction activity that is in conformity with Section 2 (m) of these regulations.

(d) When an application for a Certificate of Insufficient Jurisdiction is submitted to the Division, the Administrator shall within ten (10) days after the application is submitted:

(i) Serve notice of the application upon each local government that would be entitled to receive service of a copy of the application for a permit under W.S. 35-12-110(a)(i), as if the person submitting the application for a Certificate of Insufficient Jurisdiction was submitting an application for a permit.

(ii) Publish notice of such application for a Certificate of Insufficient Jurisdiction throughout the state for four (4) consecutive weeks in newspapers of general circulation.

(iii) Such notice shall state the following:

(A) A description of the construction activity proposed by the applicant for a Certificate of Insufficient Jurisdiction.

(B) The estimated construction cost of the construction activity proposed by the applicant for a Certificate of Insufficient Jurisdiction.

(C) A statement that any interested party, who would be a party in any permit proceeding with respect to the construction activity, may file objections to the issuance of a Certificate of Insufficient Jurisdiction within thirty (30) days after the last date of publication of notice.

(e) The Director shall present an application for a Certificate of Insufficient Jurisdiction to the Council after thirty (30) days has expired from the last date of publication of notice of application with his recommendation for issuance or denial. The Council shall thereupon, after consideration of the application and the objections thereto, either issue or deny the application for a Certificate of Insufficient Jurisdiction.

(f) The decision of the Council to issue a certificate shall be effective immediately.

Section 4. **Jurisdictional Meeting.**

(a) Persons requesting a jurisdictional determination for the following from the Division shall first request a jurisdictional meeting with the Division:

- (i) A permit pursuant to W. S. 35-12-109;
- (ii) Waiver or waivers of requirements;
- (iii) A certificate of non-jurisdiction;
- (iv) An informational filing pursuant to W. S. 35-12-119 (a) and (b); or
- (v) An exemption from a permit pursuant to W.S. 35-12-119 (c).

(b) The jurisdictional meeting shall be held when the preliminary facility design and estimated construction schedule are known.

(c) The Person seeking the jurisdictional meeting shall provide information to describe the facility and shall include the following:

- (i) Details of ownership; and points of contact;
- (ii) Description of the proposed facility including a site plan;
- (iii) Proposed facility location and land ownership;
- (iv) The location for the receipt of purchase and where title changes;
- (v) Any future phases to be requested in the application;
- (vi) The estimated cost of construction, including preliminary estimated material costs;
- (vii) Information which the applicant feels to be pertinent.

(d) The Director shall provide a written decision within 15 days following the jurisdictional meeting stating whether or not the facility is within the jurisdiction of the Siting Council and provide notice of any application fee pursuant to W.S. 35-12-105(g) and W. S. 35-12-109(b). The Director may provide conditional determinations. The Director, according to the accounting standards and procedures used by the State of Wyoming, will perform the deposit of revenues, payment of expenditures, and accounting. Any such fee will:

- (i) Be determined by the Director in accordance with the provisions of W.S 35-12-109 (b) and (d);
- (ii) Be collected at the time of the filing of an application;
- (iii) Recover the full actual costs to the Division and Council for the activities specified by W. S. 35-12-109(b) and (d);

(iv) May be subject to revision by the Director if the fees are determined to be insufficient to pay the full actual cost of the Division and Council as specified by W.S. 35-12-109 (b) and (d).

(e) If the Director determines that the information provided by the person is incomplete, the Director shall respond in writing within 15 days following the jurisdictional meeting stating that the information is incomplete and that a determination cannot be made at that time.

Section 5. Pre-Filing and Filing.

(a) At the jurisdictional meeting the Administrator shall specify the study area for the project application. The study area provides the boundaries for studies of counties and municipalities.

(b) The applicant shall notify and describe the project to local governments in the study area. The notice and description shall be sent by certified mail, return receipt, and shall include a description of the project, its location, the expected construction period, the number of construction workers, transportation routes for construction materials, the anticipated economic benefits of the project, the anticipated impacts from the project and offer methods to comment to the applicant and attend scheduled informational meetings. The notice and description will be mailed no later than 10 business days prior to the first informational meeting.

(i) Informational meetings shall be held no later than 60 days before the filing of an application and shall be in the principal city of the county and at a place as close to the site of the project as is practical.

(c) The date of filing of an application is that date when all of the following have been received by the Division:

- (i) The application fee;
- (ii) The application document; and
- (iii) The letter of transmittal.

(d) When the application is filed, the Division shall provide the applicant with a written receipt for the application which shall stipulate the application has been filed on that date.

(e) After receipt and examination of the application the Administrator shall determine the area primarily affected.

(f) Counties who wish to make a referral according to W.S. 18-5-509 shall provide the following:

(i) Information obtained from the applicant as described in Section 4(c) subparagraphs (i) through (v).

(ii) Justification why the referral is necessary. The Director will make a decision on the referral and notify the county within fifteen (15) days from the date of the referral.

Section 6. General Format of Application or Request for Waiver.

In accordance with W.S. 35-12-107 and W.S. 35-12-109, the applicant shall abide by the following rules and conditions:

(a) Prior to submitting its application or request for waiver, each applicant shall confer with the Division to determine the number of copies of the application or request for waiver to be filed with the Division. The applicant shall file a minimum of forty (40) copies of the application with the Division. The applicant shall not be required to file more than seventy-five (75) copies of the application without prior approval of the Council.

(b) The application or request for waiver shall be typed, printed, or otherwise legibly reproduced on 8 ½-inch by 11-inch paper. Maps, drawings, charts, or other documents that are bound in the application or request for waiver shall be cut or folded to 8 ½-inch by 11-inch size. All pages in an application or request for waiver shall be consecutively numbered.

(c) The application or request for waiver shall be verified by the applicant as to its truth and accuracy, upon oath or affirmation. Such application or request for waiver shall be signed by the president of the corporation or owner of the company, or another official designated by the bylaws to obligate and bind the applicant. The application or request for waiver shall be accompanied by a letter of transmittal which shall contain the following information:

(i) The company's request for a permit or waiver of permit to construct and operate the facility; and

(ii) The designated individual to serve as point of contact for the permit process including address of service of notice.

(d) The Applicant shall notify the Division immediately whenever, subsequent to submitting an application or waiver request under the Act, a material change in the design, location, schedule, or scope of the industrial facility has occurred. Such notification by the applicant may constitute a request for amendment pursuant to W.S. 35-12-106(c) and Section 15 of these rules if the Division determines that such differences materially change the nature, location or impact of the proposed industrial facility.

(e) An applicant may apply for a permit to construct an industrial facility in phases over an extended period.

(f) As part of the application, the applicant shall submit a summary of the entire application. The summary shall contain references to supporting data and analysis contained in the application.

(g) Whenever the Act or these rules require information concerning the industrial facility to be submitted to the Council and the applicant is required to submit the same or similar information to another state, federal or local agency having jurisdiction, the applicant may submit the information to the Council in the same format required by the other agency.

(h) Applicants may fulfill informational requirements of the regulations and the Act by describing the area of jurisdiction covered by other regulatory agencies in the state.

(i) The application shall contain a table containing all commitments stated in the application and provide the page number where each commitment is discussed in the body of the

application. The table shall also provide a narrative of all the commitments made to local governments in accordance with W.S. 35-12- 107(b)(xi) and W.S. 35-12-109(a)(xiii).

Section 7. Request for Waiver.

(a) The request for waiver shall contain the information required by the Act with respect to both the construction period and on-line life of the proposed industrial facility and any additional information the applicant considers relevant to the needs of the Council and local units of government for making an informed decision for granting or refusing the waiver request. The waiver application shall follow the same format as the application contents described in Section 8, less those parts identified as not necessary by the Administrator.

(b) The Council shall grant a request for a waiver either as proposed or as modified by the Council as provided by the act and considering the following:

(i) In order to find that the industrial facility would not produce an unacceptable impact, the Council must find that the granting of a waiver will not result in a significant detriment to, or significant impairment of, the environment or the social and economic condition of present or expected inhabitants. If applicable, the Council may consider direct or cumulative impacts not within the area of jurisdiction of another regulatory agency in this state.

(ii) A proposed industrial facility is considered to be designed in compliance with applicable local ordinances, regulations and compatible with land use plans if it meets applicable requirements relative to zoning laws, building codes, health and safety laws, and other laws of a similar nature in force on the date of submittal of the request for waiver.

(c) If the Council finds that the considerations of subsection (b) above have been met, the Council may waive all of the application requirements of the Act, and shall issue a permit for the industrial facility in accordance with W.S. 35-12-113. If the Council is not able to find that these requirements are met, the Council may deny the request, and issue an order requiring that an application for a permit be filed pursuant to W.S. 35-12-109. The Council may also waive any part(s) of the application requirements of W.S. 35-12-109 if it determines that it is justified by the circumstances.

Section 8. Application Information to be Submitted.

In accordance with W.S. 35-12-109, the application shall contain the information required by the Act with respect to both the construction period and online life of the proposed industrial facility and the following information the Council determines necessary:

(a) The application shall state the name, title, telephone number, mailing address, and physical address of the person to whom communication in regards to the application shall be made.

(b) A description of the specific, geographic location of the proposed industrial facility. The description shall include the following:

(i) Preliminary site plans at an appropriate scale indicating the anticipated location for all major structures, roads, parking areas, on-site temporary housing, staging areas, construction material sources, material storage piles and other dependent components; and

(ii) The area of land required by the industrial facility and a land ownership map covering all the components of the proposed industrial facility.

(c) A general description of the major components and dependent components of the proposed industrial.

(d) A description of the operating nature of the proposed industrial facility, the expected source and quantity of its raw materials, and energy requirements. The description shall include, but is not limited to, the following:

(i) The proposed on-line life of the industrial facility and its projected operating capacity during its on-line life; and, for transmission lines exceeding one hundred fifteen thousand (115,000) volts included as part of the proposed industrial facility, a projection indicating when such lines will become insufficient to meet the future demand and at what time a need will exist to construct additional transmission lines to meet such demands; and

(ii) Products needed by facility operations and their source.

(iii) Estimated material costs for the project.

(e) A statement that shall be a reasonable estimate of the calendar quarter in which construction of the industrial facility will commence, contingent upon the issuance of a permit by the Council.

(f) A statement that shall be a reasonable estimate of the maximum time period required for construction of the industrial facility and an estimate of when the physical components of the industrial facility will be ninety (90) percent complete, and the basis for that estimate.

(g) The applicant shall identify what it deems to be the area of site influence and recommends as the local governments primarily affected by the proposed industrial facility as defined in Sections 2 (b), (c) and (d). The immediately adjoining area(s) and local governments shall also be identified with a statement of the reasons for their exclusion from the list of area(s) or local governments primarily affected by the proposed industrial facility.

(h) Using tables, provide a detailed tally of the estimated work force to construct and to operate the facility showing the following information:

(i) All workers providing direct labor and direct support; (safety, supervision, inspection) at the work site;

(ii) Information by calendar month and year from the commencement of construction through the first year of operation;

(iii) Identify and provide totals of those which are construction and those which are permanent;

(iv) Identify and provide quarterly totals of the number, job classification and recurrence; of those which are estimated to be in-migrating (from outside the study area at the time of hire for the facility) and of those pre-existing employees of the applicant engaged in construction;

(v) Provide estimates of wages; and

(vi) Provide estimates of paid benefits including per diem and paid fees.

(i) The social and economic conditions in the area of site influence shall be inventoried and evaluated as they currently exist, projected as they would exist in the future without the proposed industrial facility and as they will exist with the facility. Prior to submitting its application, each applicant shall confer with the Administrator to define the needed projections, the projection period and issues for socioeconomic evaluation. The evaluation shall include, but is not limited to:

(i) An analysis of whether or not the use of the land by the industrial facility is consistent with state, intrastate, regional, county and local land use plans, if any. The analysis shall include the area of land required and ultimate use of land by the industrial facility and reclamation plans for all lands affected by the industrial facility or its dependent components;

(ii) A study of the area economy including a description of methodology used. The study may include, but is not limited to, the following factors:

(A) Employment projections by major sector;

(B) Economic bases and economic trends of the local economy;

(C) Estimates of basic versus non-basic employment;

(D) Unemployment rates;

(iii) A study of the area population including a description of methodology used. The study may include, but is not limited to, an evaluation of demographic characteristics for the current population and projections of the area population without the proposed industrial facility;

(iv) An analysis of housing facilities by type, including a quantitative evaluation of the number of units in the area and a discussion of vacancy rates, costs, and rental rates of the units. The analysis should include geographic location, including a quantitative evaluation of the number of units in the area required by the construction and operation of the proposed industrial facility and a discussion of the effects of the proposed industrial facility on vacancy rates, costs, and rental rates of the units. Specific housing programs proposed by the applicant should be described in detail;

(v) An analysis of effects on transportation facilities containing discussion of roads (surface type), and railroads (if applicable).

(vi) Public facilities and services availability and needs, which may include, but are not limited to:

(A) Facilities and personnel required for the administrative functions of government including specific new demands or increases in service levels created by construction of the proposed industrial facility;

(B) Sewer and water impacts shall describe the distribution and treatment facilities including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels. If required pursuant to W.S. 35-12-108, the application shall contain the Water Supply and Water Yield Analysis and Final Opinion of the State Engineer;

(C) Solid waste collection and disposal services including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels;

(D) Existing police and fire protection facilities including specific new demands or increases in service levels created by the proposed industrial facility;

(E) An analysis of health and hospital care facilities and personnel including specific new demands or increases in service levels created by the proposed industrial facility;

(F) Human service facilities, programs and personnel, including an analysis of the capacity to meet current demands and a description of problems, needs, and costs of increasing service levels;

(G) An analysis of community recreational facilities and programs and urban outdoor recreational opportunities including specific new demands or increases in service levels created by the proposed industrial facility;

(H) Educational facilities, including an analysis based upon enrollment per grade, physical facilities and their capacities and other relevant factors with an assessment of the effect that the new population will have on personnel, programs and facilities;

(I) Problems due to the transition from temporary, construction employees to operating workforces should be addressed. Changes in levels of services required as a result of the proposed industrial facility should specifically be addressed. Cumulative impacts of the proposed industrial facility and other developments in the area of site influence should be addressed separately. This assessment should examine increased demands associated with the construction and operational phases of the proposed industrial facility, as well as effects on the level of services as the construction or operational workforces decline;

(J) A copy of any studies that may have been made of the social or economic impact of the industrial facility.

(vii) A fiscal analysis over the projection period for all local governments and special districts identified by the applicant as primarily affected by the proposed industrial facility, including revenue structure, expenditure levels, mill levies, services provided through public financing, and the problems in providing public services. If modeling software is used, then identifying the software program and providing a summary table of the data set inputs (including any multipliers) for the analysis is required. The analysis may include, but is not limited to:

(A) An estimate of the cost of the facility with a separate line item for the estimated material costs;

(B) An estimate of the sales and use taxes to be paid directly by the applicant to construct the facility. This estimate should be broken down by year.

(C) If a facility is located in more than one county, the estimate under subsection (B) above shall be broken down by year and for each affected county.

(D) Estimates of impact assistance payments which will result from the

project.

(E) An estimate of the cost of components of the industrial facility which will be included in the assessed value of the industrial facility for purposes of ad valorem taxes for both the construction and operations periods. This estimate should include a breakdown by county if the components of the industrial facility will be located in more than one county.

(j) An evaluation of the environmental impacts as they would exist if the proposed industrial facility were built. Each evaluation should be followed by a brief explanation of each impact and the permit issued that regulates the impact. If the impact is not regulated by a state regulatory agency or federal land management agency, the application must include plans and proposals for alleviating adverse impacts. Cumulative impacts of the proposed industrial facility and other projects in the area of site influence should be addressed separately.

(k) The applicant shall describe the procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or recreational facilities which may be adversely affected by the estimated emissions and discharges from the proposed facility.

(l) The applicant shall provide certification that all local governments in the study area were provided notification of the facility, a description of the proposed project and an opportunity to ask the applicant questions regarding the proposed project at least thirty (30) days prior to the submission of the application. The certification shall include a description of the actual process used.

(m) For a permit application, the applicant shall provide a description of land use and changes to land use as a result of the project. Such will include:

- (i) The project site, transportation routes, utilities, and collector systems.
- (ii) County land use plans and zoning, if any.
- (iii) Changes to agricultural production as a consequence of the project.

(n) For a permit application, the applicant shall provide the following:

(i) An evaluation of potential impacts together with any plans and proposals to alleviate potential impacts. The evaluation shall include a recent survey for threatened and endangered and rare species of concern (flora & fauna), as identified in the state wildlife action plan prepared by the Wyoming Game and Fish Department, found at the site location.

(ii) An evaluation of the potential impacts to terrestrial and aquatic wildlife and any plans or proposals to alleviate potential impacts.

(o) The applicant shall provide a description of the methods and strategies to maximize employment and utilization of the existing local or in-state contractor and labor force during the construction and operation of the facility.

(p) The applicant shall provide a description of the impact controls and mitigating measures proposed to mitigate and alleviate adverse environmental, social and economic impacts associated with the construction and operation of the proposed industrial facility, including:

(i) Monitoring programs to assess effects of the proposed industrial facility and the overall effectiveness of impact controls and mitigating actions.

(ii) Impact controls and mitigating measures proposed by the applicant to alleviate adverse environmental, social and economic impacts associated with construction and operation of the proposed industrial facility.

(q) The applicant shall provide a description and quantification of the mitigated and unmitigated impacts that will result from the construction and operation of the proposed facility on the affected local governments and special districts. Such description shall include:

(i) Quantification of fiscal impacts, regardless of amount, on all items contained in Wyoming Statute 35-12-109 (a)(xiii)(A)–(S).

(ii) Projection of when, by calendar month, the unmitigated impacts will occur in the affected communities.

(iii) Projection, by calendar month, of fiscal impact in affected communities.

(r) Counties wishing to present evidence shall provide a description and quantification of the unmitigated impacts that will result from the construction and operation of the proposed facility. Such description shall include:

(i) Estimates of fiscal impacts on services provided by communities; and

(ii) Estimated projections of when unmitigated impacts will occur in communities;

Section 9. Additional Application Requirements for Wind Energy Facilities.

(a) Facility Decommissioning. The applicant shall provide a facility decommissioning plan.

(i) The facility decommissioning plan shall include provisions regarding the removal and proper disposal of all wind turbines, towers, substations, buildings, and cabling, electrical components, foundations to a depth of forty-eight (48) inches, and any other associated or ancillary equipment or structures within the facility boundary above and below ground.

(ii) The facility may request that a building be left on site if approval is obtained from the surface landowner and upon written notification to the Administrator.

(iii) Facility or individual wind turbine decommissioning shall begin:

(A) Within twelve (12) months after the end of the useful life of the facility or individual wind turbine, or

(B) When no electricity is generated for a continuous period of twelve (12) months of the facility or individual wind turbine.

(C) The Council may extend the time period of Section (8)(a)(iii)(B) if the facility demonstrates good cause prior to the end of the continuous period of (12) months of the facility or wind energy generating towers not generating electricity.

(iv) The facility decommissioning plan shall be updated and submitted to the Administrator every five (5) years.

(b) Interim Reclamation. Interim Reclamation shall comply with the applicable permitting requirements of the Department of Environmental Quality, Water Quality Division storm water program.

(c) Final Reclamation. The applicant shall provide a final reclamation plan which shall include:

(i) A detailed description of site conditions prior to construction, including topography, vegetative cover (including plant species and plant community structure), climate, and land uses.

(ii) Re-grading. All tower foundations, roads, and all other surface disturbances within the facility boundary must be re-graded to the natural contours of the area. Backfilling, grading and contouring of affected land shall be accomplished by one or more of the following as detailed in the approved reclamation plan:

(A) Re-establishment of the contour of the land in a manner consistent with the proposed future use of the land.

(B) Contouring affected land to blend in with the topography of the surrounding terrain unless so doing would create an erosion problem or a hazard.

(C) The facility may leave a road un-reclaimed if approval is obtained from both the surface landowner and the Administrator.

(iii) Re-vegetation

(A) After backfilling, grading and contouring, and the replacement of topsoil, re-vegetation shall be commenced in such a manner so as to most efficiently accommodate the retention of moisture and control erosion on all affected lands to be re-vegetated.

(B) Re-vegetation documentation shall include seedbed preparation, seed mixture, and post seeding maintenance of all disturbed areas.

(C) If applicable, documentation of any mulching and/or use of fertilizers.

(D) Reclamation shall restore the land to a condition and native or adaptive perennial vegetative cover equal to or better than the original condition.

(E) Re-vegetation of all affected lands shall be accomplished in a manner consistent with the approved reclamation plan and the proposed future use of the land.

(F) Seeding of affected land shall be conducted during the first normal period for favorable planting conditions after final preparation unless an alternative plan is approved. The species of vegetation to be used in re-vegetation efforts shall be described in the reclamation plan indicating the composition of seed mixtures and the amount of seed to be distributed on the area on a per acre basis.

(G) The operator must control and minimize the introduction of noxious weeds into the re-vegetated areas until final reclamation is achieved.

(iv) The final reclamation plan shall be updated and submitted to the Administrator every five years.

(d) Financial Assurance: The applicant shall provide financial assurances for a wind energy facility, sufficient to assure complete decommissioning and site reclamation of the facility in accordance with the provisions of these rules. Wind energy facilities subject to regulation by the Public Service Commission shall be exempt from these financial assurance provisions and from the Cost Estimation for Decommissioning and Site Reclamation provisions of Section 9(e) and (h) of these rules.

(i) All financial assurances shall be in place prior to commencement of construction of any wind energy facility, and shall be adjusted up or down every five years from the date of permit issuance by the Council based on the results of paragraph (e) of this section.

(ii) Additional financial assurances to cover risks not anticipated at the time of the permit may be required at any time by the Director, as reasonable and necessary, provided the Director first gives thirty (30) days written notice stating the reason for and the amount of the additional financial assurance.

(iii) Financial assurance in the form of domestic securities may be accepted in any of the following forms at the discretion of the Director with consideration of credit worthiness, financial strength, credit history, credit rating and debt.

(A) Surety bond with a corporate surety registered in Wyoming.

(B) Certificate of deposit in the name of the "Department of Environmental Quality" with a state or federally insured financial institution in Wyoming. The permittee shall be entitled to all interest payments.

(C) Other forms of assurance such as corporate guarantee, letter of credit, insurance policy, or other forms as may be acceptable to the Director.

(iv) If the Permittee fails to decommission and reclaim as described in its permit, the Director may determine that the financial assurance be forfeited to the Division to arrange for the decommissioning and reclamation to be conducted by a third-party. In order for the Director to determine that the financial assurance be forfeited, the Director shall:

(A) Determine that decommissioning or reclamation has not started or it has fallen behind the approved schedule for more than six (6) months.

(B) Notify the Permittee in writing of the failure to perform reclamation in accordance with its approved reclamation plan and demand that justification be provided to the Division within 30 days.

(I) If no justification is made by the Permittee within the time provided, or if the Director rejects the justification, the Director shall provide the Permittee written notice that the Division intends to pursue forfeiture of the financial assurance.

(II) The Permittee has 30 days from the date of receiving the

notice of financial assurance forfeiture to request a hearing with the Council contesting the forfeiture of the financial assurance.

(III) If no hearing is requested, the Council will address the revocation of the permit and forfeiture of the financial assurance at the next meeting of the Council. If a hearing is requested, the Council shall conduct a hearing in accordance with the Wyoming Administrative Procedures Act. The Permittee shall bear the expense of scheduling and holding the hearing.

(e) Cost Estimation for Decommissioning and Site Reclamation of the facility:

(i) Estimates of cost for decommissioning and site reclamation shall be made by a licensed professional engineer provided by the applicant and subject to review and approval by the Director.

(ii) Total decommissioning costs shall be estimated without regard to salvage value of the equipment.

(iii) Decommissioning and site reclamation estimates shall be submitted to the Division in the application and every five years after the date of permit issuance until the completion of final reclamation.

(iv) The licensed professional engineer estimate of decommissioning and reclamation costs shall include the following:

(A) A general discussion of assumptions, including equipment, timeframes, backup calculations, procedures, methods, and any other considerations used in developing the cost estimate.

(B) A detailed description of the decommissioning activities to be performed.

(C) A detailed description of the reclamation activities to be performed.

(v) The facility may request release of the financial assurance mechanism when the facility has achieved final reclamation. Final reclamation means that all surface disturbances have been re-graded and re-vegetated with a uniform perennial vegetative cover with a density of 90% of the native or adaptive background vegetative cover. Noxious weeds shall not be included in percent cover in determining reclamation success.

(f) The Council may give a case-by-case variance to requirements of this Section after considering evidence by the applicant or landowner.

(g) Notice to record owners of mineral rights. Before submitting the application, the applicant shall provide notice to record owners of mineral rights located on or under the land where the proposed facility will be constructed.

(i) The notice shall consist of a statement of the applicant's intention to construct the project, features of the project, a legal description of the boundaries of the project, locations where the application may be examined, and persons to contact for additional information.

(ii) The notice shall be mailed by first class mail to all record owners of mineral rights whose identity and current addresses are readily obtainable from publicly available documents.

(iii) The notice shall be published twice in a newspaper of general circulation in the county or counties where the project is to be located.

(iv) The notice and details of steps taken to notify the record owners of mineral rights shall be entered into the record either within the application or as separate exhibit filed with the hearing examiner and parties.

(h) The application shall contain information demonstrating the applicant's financial capability to construct, maintain, operate, decommission, and reclaim the facility. Such documentation, if requested, shall be held confidential to the extent authorized by Wyoming law and shall include:

(i) Commitment letters from the principal investors of the project, which may be conditioned on issuance of required state and local permits; or

(ii) For applicants whose securities are publicly traded and are required to publicly disclose financial statements, any one of the following:

- (A) General audited financial statements for the most recent year-end;
- (B) Most recent credit rating reports for the financing company as published.
- (C) Reports by chartered financial analysts as published.

(iii) For applicants whose securities are not publically traded, financial statements of the majority financial contributors.

(i) Notice to affected landowners

(i) Applicant must provide a list of the names and mailing addresses of all affected landowners at the time the application is submitted.

(ii) Upon receipt of an application subject to this section, the Division will provide notice to the affected landowners and request information and recommendations, which pertain to their respective lands and interests.

(iii) All review comments from State agencies pursuant to W.S. 35-12-110(b) and (c) will be provided to the affected landowners by the Division.

(iv) All comments by affected landowners received by the Division about the project and about the agency comments under (iii) above will be provided to the State agencies. The agencies will give the Division their replies to the comments from affected landowners.

Section 10. Application Information for Commercial Waste Disposal Facilities.

Application requirements for a commercial waste disposal facility shall include information required for a request for waiver or permit application under W.S. 35-12-107, 35-12-109 and Sections

6 and 7 of these rules and regulations and the information required in subsections (a) through (f) of this section.

(a) A statement of the applicant's financial condition, including but not limited to:

(i) A profit and loss statement

(ii) Debt to equity ratio

(b) A description of the mode of transportation by which the wastes will be transported to the site; including access route specification, modification of existing traffic patterns, an estimate of the additional load and traffic placed on access routes, and the method of waste containment during transport. The applicant shall describe possible hazards associated with the transportation of wastes, safety precautions and emergency procedures should a transportation accident occur in route to the facility. If the wastes are to be temporarily stored, transferred, or handled during transport, the location of storage facilities or transfer stations shall be identified. For hazardous wastes, the applicant shall describe how the facility will comply with Department of Transportation the Environmental Protection Agency manifest and transportation requirements of 49 CFR 271-279 and 40 CFR 263.

(c) A description of the effect the facility may have on local land use, and an estimate of the potential short and long-term effect on local property values and tax revenues, and an estimate of the adverse effect the proposed facility may have on local businesses and jobs.

(d) Specification of the types of wastes to be managed by the facility, an estimate of the average waste volume the facility will manage in tons per day and the maximum tonnage the facility will be capable of handling, as well as a general description of the waste management methods used by the facility or associated operations.

(e) A description of the record keeping procedures that will be maintained to assure accurate accounting and payment of the waste management surcharge. The applicant may also request that certain records be held as confidential in accordance with Section 16(b) of these regulations.

(f) The applicant's assessment of impacts must include the impacts of required or proposed recycling operations resulting from the proposed facility.

Section 11. **Decision of Council.**

(a) The Council shall either grant or deny the application as filed, or grant it upon terms, conditions or modifications of the construction, operation or maintenance of the industrial facility as the Council deems appropriate. The Decision of the Council shall be written and shall be effective the date it is signed by the chair of the Council.

(b) Compliance with all applicable law. The Council must find that the proposed industrial facility will comply with all applicable local, state, and federal law throughout each phase of planning, construction, and operation. The local and state laws that must be complied with for purposes of this subsection consist of those laws which were in force on the date of application. In many cases, required permits and approvals may not be applied for until subsequent to the filing of the application. Therefore, the Council will examine the list of permits that regulate other aspects of the facility development for the purpose of determining whether the proposed industrial facility would be in compliance with all applicable laws if the permits and approvals specified therein were issued as expected.

(c) Threat of serious injury. In order to find that the industrial facility does not pose a threat of serious injury, the Council must find that the granting of a permit, as conditioned by the Council, will not result in a significant detriment to, or significant impairment of, the environment or the social and economic condition of present or expected inhabitants.

(i) In determining whether the proposed industrial facility poses a threat of serious injury to the social condition of the inhabitants, any significant decrease in the quality or quantity of services or facilities may be considered a serious injury. "Social condition" shall include, but is not limited to, the following factors:

- (A) Water treatment;
- (B) Sanitary waste disposal;
- (C) Solid waste collection;
- (D) Housing;
- (E) Police and fire protection;
- (F) Medical facilities;
- (G) Schools;
- (H) Recreational facilities;
- (I) Transportation systems;
- (J) Mental health facilities;
- (K) Social service facilities.

(ii) In determining whether the proposed industrial facility poses a threat of serious injury to the economic condition of the present or expected inhabitants, any net deterioration of a material nature in the condition of either present or expected inhabitants will be weighed negatively. "Economic conditions" may include, but is not limited to, the following factors:

- (A) Upgrading of jobs and increased income;
- (B) Family and per capita income;
- (C) Unemployment and underemployment rates within the area of site influence.
- (D) Purchasing power of earnings within the area of site influence.
- (E) Short term and long term fluctuations in resource consumption and resource availability.
- (F) Employment dislocation and skill obsolescence.

(G) Employment opportunities;

(H) Diversity of economy and stability of various segments of the economy.

(d) Substantially impair the health, safety or welfare. The Council must find that the proposed industrial facility will not substantially impair the health, safety or welfare of the present or expected inhabitants of the areas of site influence. A proposed industrial facility may be found to substantially impair the health, safety or welfare of the inhabitants if their health, safety or welfare during and after construction would be significantly diminished or weakened relative to present levels.

(e) If the Council is not able to find that these conditions are met, the Council shall deny the application.

(f) If the Council determines that the location of all or part of the proposed industrial facility should be modified, it may condition its permit upon that modification, provided that the local governments, and persons residing therein, affected by the modification, have been given reasonable notice of the modification.

(g) If the Council decides to grant a permit for the industrial facility, it shall issue the permit embodying the terms and conditions in detail, including the time specified to commence construction, which time shall be determined by the Council's decision as to the reasonable capability of the local government, most substantially affected by the proposed industrial facility, to implement the necessary procedures to alleviate the impact. If the construction of the facility fails to follow the schedule used by the Council to make its decision, the Council may require an amendment to the permit in accordance with W.S. 35-12-106(c) and (d).

(h) Unless the Council extends the permit as provided in subsection (i) of this section a permit to construct shall expire for any of the following conditions:

(i) Construction has not commenced within thirty-six (36) months after the date of the Decision of the Council;

(ii) If commenced construction has discontinued before the completion of the described project for a period of twelve (12) consecutive months, provided that the discontinuance is not in an approved schedule or for approved phases.

(i) The Council may extend the time periods of paragraphs (h)(i) and (h)(ii) above for good cause provided that the facility requests an extension in a timely manner accompanied by an update to the Application including the following:

(i) The construction schedule;

(ii) The estimated start of commercial operation;

(iii) Socio-economic baseline; and

(iv) Updates to those sections of the Application as defined by the Administrator where material changes are expected to occur.

(j) Permit Term. During the application for a permit or permit waiver, an applicant may request that the permit be issued for a term of less than the life of the facility, but not less than the construction phase(s). The Council may authorize a permit for a term less than the life of a facility if the applicant demonstrates that all of the following conditions exist:

(i) After the permit term (over the remaining life of the facility), no adverse environmental, social and economic impacts in the area of site influence may occur, which are not regulated by another State regulatory agency. The life of the facility includes cessation of operations, site clearance and site reclamation.

(ii) There are no conditions or requirements of the pending permit that warrant the continuation of Council's jurisdiction for the remaining life of the facility.

(iii) The permit term would not conflict with any statute or rule governing the facility, and would not conflict with the purposes of the Industrial Development Information and Siting Act.

(A) The Council shall consider all objections from local government before granting a permit term request.

(k) Local governments may make a request for a bond pursuant to W. S. 35-12-113(e), such requests must:

(i) Be provided to the Director and parties three weeks prior to the date of the hearing of the permit application by the Council;

(ii) Justify the need for the bond;

(iii) Describe the purpose and use of the bond;

(iv) Justify the amount of the bond;

(v) Recommend a mechanism to determine when and if the bond should be released; and

(vi) Recommend a mechanism to determine when and if the bond should be surrendered to the State of Wyoming. The Director shall make a recommendation on any such bond request to the Council prior to the hearing of the Council. Such recommendation shall be provided to the parties to the hearing.

Section 12. **Impact Assistance Funds.**

(a) If all affected counties, cities and towns in the area primarily affected can agree to an amount and schedule for payment distributions, they may provide their agreement to the Division for submission to the Council for its consideration. If an amount and schedule supported by all governments within the area primarily affected has not been provided to the Division within 30 days of filing an application or waiver of permit application, the Division will review the information provided in the application and provide to counties, cities and towns within the area primarily affected the Administrator's recommendation to the Council for distribution of the impact assistance funds. Counties in disagreement with the Administrator's draft recommendation shall provide to the

parties an alternate distribution recommendation and information showing that the Administrator's recommended distribution does not account for all the unmitigated impacts.

(b) Pursuant to W.S. 39-15-111(c) and (d), and W.S. 39-16-111 (d) and (e) the Council shall, after consideration of all evidence and recommendations presented at the hearing held pursuant to W.S. 35-12-107(g) and W.S. 35-12-110(f), establish an amount and schedule for distribution of impact assistance funds. The Council shall establish a dollar amount associated with the unmitigated impacts on the affected counties, cities and towns from the construction of the proposed facility. Under no circumstances shall the impact assistance payment exceed two and seventy-six hundredths percent (2.76%) of the total estimated material costs of the facility, as those costs are determined by the Council.

(c) If impact assistance payments are already being distributed to an affected area of site influence, and another facility commences construction, the Council shall consider the effect of the following factors in establishing, modifying, adjusting or revising the distribution:

(i) The amount of impact assistance funds generated by each facility and the degree of impact in the county attributable to each facility; and

(ii) The timeframe in which different amounts of impact assistance funds are generated by each facility in relation to the timeframe in which impacts attributable to each facility occur.

(d) The Council may adjust, revise or modify distributions during the construction of a facility. A local government which is primarily affected by the facility and which has filed a notice of intent to be a party pursuant to W.S. 35-12-111(b), or any person issued a permit pursuant to W.S. 35-12-106, may petition the Council for review and adjustment of the distribution upon a showing of good cause. The request shall be submitted to the Division.

(i) Upon receiving a request to modify a distribution, the Administrator shall:

(A) Within ten (10) days after the request is received, serve a copy of the request to each local government primarily affected. A copy of the request shall be provided to the permittee.

(B) Request the affected local governments and permittees to submit to the Division all relevant studies, statements, reports, analyses, evaluations, compilations, or other written material which will enable the Council to determine whether the social and economic impacts have changed and establish a new distribution.

(C) Conduct such investigations, studies, reports and evaluation as may be necessary to prepare a recommendation on the request.

(ii) The Administrator shall present the request for impact assistance funds to the Council at least thirty (30) days after the Division received the request, with a recommendation. The Council may thereupon, after consideration of the materials submitted by the local governments, applicants, permittees and Administrator, determine that the social and economic impacts from construction of the facility have changed, and establish a new distribution as appropriate and necessary.

(e) Pursuant to W.S. 39-15-111(c) and (d), and W.S. 39-16-111(d) and (e) the Council, may determine that the social and economic impacts from construction of an industrial facility upon

the adjoining county are significant and establish the distribution of impacts between all communities in the impact area.

(i) The Council may adjust, revise or modify a distribution during the construction of a facility; upon receiving a written request from any person issued a permit pursuant to W.S. 35-12-106, and a showing of good cause.

(f) Upon establishing or modifying a distribution pursuant to W.S. 39-15-111(c) and (d), and W. S. 39-16-111 (d) and (e) the Division shall notify all parties.

(g) For the purposes of this Section of these regulations, the period of construction for a facility shall end when the physical components of the industrial facility are ninety (90) percent complete. The physical components of the industrial facility shall include all materials, supplies, and equipment included in the estimated construction cost of the facility pursuant to Section 2 (l) of these regulations.

Section 13. **Information Requirements Imposed Upon Exempt Activities.**

(a) No entity defined as an information applicant shall commence construction activity unless such entity has supplied the following information to the Council a reasonable time prior to the commencement of such construction:

(i) A description of the nature and location of the construction activity.

(ii) The estimated time of commencement of construction and construction time.

(iii) The estimated number and job classifications, by calendar quarter, of the employees of the applicant, of its contractor or subcontractor during the construction phase and during the operating life of the facility. Such estimates shall include the number of employees who will be utilized but who do not currently reside within the area to be affected by the facility.

(b) For construction activities which are exempt from the permit requirements of the Act pursuant to W.S. 35-12-119(c), and which are associated with an industrial facility as defined by W.S. 35-12-102(a)(vii), the applicant shall provide the information required by W.S. 35-12-109(a)(iii), (iv), (v), and (viii) at the same time that the application for a permit for the industrial facility is filed.

Section 14. **Permit Transfers and Terminations.**

(a) The Administrator may recommend corrections to the name of the permit holder to the Council.

(b) The Council may authorize transfers of permits to a different person buying the assets of the permitted facility if:

(i) The matter is initiated by a written request from the current permit holder and accompanied by a written acceptance of the permit, its terms and conditions by the prospective buyer.

(ii) The matter is heard by the Council at its next meeting after notice is

published and parties are notified.

(iii) Appropriate officers of the current permit holder and the acquiring company are present for examination by the Council.

(c) Petition by a Permittee for termination of the permit.

(i) Upon application for a permit termination, the Council may authorize permit termination if the Permittee demonstrates that all of the following conditions exist:

(A) The operation is in compliance with local ordinances and land use plans in force or adopted on or prior to the date of the application.

(B) Termination of the permit will not cause or add to any adverse environmental, social and economic impacts in the area of site influence, which are not regulated by another State regulatory agency, during the remaining life of the facility. The remaining life of the facility includes cessation of operations, site clearance and site reclamation.

(C) All construction phases of the facility have been completed and there are no conditions or requirements of the permit that warrant the continuation of the permit for the remaining life of the facility.

(D) Permit termination would not conflict with any statute or rule governing the facility, and would not conflict with the purposes of Act.

(ii) The Council shall consider all objections from local governments before granting a permit termination.

(iii) Within fourteen (14) days of receipt of a termination application the Director shall cause notice to be published in newspaper(s) of general circulation in the area primarily affected stating the nature of the request. Written notice shall also be provided to local governments in the area of site influence. The notice shall describe the name and location of the operation and provide for a thirty (30) day public comment period.

(iv) Prior to granting a permit termination, the Council shall provide opportunity for a public hearing if requested, in accordance with Chapter II, Section 13 and 14 of these regulations. The Council shall render a decision within ninety (90) days from the date the application is filed with the Department.

(v) The applicant shall pay an application fee to cover the costs of processing the application, inspecting, and for compliance activities. The amount shall be calculated by the Director.

Section 15. **Amendments.**

(a) A permit shall be amended if the applicant makes a significant change to the scope, purpose, size, or scheduling of the project; which would result in different impacts not within the scope of the approved permit.

(i) Supplemental submittals shall not be considered amendments, if they do not provide a significant change to the scope, purpose, size or scheduling of the project. In particular, material which is in the nature of a clarification in response to a request by the Division

shall not be considered a permit application amendment.

(ii) An amendment to a permit application or request for waiver may be allowed on condition that the applicant agrees to an extension of time for hearings, studies and determinations, in order to allow full and adequate notice in the manner and to the persons specified in W.S. 35-12-111(a).

(b) With respect to commercial waste disposal facilities, any major changes in the type or volume of wastes received, size of the facility, changes in transportation methods or routes for waste delivery, or changes in recycling, reuse, or treatment shall require notice and prior approval from the Director. If the Director determines that these changes may result in additional adverse impacts that were not previously reviewed by the Council, the Permittee shall submit a permit amendment in accordance with the requirements of this section.

Section 16. Waste Management Surcharge.

(a) Each Permittee of a commercial waste incineration or disposal facility shall keep records of all wastes received by the facility. Records shall consist of:

(i) A daily log of all wastes received by the applicant by weight, source and content.

(ii) A daily record of payments made for wastes received for disposal by source, including a first accounting of invoices;

(iii) A daily record of solid wastes removed from the facility and recycled or reused; and

(iv) A daily record of hazardous wastes treated at the facility.

(b) In accordance with W.S. 16-4-203(d)(v), records supplied for purposes of verifying the surcharge payment shall be public record unless the applicant can demonstrate to the Council, at the time of permitting, that the information consists of trade secrets, privileged information, or confidential commercial information. In such case, the applicant shall stamp as "confidential" each page containing privileged information.

(c) Waste receipt and surcharge reporting shall be on a quarterly basis through the use of monthly recapitulation sheets of the daily records.

(d) In accordance with W.S. 35-12-113(g), the Permittee shall remit the surcharge no later than the last day of the second month following the end of the quarter. Failure to remit the full payment as required by this section may constitute grounds for permit revocation in accordance with W.S. 35-12-116, after notice and reasonable opportunity to correct the failure.

(e) Upon a fourteen (14) day advance notice, the Permittee shall allow audits by the Division, or its auditors. The Permittee shall provide the Division access to all records and provide the copying of all records dealing with compliance of the permit requirements and payment of the waste management surcharge.

(f) Without advance notice, the Division or its designated agent may inspect manifests for shipments to determine accuracy of record keeping and weight scales.

(g) For audit purposes, all records required by this section will be maintained a minimum of five years.

(h) All measuring devices utilized to determine the surcharge payment shall be certified by the Wyoming Department of Agriculture in accordance with W.S. 40-10-117 through 40-10-123 and inspected and recertified annually.

(i) The waste management surcharge rate shall be a minimum of \$10 per short ton for non-hazardous wastes received and \$25 per short ton for hazardous waste. The Council may impose a higher rate at the time of permitting or annually thereafter. The rate may also be lowered as long as the surcharge remains at or above the minimum set in W.S. 35-12-113(g). The Council shall consider any of the following criteria as a basis for adjusting the surcharge rate:

(i) National or regional cost escalation for waste disposal;

(ii) Level of short and long term liabilities and risk to public health, safety and welfare.

(iii) Encouragement of the use and demonstration of new and advanced technologies which benefit the community and state;

(iv) Economic benefits accruing to the local community from the facility, including but not limited to, voluntary mitigation measures, employment opportunities, and importance to the economic stability; or

(v) Utilization of waste reduction, recycling and treatment practices at the origin of the wastes.

(j) The Council shall authorize a reduction in the waste management surcharge rate to encourage recycling, reuse, or treatment of hazardous wastes in accordance with W.S. 35-12-113(g). To obtain the credit, the Permittee must provide for removal and recovery of useful components of the waste stream above the minimum required by W.S. 35-11-508(a) (iii). For hazardous wastes, the treatment process shall reduce the hazards and long-term risks from the wastes above the minimum treatment processes required by rules promulgated under the Environmental Quality Act. The Council may authorize a credit at, or greater than, the minimum of W.S. 35-12-113(g) if the Council finds:

(i) Economic viability - where the Permittee can demonstrate a recycling or treatment technology or method which would not be economically viable through costs in excess of the minimum credit, the Council may grant a higher credit to promote the technology or method, if the Council determines the recycling or treatment technology or method beneficial to the State.

(ii) Economic development - the credit may be increased to broaden the local economic base in the form of a subsidy to develop local recycling, reuse, or treatment enterprises. This subsidy may only be approved to increase business profitability in the growth years of the enterprise.

(k) Upon submittal of a permit application, request for waiver, or annually after permit approval, the Director may require the Permittee or applicant to provide cost data so that the Division may evaluate the merits of a surcharge rate adjustment. The information requested may include, but

is not limited to:

- (i) Breakdown of operation costs.
- (ii) Breakdown of construction costs.
- (iii) Breakdown of transportation costs.
- (iv) Current tipping charges.

Section 17. Fees and Public Records.

(a) **Application Fee.** The fee required by W.S. 35-12-109(b) is prepared on the basis of features of the proposed application and facility as are any increases in the Application Fee as required by W.S. 35-12-109(d).

(b) Public records may be inspected and copies provided upon written request specifying the document(s) requested.

(c) These rules incorporate by reference the following rules and regulations, as in effect of September 6, 2016:

(i) Wyoming Department Of Administration and Information, Director's Office, Chapter 2, Uniform Procedures, Fees, Costs, and Charge for Inspection, Copying, and Producing Public Records, available at <https://rules.wyo.gov>.

(d) These rules do not incorporate later amendments or editions of the incorporated matter.

(e) All incorporated matter is available for public inspection at the Department's Cheyenne office. Contact information for the Cheyenne Office may be obtained at <http://deq.wyoming.gov> or from (307) 777-7369.

CHAPTER 1
INDUSTRIAL DEVELOPMENT INFORMATION AND SITING
RULES AND REGULATIONS

Section 1. **Authority.**

These rules and regulations are promulgated by the Wyoming Industrial Siting Council (Council), pursuant to the authority granted the Council by the Wyoming Industrial Development Information and Siting Act; W.S. 35-12-101 through 35-12-119. If any provision of these rules or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of these rules which can be given effect without the invalid provision or application and to this end the provisions of these rules are declared to be severable.

Section 2. **Definitions.**

Definitions contained in W.S. 35-12-102, shall be applicable, where appropriate. The following terms used in these regulations shall have the following meanings, unless the context otherwise requires:

(a) “Act” means the Industrial Development Information and Siting Act, W.S. 35-12-101 through 35-12-119.

(b) “Area or local government primarily affected by the proposed industrial facility” means:

(i) Any defined geographical area in which the construction or operation of the industrial facility may significantly affect the environment, population, level of economic well-being, level of social services, or may threaten the health, safety or welfare of present or expected inhabitants.

(ii) Any such county, incorporated municipality, school district, or combination thereof formed under the Wyoming Joint Powers Act within (i) above.

(c) “Areas of site influence” means the areas which may be affected environmentally, socially, or economically, in any significant degree, by the location of the industrial facility at the proposed site. A separate “area of influence” may be considered for each resource identified in Section 8(i) of these rules.

(d) “Complete application” means an application which contains all of the information required by W.S. 35-12-109 and Section 8 of these rules, except those portions of the application requirements that the Council has waived pursuant to W.S. 35-12-107; excluding proprietary information. If proprietary information is withheld, it must be stated in the application.

(e) “Construction schedule” means the schedule of events by time, from the commencement of construction through completion of construction and commencement of commercial operation of the facility, as described in the application and any approved updates.

(f) “Cumulative impacts” means the combined impacts upon the environment or the social or economic conditions resulting from construction and operation of the proposed industrial facility and from construction and operation of other on-going or proposed developments in the area of site influence. Proposed developments to be considered in cumulative impacts include those

facilities which have public information available, or are actively permitting.

(g) “Decommissioning” means the removal from service, disassembly, and proper off-site disposal of the facility components.

(h) “Dependent component” means any ancillary facility to be constructed by the applicant that is necessary and essential to the construction or operation of the industrial facility. Dependent components are considered part of the industrial facility. Facilities described at W.S. 35-12-119 as exempt are not dependent components.

(i) “District or Special District” means the following:

(i) A special purpose local government created pursuant to W. S. 16-1-101 et seq. (Joint Powers Act) and whose registry as such is maintained by the Wyoming Secretary of State; or

(ii) A public school district.

(j) “Effective date of the Act” means May 30, 1975.

(k) “Environment” means the physical conditions existing within the affected area, including, but not limited to, land, air, water, minerals, flora, wildlife, noise, and objects of historic, aesthetic, or recreational impacts over which the Council has jurisdiction.

(l) “Estimated construction costs” means the anticipated total costs and expenses attributable directly to the planning, design, erection and construction of the applicant’s proposed facility. The estimate shall be based upon current cost projections within the possession of the applicant. Such costs and expenses shall include, but are not limited to, the following: costs of materials, supplies and equipment, including allocable construction equipment costs; labor and management personnel compensation and salaries; contract and subcontract fees; employee benefits; employment; sales and use taxes; per diem and subsistence allowances; and all other costs necessary and incident to the construction of the proposed facility. For purposes of estimating construction costs, the proposed facility shall be described and considered to include all units and components at the proposed site location, and which are or have been included in current plans for development of the proposed site. Exempt activities and site acquisition expenditures including the acquisition costs of mineral rights and interests are not to be included in the estimated construction cost.

(i) In computing an estimate pursuant to Section 2(l) above, the estimated costs for materials, supplies, equipment and allocable construction equipment shall include:

(A) The total costs of materials, supplies, and equipment incorporated into or otherwise necessary to construct the facility;

(B) The total costs of equipment used in site preparation and construction, which is further required to place the proposed facility into operation; and

(C) The allocable costs of that equipment used in site preparation and construction of the proposed facility, but which is not retained on site, and is not required to place the proposed facility into operation.

(ii) The proposed facility's estimated construction cost shall include the costs of access roads including modifications and improvements to existing roadways when such modifications or improvements are necessitated by the proposed facility, the costs of any rail facilities constructed for the substantial use of the proposed facility, and costs of other dependent components.

(m) "Estimated materials costs" means the estimated costs of materials, supplies and equipment, including allocable construction equipment costs, necessary and incident to the construction of the proposed facility.

(n) "Financial assurance" means a security serving as collateral in the form of a surety bond, certificate of deposit, corporate guarantee, letter of credit, deposit account, insurance policy or other form acceptable to the Director to insure proper decommissioning and reclamation activities.

(o) "Financial capability" means evidence of the financial strength of the applicant to construct, maintain, operate, decommission and reclaim the facility.

(p) "Health" shall mean the state of being sound in body or mind and includes psychological as well as physical well-being.

(q) "Information applicant" means any person who intends to initiate a construction activity with an estimated construction cost of at least ninety-six million nine hundred thousand dollars (\$96,900,000.00) adjusted by applicable cost indices as provided in W.S. 35-12-102(a)(vii), which construction activity also falls within W.S. 35-12-119.

(r) "Job classification" means those of the 2010 Standard Occupational Classification System of the U. S. Department of Labor.

(s) "Mineral rights" means fee, leasehold, or mining claim interests in the mineral estate.

(t) "Mitigated impacts" means impacts that are minimized by limiting the magnitude of the impact, or are compensated for by replacing or providing substitute resources or supplemental environmental projects.

(u) "Oil and gas drilling facilities" are any and all activities in connection with or associated with drilling, testing, or completing oil and gas wells including well access roads and any electrical service, mobile and fixed equipment, and services used for drilling, completing, testing, maintaining and repairing oil or gas wells and related activities.

(v) "Oil and gas producing facilities" are any and all activities necessary to extract oil or gas or both from a naturally occurring underground reservoir containing a common accumulation of oil or gas or both. Producing facilities include the oil or gas well downhole equipment, well heads, flow controls, and artificial lift equipment including compressors. Producing facilities also include those facilities used for pressure maintenance, enhanced recovery, or produced water disposal.

(w) "Permit termination" means cessation or termination of a permit and all permit conditions, which were issued by the Council for the construction and operation of an industrial facility.

(x) "Phase" or "phase of construction" means any future expansion or

modification of the facility described in the application pursuant to W.S. 35-12-109 (a)(vi), and interpreted for jurisdiction by the Division.

(y) “Projection period” means the period of time over which projections of socioeconomic factors are made. The projection period shall not exceed five (5) years beyond the period during which stable operation of the industrial facility is achieved.

(z) “Reclamation” means the process of restoring all lands affected by the proposed industrial facility or its dependent components to a use for grazing, agriculture, recreational, wildlife purpose, or any other purpose of greater or equal value which satisfies the landowner or land management agency. The process may require removal of structures, backfilling, grading, contouring, compaction, stabilization, revegetation and drainage control.

(aa) “Safety” shall mean freedom from injury or threat of injury. Such injury or threat of injury may be premised on crime rates, traffic accident rates, dangers of industrial accidents or mishaps, or other similar considerations.

(ab) “Studies” shall include all social, economic or environmental reports, analyses, evaluations or compilations dealing with the impact of the industrial facility whether prepared by the applicant, the applicant’s employees, or consultants retained by the applicant. Where such studies are part of a longer report or study, the applicant may sever such study from the larger document for purposes of submission to the Council.

(ac) “Study Area” is the geographic and political boundary, as designated by the Administrator for the required governmental, social, and economic studies required for applications.

(ad) “Unmitigated impacts” means identified impacts that are not minimized by limiting the magnitude of the impact, or are not compensated for by replacing or providing substitute resources or supplemental environmental projects.

(ae) “Welfare” shall mean considerations of public convenience, public wellbeing and general prosperity. The term also properly covers those subjects encompassed under health and safety.

(af) “Wellfield activity” means any and all activity directly associated with the development, operation, or abandonment of oil and gas drilling or producing facilities. Wellfield activity includes but is not limited to construction of flow lines, heaters, treaters, dehydrators, fluid separators and stabilizers. Storage tanks not within the definable boundaries of an industrial facility are wellfield activities.

Section 3. **Certificate of Insufficient Jurisdiction.**

No person shall commence to construct an industrial facility unless an application has been filed in conformity with these rules and regulations and a permit has been issued by the Council.

(a) Any person who intends to initiate construction activity which may qualify as an industrial facility under the Act shall submit to the Division an application for a Certificate of Insufficient Jurisdiction which shall demonstrate that the proposed construction activity does not qualify as an industrial facility under the Act, and that the Council lacks sufficient jurisdiction to require that an application for a permit be submitted.

(b) Industrial facilities that meet one of the following criteria shall not need a certificate of insufficient jurisdiction:

(i) The estimated construction cost is less than eighty percent (80%) of the current threshold construction cost.

(ii) A commercial waste incineration or disposal facility is not physically capable of receiving four hundred (400) short tons or more per day of household or mixed household and industrial waste.

(c) An application for a Certificate of Insufficient Jurisdiction shall contain the following information:

(i) A description of the proposed construction activity.

(ii) An estimated construction cost for the proposed construction activity that is in conformity with Section 2 (m) of these regulations.

(d) When an application for a Certificate of Insufficient Jurisdiction is submitted to the Division, the Administrator shall within ten (10) days after the application is submitted:

(i) Serve notice of the application upon each local government that would be entitled to receive service of a copy of the application for a permit under W.S. 35-12-110(a)(i), as if the person submitting the application for a Certificate of Insufficient Jurisdiction was submitting an application for a permit.

(ii) Publish notice of such application for a Certificate of Insufficient Jurisdiction throughout the state for four (4) consecutive weeks in newspapers of general circulation.

(iii) Such notice shall state the following:

(A) A description of the construction activity proposed by the applicant for a Certificate of Insufficient Jurisdiction.

(B) The estimated construction cost of the construction activity proposed by the applicant for a Certificate of Insufficient Jurisdiction.

(C) A statement that any interested party, who would be a party in any permit proceeding with respect to the construction activity, may file objections to the issuance of a Certificate of Insufficient Jurisdiction within thirty (30) days after the last date of publication of notice.

(e) The Director shall present an application for a Certificate of Insufficient Jurisdiction to the Council after thirty (30) days has expired from the last date of publication of notice of application with his recommendation for issuance or denial. The Council shall thereupon, after consideration of the application and the objections thereto, either issue or deny the application for a Certificate of Insufficient Jurisdiction.

(f) The decision of the Council to issue a certificate shall be effective immediately.

Section 4. **Jurisdictional Meeting.**

(a) Persons requesting a jurisdictional determination for the following from the Division shall first request a jurisdictional meeting with the Division:

- (i) A permit pursuant to W. S. 35-12-109;
- (ii) Waiver or waivers of requirements;
- (iii) A certificate of non-jurisdiction;
- (iv) An informational filing pursuant to W. S. 35-12-119 (a) and (b); or
- (v) An exemption from a permit pursuant to W.S. 35-12-119 (c).

(b) The jurisdictional meeting shall be held when the preliminary facility design and estimated construction schedule are known.

(c) The Person seeking the jurisdictional meeting shall provide information to describe the facility and shall include the following:

- (i) Details of ownership; and points of contact;
- (ii) Description of the proposed facility including a site plan;
- (iii) Proposed facility location and land ownership;
- (iv) The location for the receipt of purchase and where title changes;
- (v) Any future phases to be requested in the application;
- (vi) The estimated cost of construction, including preliminary estimated material costs;
- (vii) Information which the applicant feels to be pertinent.

(d) The Director shall provide a written decision within 15 days following the jurisdictional meeting stating whether or not the facility is within the jurisdiction of the Siting Council and provide notice of any application fee pursuant to W.S. 35-12-105(g) and W. S. 35-12-109(b). The Director may provide conditional determinations. The Director, according to the accounting standards and procedures used by the State of Wyoming, will perform the deposit of revenues, payment of expenditures, and accounting. Any such fee will:

- (i) Be determined by the Director in accordance with the provisions of W.S 35-12-109 (b) and (d);
- (ii) Be collected at the time of the filing of an application;
- (iii) Recover the full actual costs to the Division and Council for the activities specified by W. S. 35-12-109(b) and (d);

(iv) May be subject to revision by the Director if the fees are determined to be insufficient to pay the full actual cost of the Division and Council as specified by W.S. 35-12-109 (b) and (d).

(e) If the Director determines that the information provided by the person is incomplete, the Director shall respond in writing within 15 days following the jurisdictional meeting stating that the information is incomplete and that a determination cannot be made at that time.

Section 5. Pre-Filing and Filing.

(a) At the jurisdictional meeting the Administrator shall specify the study area for the project application. The study area provides the boundaries for studies of counties and municipalities.

(b) The applicant shall notify and describe the project to local governments in the study area. The notice and description shall be sent by certified mail, return receipt, and shall include a description of the project, its location, the expected construction period, the number of construction workers, transportation routes for construction materials, the anticipated economic benefits of the project, the anticipated impacts from the project and offer methods to comment to the applicant and attend scheduled informational meetings. The notice and description will be mailed no later than 10 business days prior to the first informational meeting.

(i) Informational meetings shall be held no later than 60 days before the filing of an application and shall be in the principal city of the county and at a place as close to the site of the project as is practical.

(c) The date of filing of an application is that date when all of the following have been received by the Division:

- (i) The application fee;
- (ii) The application document; and
- (iii) The letter of transmittal.

(d) When the application is filed, the Division shall provide the applicant with a written receipt for the application which shall stipulate the application has been filed on that date.

(e) After receipt and examination of the application the Administrator shall determine the area primarily affected.

(f) Counties who wish to make a referral according to W.S. 18-5-509 shall provide the following:

- (i) Information obtained from the applicant as described in Section 4(c) subparagraphs (i) through (v).
- (ii) Justification why the referral is necessary. The Director will make a decision on the referral and notify the county within fifteen (15) days from the date of the referral.

Section 6. General Format of Application or Request for Waiver.

In accordance with W.S. 35-12-107 and W.S. 35-12-109, the applicant shall abide by the following rules and conditions:

(a) Prior to submitting its application or request for waiver, each applicant shall confer with the Division to determine the number of copies of the application or request for waiver to be filed with the Division. The applicant shall file a minimum of forty (40) copies of the application with the Division. The applicant shall not be required to file more than seventy-five (75) copies of the application without prior approval of the Council.

(b) The application or request for waiver shall be typed, printed, or otherwise legibly reproduced on 8 ½-inch by 11-inch paper. Maps, drawings, charts, or other documents that are bound in the application or request for waiver shall be cut or folded to 8 ½-inch by 11-inch size. All pages in an application or request for waiver shall be consecutively numbered.

(c) The application or request for waiver shall be verified by the applicant as to its truth and accuracy, upon oath or affirmation. Such application or request for waiver shall be signed by the president of the corporation or owner of the company, or another official designated by the bylaws to obligate and bind the applicant. The application or request for waiver shall be accompanied by a letter of transmittal which shall contain the following information:

(i) The company's request for a permit or waiver of permit to construct and operate the facility; and

(ii) The designated individual to serve as point of contact for the permit process including address of service of notice.

(d) The Applicant shall notify the Division immediately whenever, subsequent to submitting an application or waiver request under the Act, a material change in the design, location, schedule, or scope of the industrial facility has occurred. Such notification by the applicant may constitute a request for amendment pursuant to W.S. 35-12-106(c) and Section 15 of these rules if the Division determines that such differences materially change the nature, location or impact of the proposed industrial facility.

(e) An applicant may apply for a permit to construct an industrial facility in phases over an extended period.

(f) As part of the application, the applicant shall submit a summary of the entire application. The summary shall contain references to supporting data and analysis contained in the application.

(g) Whenever the Act or these rules require information concerning the industrial facility to be submitted to the Council and the applicant is required to submit the same or similar information to another state, federal or local agency having jurisdiction, the applicant may submit the information to the Council in the same format required by the other agency.

(h) Applicants may fulfill informational requirements of the regulations and the Act by describing the area of jurisdiction covered by other regulatory agencies in the state.

(i) The application shall contain a table containing all commitments stated in the application and provide the page number where each commitment is discussed in the body of the

application. The table shall also provide a narrative of all the commitments made to local governments in accordance with W.S. 35-12- 107(b)(xi) and W.S. 35-12-109(a)(xiii).

Section 7. Request for Waiver.

(a) The request for waiver shall contain the information required by the Act with respect to both the construction period and on-line life of the proposed industrial facility and any additional information the applicant considers relevant to the needs of the Council and local units of government for making an informed decision for granting or refusing the waiver request. The waiver application shall follow the same format as the application contents described in Section 8, less those parts identified as not necessary by the Administrator.

(b) The Council shall grant a request for a waiver either as proposed or as modified by the Council as provided by the act and considering the following:

(i) In order to find that the industrial facility would not produce an unacceptable impact, the Council must find that the granting of a waiver will not result in a significant detriment to, or significant impairment of, the environment or the social and economic condition of present or expected inhabitants. If applicable, the Council may consider direct or cumulative impacts not within the area of jurisdiction of another regulatory agency in this state.

(ii) A proposed industrial facility is considered to be designed in compliance with applicable local ordinances, regulations and compatible with land use plans if it meets applicable requirements relative to zoning laws, building codes, health and safety laws, and other laws of a similar nature in force on the date of submittal of the request for waiver.

(c) If the Council finds that the considerations of subsection (b) above have been met, the Council may waive all of the application requirements of the Act, and shall issue a permit for the industrial facility in accordance with W.S. 35-12-113. If the Council is not able to find that these requirements are met, the Council may deny the request, and issue an order requiring that an application for a permit be filed pursuant to W.S. 35-12-109. The Council may also waive any part(s) of the application requirements of W.S. 35-12-109 if it determines that it is justified by the circumstances.

Section 8. Application Information to be Submitted.

In accordance with W.S. 35-12-109, the application shall contain the information required by the Act with respect to both the construction period and online life of the proposed industrial facility and the following information the Council determines necessary:

(a) The application shall state the name, title, telephone number, mailing address, and physical address of the person to whom communication in regards to the application shall be made.

(b) A description of the specific, geographic location of the proposed industrial facility. The description shall include the following:

(i) Preliminary site plans at an appropriate scale indicating the anticipated location for all major structures, roads, parking areas, on-site temporary housing, staging areas, construction material sources, material storage piles and other dependent components; and

(ii) The area of land required by the industrial facility and a land ownership map covering all the components of the proposed industrial facility.

(c) A general description of the major components and dependent components of the proposed industrial.

(d) A description of the operating nature of the proposed industrial facility, the expected source and quantity of its raw materials, and energy requirements. The description shall include, but is not limited to, the following:

(i) The proposed on-line life of the industrial facility and its projected operating capacity during its on-line life; and, for transmission lines exceeding one hundred fifteen thousand (115,000) volts included as part of the proposed industrial facility, a projection indicating when such lines will become insufficient to meet the future demand and at what time a need will exist to construct additional transmission lines to meet such demands; and

(ii) Products needed by facility operations and their source.

(iii) Estimated material costs for the project.

(e) A statement that shall be a reasonable estimate of the calendar quarter in which construction of the industrial facility will commence, contingent upon the issuance of a permit by the Council.

(f) A statement that shall be a reasonable estimate of the maximum time period required for construction of the industrial facility and an estimate of when the physical components of the industrial facility will be ninety (90) percent complete, and the basis for that estimate.

(g) The applicant shall identify what it deems to be the area of site influence and recommends as the local governments primarily affected by the proposed industrial facility as defined in Sections 2 (b), (c) and (d). The immediately adjoining area(s) and local governments shall also be identified with a statement of the reasons for their exclusion from the list of area(s) or local governments primarily affected by the proposed industrial facility.

(h) Using tables, provide a detailed tally of the estimated work force to construct and to operate the facility showing the following information:

(i) All workers providing direct labor and direct support; (safety, supervision, inspection) at the work site;

(ii) Information by calendar month and year from the commencement of construction through the first year of operation;

(iii) Identify and provide totals of those which are construction and those which are permanent;

(iv) Identify and provide quarterly totals of the number, job classification and recurrence; of those which are estimated to be in-migrating (from outside the study area at the time of hire for the facility) and of those pre-existing employees of the applicant engaged in construction;

(v) Provide estimates of wages; and

(vi) Provide estimates of paid benefits including per diem and paid fees.

(i) The social and economic conditions in the area of site influence shall be inventoried and evaluated as they currently exist, projected as they would exist in the future without the proposed industrial facility and as they will exist with the facility. Prior to submitting its application, each applicant shall confer with the Administrator to define the needed projections, the projection period and issues for socioeconomic evaluation. The evaluation shall include, but is not limited to:

(i) An analysis of whether or not the use of the land by the industrial facility is consistent with state, intrastate, regional, county and local land use plans, if any. The analysis shall include the area of land required and ultimate use of land by the industrial facility and reclamation plans for all lands affected by the industrial facility or its dependent components;

(ii) A study of the area economy including a description of methodology used. The study may include, but is not limited to, the following factors:

(A) Employment projections by major sector;

(B) Economic bases and economic trends of the local economy;

(C) Estimates of basic versus non-basic employment;

(D) Unemployment rates;

(iii) A study of the area population including a description of methodology used. The study may include, but is not limited to, an evaluation of demographic characteristics for the current population and projections of the area population without the proposed industrial facility;

(iv) An analysis of housing facilities by type, including a quantitative evaluation of the number of units in the area and a discussion of vacancy rates, costs, and rental rates of the units. The analysis should include geographic location, including a quantitative evaluation of the number of units in the area required by the construction and operation of the proposed industrial facility and a discussion of the effects of the proposed industrial facility on vacancy rates, costs, and rental rates of the units. Specific housing programs proposed by the applicant should be described in detail;

(v) An analysis of effects on transportation facilities containing discussion of roads (surface type), and railroads (if applicable).

(vi) Public facilities and services availability and needs, which may include, but are not limited to:

(A) Facilities and personnel required for the administrative functions of government including specific new demands or increases in service levels created by construction of the proposed industrial facility;

(B) Sewer and water impacts shall describe the distribution and treatment facilities including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels. If required pursuant to W.S. 35-12-108, the application shall contain the Water Supply and Water Yield Analysis and Final Opinion of the State Engineer;

(C) Solid waste collection and disposal services including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels;

(D) Existing police and fire protection facilities including specific new demands or increases in service levels created by the proposed industrial facility;

(E) An analysis of health and hospital care facilities and personnel including specific new demands or increases in service levels created by the proposed industrial facility;

(F) Human service facilities, programs and personnel, including an analysis of the capacity to meet current demands and a description of problems, needs, and costs of increasing service levels;

(G) An analysis of community recreational facilities and programs and urban outdoor recreational opportunities including specific new demands or increases in service levels created by the proposed industrial facility;

(H) Educational facilities, including an analysis based upon enrollment per grade, physical facilities and their capacities and other relevant factors with an assessment of the effect that the new population will have on personnel, programs and facilities;

(I) Problems due to the transition from temporary, construction employees to operating workforces should be addressed. Changes in levels of services required as a result of the proposed industrial facility should specifically be addressed. Cumulative impacts of the proposed industrial facility and other developments in the area of site influence should be addressed separately. This assessment should examine increased demands associated with the construction and operational phases of the proposed industrial facility, as well as effects on the level of services as the construction or operational workforces decline;

(J) A copy of any studies that may have been made of the social or economic impact of the industrial facility.

(vii) A fiscal analysis over the projection period for all local governments and special districts identified by the applicant as primarily affected by the proposed industrial facility, including revenue structure, expenditure levels, mill levies, services provided through public financing, and the problems in providing public services. If modeling software is used, then identifying the software program and providing a summary table of the data set inputs (including any multipliers) for the analysis is required. The analysis may include, but is not limited to:

(A) An estimate of the cost of the facility with a separate line item for the estimated material costs;

(B) An estimate of the sales and use taxes to be paid directly by the applicant to construct the facility. This estimate should be broken down by year.

(C) If a facility is located in more than one county, the estimate under subsection (B) above shall be broken down by year and for each affected county.

(D) Estimates of impact assistance payments which will result from the

project.

(E) An estimate of the cost of components of the industrial facility which will be included in the assessed value of the industrial facility for purposes of ad valorem taxes for both the construction and operations periods. This estimate should include a breakdown by county if the components of the industrial facility will be located in more than one county.

(j) An evaluation of the environmental impacts as they would exist if the proposed industrial facility were built. Each evaluation should be followed by a brief explanation of each impact and the permit issued that regulates the impact. If the impact is not regulated by a state regulatory agency or federal land management agency, the application must include plans and proposals for alleviating adverse impacts. Cumulative impacts of the proposed industrial facility and other projects in the area of site influence should be addressed separately.

(k) The applicant shall describe the procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or recreational facilities which may be adversely affected by the estimated emissions and discharges from the proposed facility.

(l) The applicant shall provide certification that all local governments in the study area were provided notification of the facility, a description of the proposed project and an opportunity to ask the applicant questions regarding the proposed project at least thirty (30) days prior to the submission of the application. The certification shall include a description of the actual process used.

(m) For a permit application, the applicant shall provide a description of land use and changes to land use as a result of the project. Such will include:

- (i) The project site, transportation routes, utilities, and collector systems.
- (ii) County land use plans and zoning, if any.
- (iii) Changes to agricultural production as a consequence of the project.

(n) For a permit application, the applicant shall provide the following:

(i) An evaluation of potential impacts together with any plans and proposals to alleviate potential impacts. The evaluation shall include a recent survey for threatened and endangered and rare species of concern (flora & fauna), as identified in the state wildlife action plan prepared by the Wyoming Game and Fish Department, found at the site location.

(ii) An evaluation of the potential impacts to terrestrial and aquatic wildlife and any plans or proposals to alleviate potential impacts.

(o) The applicant shall provide a description of the methods and strategies to maximize employment and utilization of the existing local or in-state contractor and labor force during the construction and operation of the facility.

(p) The applicant shall provide a description of the impact controls and mitigating measures proposed to mitigate and alleviate adverse environmental, social and economic impacts associated with the construction and operation of the proposed industrial facility, including:

(i) Monitoring programs to assess effects of the proposed industrial facility and the overall effectiveness of impact controls and mitigating actions.

(ii) Impact controls and mitigating measures proposed by the applicant to alleviate adverse environmental, social and economic impacts associated with construction and operation of the proposed industrial facility.

(q) The applicant shall provide a description and quantification of the mitigated and unmitigated impacts that will result from the construction and operation of the proposed facility on the affected local governments and special districts. Such description shall include:

(i) Quantification of fiscal impacts, regardless of amount, on all items contained in Wyoming Statute 35-12-109 (a)(xiii)(A)–(S).

(ii) Projection of when, by calendar month, the unmitigated impacts will occur in the affected communities.

(iii) Projection, by calendar month, of fiscal impact in affected communities.

(r) Counties wishing to present evidence shall provide a description and quantification of the unmitigated impacts that will result from the construction and operation of the proposed facility. Such description shall include:

(i) Estimates of fiscal impacts on services provided by communities; and

(ii) Estimated projections of when unmitigated impacts will occur in communities;

Section 9. Additional Application Requirements for Wind Energy Facilities.

(a) Facility Decommissioning. The applicant shall provide a facility decommissioning plan.

(i) The facility decommissioning plan shall include provisions regarding the removal and proper disposal of all wind turbines, towers, substations, buildings, and cabling, electrical components, foundations to a depth of forty-eight (48) inches, and any other associated or ancillary equipment or structures within the facility boundary above and below ground.

(ii) The facility may request that a building be left on site if approval is obtained from the surface landowner and upon written notification to the Administrator.

(iii) Facility or individual wind turbine decommissioning shall begin:

(A) Within twelve (12) months after the end of the useful life of the facility or individual wind turbine, or

(B) When no electricity is generated for a continuous period of twelve (12) months of the facility or individual wind turbine.

(C) The Council may extend the time period of Section (8)(a)(iii)(B) if the facility demonstrates good cause prior to the end of the continuous period of (12) months of the facility or wind energy generating towers not generating electricity.

(iv) The facility decommissioning plan shall be updated and submitted to the Administrator every five (5) years.

(b) Interim Reclamation. Interim Reclamation shall comply with the applicable permitting requirements of the Department of Environmental Quality, Water Quality Division storm water program.

(c) Final Reclamation. The applicant shall provide a final reclamation plan which shall include:

(i) A detailed description of site conditions prior to construction, including topography, vegetative cover (including plant species and plant community structure), climate, and land uses.

(ii) Re-grading. All tower foundations, roads, and all other surface disturbances within the facility boundary must be re-graded to the natural contours of the area. Backfilling, grading and contouring of affected land shall be accomplished by one or more of the following as detailed in the approved reclamation plan:

(A) Re-establishment of the contour of the land in a manner consistent with the proposed future use of the land.

(B) Contouring affected land to blend in with the topography of the surrounding terrain unless so doing would create an erosion problem or a hazard.

(C) The facility may leave a road un-reclaimed if approval is obtained from both the surface landowner and the Administrator.

(iii) Re-vegetation

(A) After backfilling, grading and contouring, and the replacement of topsoil, re-vegetation shall be commenced in such a manner so as to most efficiently accommodate the retention of moisture and control erosion on all affected lands to be re-vegetated.

(B) Re-vegetation documentation shall include seedbed preparation, seed mixture, and post seeding maintenance of all disturbed areas.

(C) If applicable, documentation of any mulching and/or use of fertilizers.

(D) Reclamation shall restore the land to a condition and native or adaptive perennial vegetative cover equal to or better than the original condition.

(E) Re-vegetation of all affected lands shall be accomplished in a manner consistent with the approved reclamation plan and the proposed future use of the land.

(F) Seeding of affected land shall be conducted during the first normal period for favorable planting conditions after final preparation unless an alternative plan is approved. The species of vegetation to be used in re-vegetation efforts shall be described in the reclamation plan indicating the composition of seed mixtures and the amount of seed to be distributed on the area on a per acre basis.

(G) The operator must control and minimize the introduction of noxious weeds into the re-vegetated areas until final reclamation is achieved.

(iv) The final reclamation plan shall be updated and submitted to the Administrator every five years.

(d) Financial Assurance: The applicant shall provide financial assurances for a wind energy facility, sufficient to assure complete decommissioning and site reclamation of the facility in accordance with the provisions of these rules. Wind energy facilities subject to regulation by the Public Service Commission shall be exempt from these financial assurance provisions and from the Cost Estimation for Decommissioning and Site Reclamation provisions of Section 9(e) and (h) of these rules.

(i) All financial assurances shall be in place prior to commencement of construction of any wind energy facility, and shall be adjusted up or down every five years from the date of permit issuance by the Council based on the results of paragraph (e) of this section.

(ii) Additional financial assurances to cover risks not anticipated at the time of the permit may be required at any time by the Director, as reasonable and necessary, provided the Director first gives thirty (30) days written notice stating the reason for and the amount of the additional financial assurance.

(iii) Financial assurance in the form of domestic securities may be accepted in any of the following forms at the discretion of the Director with consideration of credit worthiness, financial strength, credit history, credit rating and debt.

(A) Surety bond with a corporate surety registered in Wyoming.

(B) Certificate of deposit in the name of the "Department of Environmental Quality" with a state or federally insured financial institution in Wyoming. The permittee shall be entitled to all interest payments.

(C) Other forms of assurance such as corporate guarantee, letter of credit, insurance policy, or other forms as may be acceptable to the Director.

(iv) If the Permittee fails to decommission and reclaim as described in its permit, the Director may determine that the financial assurance be forfeited to the Division to arrange for the decommissioning and reclamation to be conducted by a third-party. In order for the Director to determine that the financial assurance be forfeited, the Director shall:

(A) Determine that decommissioning or reclamation has not started or it has fallen behind the approved schedule for more than six (6) months.

(B) Notify the Permittee in writing of the failure to perform reclamation in accordance with its approved reclamation plan and demand that justification be provided to the Division within 30 days.

(I) If no justification is made by the Permittee within the time provided, or if the Director rejects the justification, the Director shall provide the Permittee written notice that the Division intends to pursue forfeiture of the financial assurance.

(II) The Permittee has 30 days from the date of receiving the

notice of financial assurance forfeiture to request a hearing with the Council contesting the forfeiture of the financial assurance.

(III) If no hearing is requested, the Council will address the revocation of the permit and forfeiture of the financial assurance at the next meeting of the Council. If a hearing is requested, the Council shall conduct a hearing in accordance with the Wyoming Administrative Procedures Act. The Permittee shall bear the expense of scheduling and holding the hearing.

(e) Cost Estimation for Decommissioning and Site Reclamation of the facility:

(i) Estimates of cost for decommissioning and site reclamation shall be made by a licensed professional engineer provided by the applicant and subject to review and approval by the Director.

(ii) Total decommissioning costs shall be estimated without regard to salvage value of the equipment.

(iii) Decommissioning and site reclamation estimates shall be submitted to the Division in the application and every five years after the date of permit issuance until the completion of final reclamation.

(iv) The licensed professional engineer estimate of decommissioning and reclamation costs shall include the following:

(A) A general discussion of assumptions, including equipment, timeframes, backup calculations, procedures, methods, and any other considerations used in developing the cost estimate.

(B) A detailed description of the decommissioning activities to be performed.

(C) A detailed description of the reclamation activities to be performed.

(v) The facility may request release of the financial assurance mechanism when the facility has achieved final reclamation. Final reclamation means that all surface disturbances have been re-graded and re-vegetated with a uniform perennial vegetative cover with a density of 90% of the native or adaptive background vegetative cover. Noxious weeds shall not be included in percent cover in determining reclamation success.

(f) The Council may give a case-by-case variance to requirements of this Section after considering evidence by the applicant or landowner.

(g) Notice to record owners of mineral rights. Before submitting the application, the applicant shall provide notice to record owners of mineral rights located on or under the land where the proposed facility will be constructed.

(i) The notice shall consist of a statement of the applicant's intention to construct the project, features of the project, a legal description of the boundaries of the project, locations where the application may be examined, and persons to contact for additional information.

(ii) The notice shall be mailed by first class mail to all record owners of mineral rights whose identity and current addresses are readily obtainable from publicly available documents.

(iii) The notice shall be published twice in a newspaper of general circulation in the county or counties where the project is to be located.

(iv) The notice and details of steps taken to notify the record owners of mineral rights shall be entered into the record either within the application or as separate exhibit filed with the hearing examiner and parties.

(h) The application shall contain information demonstrating the applicant's financial capability to construct, maintain, operate, decommission, and reclaim the facility. Such documentation, if requested, shall be held confidential to the extent authorized by Wyoming law and shall include:

(i) Commitment letters from the principal investors of the project, which may be conditioned on issuance of required state and local permits; or

(ii) For applicants whose securities are publicly traded and are required to publicly disclose financial statements, any one of the following:

- (A) General audited financial statements for the most recent year-end;
- (B) Most recent credit rating reports for the financing company as published.
- (C) Reports by chartered financial analysts as published.

(iii) For applicants whose securities are not publically traded, financial statements of the majority financial contributors.

(i) Notice to affected landowners

(i) Applicant must provide a list of the names and mailing addresses of all affected landowners at the time the application is submitted.

(ii) Upon receipt of an application subject to this section, the Division will provide notice to the affected landowners and request information and recommendations, which pertain to their respective lands and interests.

(iii) All review comments from State agencies pursuant to W.S. 35-12-110(b) and (c) will be provided to the affected landowners by the Division.

(iv) All comments by affected landowners received by the Division about the project and about the agency comments under (iii) above will be provided to the State agencies. The agencies will give the Division their replies to the comments from affected landowners.

Section 10. Application Information for Commercial Waste Disposal Facilities.

Application requirements for a commercial waste disposal facility shall include information required for a request for waiver or permit application under W.S. 35-12-107, 35-12-109 and Sections

6 and 7 of these rules and regulations and the information required in subsections (a) through (f) of this section.

(a) A statement of the applicant's financial condition, including but not limited to:

(i) A profit and loss statement

(ii) Debt to equity ratio

(b) A description of the mode of transportation by which the wastes will be transported to the site; including access route specification, modification of existing traffic patterns, an estimate of the additional load and traffic placed on access routes, and the method of waste containment during transport. The applicant shall describe possible hazards associated with the transportation of wastes, safety precautions and emergency procedures should a transportation accident occur in route to the facility. If the wastes are to be temporarily stored, transferred, or handled during transport, the location of storage facilities or transfer stations shall be identified. For hazardous wastes, the applicant shall describe how the facility will comply with Department of Transportation the Environmental Protection Agency manifest and transportation requirements of 49 CFR 271-279 and 40 CFR 263.

(c) A description of the effect the facility may have on local land use, and an estimate of the potential short and long-term effect on local property values and tax revenues, and an estimate of the adverse effect the proposed facility may have on local businesses and jobs.

(d) Specification of the types of wastes to be managed by the facility, an estimate of the average waste volume the facility will manage in tons per day and the maximum tonnage the facility will be capable of handling, as well as a general description of the waste management methods used by the facility or associated operations.

(e) A description of the record keeping procedures that will be maintained to assure accurate accounting and payment of the waste management surcharge. The applicant may also request that certain records be held as confidential in accordance with Section 16(b) of these regulations.

(f) The applicant's assessment of impacts must include the impacts of required or proposed recycling operations resulting from the proposed facility.

Section 11. **Decision of Council.**

(a) The Council shall either grant or deny the application as filed, or grant it upon terms, conditions or modifications of the construction, operation or maintenance of the industrial facility as the Council deems appropriate. The Decision of the Council shall be written and shall be effective the date it is signed by the chair of the Council.

(b) Compliance with all applicable law. The Council must find that the proposed industrial facility will comply with all applicable local, state, and federal law throughout each phase of planning, construction, and operation. The local and state laws that must be complied with for purposes of this subsection consist of those laws which were in force on the date of application. In many cases, required permits and approvals may not be applied for until subsequent to the filing of the application. Therefore, the Council will examine the list of permits that regulate other aspects of the facility development for the purpose of determining whether the proposed industrial facility would be in compliance with all applicable laws if the permits and approvals specified therein were issued as expected.

(c) Threat of serious injury. In order to find that the industrial facility does not pose a threat of serious injury, the Council must find that the granting of a permit, as conditioned by the Council, will not result in a significant detriment to, or significant impairment of, the environment or the social and economic condition of present or expected inhabitants.

(i) In determining whether the proposed industrial facility poses a threat of serious injury to the social condition of the inhabitants, any significant decrease in the quality or quantity of services or facilities may be considered a serious injury. "Social condition" shall include, but is not limited to, the following factors:

- (A) Water treatment;
- (B) Sanitary waste disposal;
- (C) Solid waste collection;
- (D) Housing;
- (E) Police and fire protection;
- (F) Medical facilities;
- (G) Schools;
- (H) Recreational facilities;
- (I) Transportation systems;
- (J) Mental health facilities;
- (K) Social service facilities.

(ii) In determining whether the proposed industrial facility poses a threat of serious injury to the economic condition of the present or expected inhabitants, any net deterioration of a material nature in the condition of either present or expected inhabitants will be weighed negatively. "Economic conditions" may include, but is not limited to, the following factors:

- (A) Upgrading of jobs and increased income;
- (B) Family and per capita income;
- (C) Unemployment and underemployment rates within the area of site influence.
- (D) Purchasing power of earnings within the area of site influence.
- (E) Short term and long term fluctuations in resource consumption and resource availability.
- (F) Employment dislocation and skill obsolescence.

(G) Employment opportunities;

(H) Diversity of economy and stability of various segments of the economy.

(d) Substantially impair the health, safety or welfare. The Council must find that the proposed industrial facility will not substantially impair the health, safety or welfare of the present or expected inhabitants of the areas of site influence. A proposed industrial facility may be found to substantially impair the health, safety or welfare of the inhabitants if their health, safety or welfare during and after construction would be significantly diminished or weakened relative to present levels.

(e) If the Council is not able to find that these conditions are met, the Council shall deny the application.

(f) If the Council determines that the location of all or part of the proposed industrial facility should be modified, it may condition its permit upon that modification, provided that the local governments, and persons residing therein, affected by the modification, have been given reasonable notice of the modification.

(g) If the Council decides to grant a permit for the industrial facility, it shall issue the permit embodying the terms and conditions in detail, including the time specified to commence construction, which time shall be determined by the Council's decision as to the reasonable capability of the local government, most substantially affected by the proposed industrial facility, to implement the necessary procedures to alleviate the impact. If the construction of the facility fails to follow the schedule used by the Council to make its decision, the Council may require an amendment to the permit in accordance with W.S. 35-12-106(c) and (d).

(h) Unless the Council extends the permit as provided in subsection (i) of this section a permit to construct shall expire for any of the following conditions:

(i) Construction has not commenced within thirty-six (36) months after the date of the Decision of the Council;

(ii) If commenced construction has discontinued before the completion of the described project for a period of twelve (12) consecutive months, provided that the discontinuance is not in an approved schedule or for approved phases.

(i) The Council may extend the time periods of paragraphs (h)(i) and (h)(ii) above for good cause provided that the facility requests an extension in a timely manner accompanied by an update to the Application including the following:

(i) The construction schedule;

(ii) The estimated start of commercial operation;

(iii) Socio-economic baseline; and

(iv) Updates to those sections of the Application as defined by the Administrator where material changes are expected to occur.

(j) Permit Term. During the application for a permit or permit waiver, an applicant may request that the permit be issued for a term of less than the life of the facility, but not less than the construction phase(s). The Council may authorize a permit for a term less than the life of a facility if the applicant demonstrates that all of the following conditions exist:

(i) After the permit term (over the remaining life of the facility), no adverse environmental, social and economic impacts in the area of site influence may occur, which are not regulated by another State regulatory agency. The life of the facility includes cessation of operations, site clearance and site reclamation.

(ii) There are no conditions or requirements of the pending permit that warrant the continuation of Council's jurisdiction for the remaining life of the facility.

(iii) The permit term would not conflict with any statute or rule governing the facility, and would not conflict with the purposes of the Industrial Development Information and Siting Act.

(A) The Council shall consider all objections from local government before granting a permit term request.

(k) Local governments may make a request for a bond pursuant to W. S. 35-12-113(e), such requests must:

(i) Be provided to the Director and parties three weeks prior to the date of the hearing of the permit application by the Council;

(ii) Justify the need for the bond;

(iii) Describe the purpose and use of the bond;

(iv) Justify the amount of the bond;

(v) Recommend a mechanism to determine when and if the bond should be released; and

(vi) Recommend a mechanism to determine when and if the bond should be surrendered to the State of Wyoming. The Director shall make a recommendation on any such bond request to the Council prior to the hearing of the Council. Such recommendation shall be provided to the parties to the hearing.

Section 12. **Impact Assistance Funds.**

(a) If all affected counties, cities and towns in the area primarily affected can agree to an amount and schedule for payment distributions, they may provide their agreement to the Division for submission to the Council for its consideration. If an amount and schedule supported by all governments within the area primarily affected has not been provided to the Division within 30 days of filing an application or waiver of permit application, the Division will review the information provided in the application and provide to counties, cities and towns within the area primarily affected the Administrator's recommendation to the Council for distribution of the impact assistance funds. Counties in disagreement with the Administrator's draft recommendation shall provide to the

parties an alternate distribution recommendation and information showing that the Administrator's recommended distribution does not account for all the unmitigated impacts.

(b) Pursuant to W.S. 39-15-111(c) and (d), and W.S. 39-16-111 (d) and (e) the Council shall, after consideration of all evidence and recommendations presented at the hearing held pursuant to W.S. 35-12-107(g) and W.S. 35-12-110(f), establish an amount and schedule for distribution of impact assistance funds. The Council shall establish a dollar amount associated with the unmitigated impacts on the affected counties, cities and towns from the construction of the proposed facility. Under no circumstances shall the impact assistance payment exceed two and seventy-six hundredths percent (2.76%) of the total estimated material costs of the facility, as those costs are determined by the Council.

(c) If impact assistance payments are already being distributed to an affected area of site influence, and another facility commences construction, the Council shall consider the effect of the following factors in establishing, modifying, adjusting or revising the distribution:

(i) The amount of impact assistance funds generated by each facility and the degree of impact in the county attributable to each facility; and

(ii) The timeframe in which different amounts of impact assistance funds are generated by each facility in relation to the timeframe in which impacts attributable to each facility occur.

(d) The Council may adjust, revise or modify distributions during the construction of a facility. A local government which is primarily affected by the facility and which has filed a notice of intent to be a party pursuant to W.S. 35-12-111(b), or any person issued a permit pursuant to W.S. 35-12-106, may petition the Council for review and adjustment of the distribution upon a showing of good cause. The request shall be submitted to the Division.

(i) Upon receiving a request to modify a distribution, the Administrator shall:

(A) Within ten (10) days after the request is received, serve a copy of the request to each local government primarily affected. A copy of the request shall be provided to the permittee.

(B) Request the affected local governments and permittees to submit to the Division all relevant studies, statements, reports, analyses, evaluations, compilations, or other written material which will enable the Council to determine whether the social and economic impacts have changed and establish a new distribution.

(C) Conduct such investigations, studies, reports and evaluation as may be necessary to prepare a recommendation on the request.

(ii) The Administrator shall present the request for impact assistance funds to the Council at least thirty (30) days after the Division received the request, with a recommendation. The Council may thereupon, after consideration of the materials submitted by the local governments, applicants, permittees and Administrator, determine that the social and economic impacts from construction of the facility have changed, and establish a new distribution as appropriate and necessary.

(e) Pursuant to W.S. 39-15-111(c) and (d), and W.S. 39-16-111(d) and (e) the Council, may determine that the social and economic impacts from construction of an industrial facility upon

the adjoining county are significant and establish the distribution of impacts between all communities in the impact area.

(i) The Council may adjust, revise or modify a distribution during the construction of a facility; upon receiving a written request from any person issued a permit pursuant to W.S. 35-12-106, and a showing of good cause.

(f) Upon establishing or modifying a distribution pursuant to W.S. 39-15-111(c) and (d), and W. S. 39-16-111 (d) and (e) the Division shall notify all parties.

(g) For the purposes of this Section of these regulations, the period of construction for a facility shall end when the physical components of the industrial facility are ninety (90) percent complete. The physical components of the industrial facility shall include all materials, supplies, and equipment included in the estimated construction cost of the facility pursuant to Section 2 (l) of these regulations.

Section 13. **Information Requirements Imposed Upon Exempt Activities.**

(a) No entity defined as an information applicant shall commence construction activity unless such entity has supplied the following information to the Council a reasonable time prior to the commencement of such construction:

(i) A description of the nature and location of the construction activity.

(ii) The estimated time of commencement of construction and construction time.

(iii) The estimated number and job classifications, by calendar quarter, of the employees of the applicant, of its contractor or subcontractor during the construction phase and during the operating life of the facility. Such estimates shall include the number of employees who will be utilized but who do not currently reside within the area to be affected by the facility.

(b) For construction activities which are exempt from the permit requirements of the Act pursuant to W.S. 35-12-119(c), and which are associated with an industrial facility as defined by W.S. 35-12-102(a)(vii), the applicant shall provide the information required by W.S. 35-12-109(a)(iii), (iv), (v), and (viii) at the same time that the application for a permit for the industrial facility is filed.

Section 14. **Permit Transfers and Terminations.**

(a) The Administrator may recommend corrections to the name of the permit holder to the Council.

(b) The Council may authorize transfers of permits to a different person buying the assets of the permitted facility if:

(i) The matter is initiated by a written request from the current permit holder and accompanied by a written acceptance of the permit, its terms and conditions by the prospective buyer.

(ii) The matter is heard by the Council at its next meeting after notice is

published and parties are notified.

(iii) Appropriate officers of the current permit holder and the acquiring company are present for examination by the Council.

(c) Petition by a Permittee for termination of the permit.

(i) Upon application for a permit termination, the Council may authorize permit termination if the Permittee demonstrates that all of the following conditions exist:

(A) The operation is in compliance with local ordinances and land use plans in force or adopted on or prior to the date of the application.

(B) Termination of the permit will not cause or add to any adverse environmental, social and economic impacts in the area of site influence, which are not regulated by another State regulatory agency, during the remaining life of the facility. The remaining life of the facility includes cessation of operations, site clearance and site reclamation.

(C) All construction phases of the facility have been completed and there are no conditions or requirements of the permit that warrant the continuation of the permit for the remaining life of the facility.

(D) Permit termination would not conflict with any statute or rule governing the facility, and would not conflict with the purposes of Act.

(ii) The Council shall consider all objections from local governments before granting a permit termination.

(iii) Within fourteen (14) days of receipt of a termination application the Director shall cause notice to be published in newspaper(s) of general circulation in the area primarily affected stating the nature of the request. Written notice shall also be provided to local governments in the area of site influence. The notice shall describe the name and location of the operation and provide for a thirty (30) day public comment period.

(iv) Prior to granting a permit termination, the Council shall provide opportunity for a public hearing if requested, in accordance with Chapter II, Section 13 and 14 of these regulations. The Council shall render a decision within ninety (90) days from the date the application is filed with the Department.

(v) The applicant shall pay an application fee to cover the costs of processing the application, inspecting, and for compliance activities. The amount shall be calculated by the Director.

Section 15. **Amendments.**

(a) A permit shall be amended if the applicant makes a significant change to the scope, purpose, size, or scheduling of the project; which would result in different impacts not within the scope of the approved permit.

(i) Supplemental submittals shall not be considered amendments, if they do not provide a significant change to the scope, purpose, size or scheduling of the project. In particular, material which is in the nature of a clarification in response to a request by the Division

shall not be considered a permit application amendment.

(ii) An amendment to a permit application or request for waiver may be allowed on condition that the applicant agrees to an extension of time for hearings, studies and determinations, in order to allow full and adequate notice in the manner and to the persons specified in W.S. 35-12-111(a).

(b) With respect to commercial waste disposal facilities, any major changes in the type or volume of wastes received, size of the facility, changes in transportation methods or routes for waste delivery, or changes in recycling, reuse, or treatment shall require notice and prior approval from the Director. If the Director determines that these changes may result in additional adverse impacts that were not previously reviewed by the Council, the Permittee shall submit a permit amendment in accordance with the requirements of this section.

Section 16. Waste Management Surcharge.

(a) Each Permittee of a commercial waste incineration or disposal facility shall keep records of all wastes received by the facility. Records shall consist of:

(i) A daily log of all wastes received by the applicant by weight, source and content.

(ii) A daily record of payments made for wastes received for disposal by source, including a first accounting of invoices;

(iii) A daily record of solid wastes removed from the facility and recycled or reused; and

(iv) A daily record of hazardous wastes treated at the facility.

(b) In accordance with W.S. 16-4-203(d)(v), records supplied for purposes of verifying the surcharge payment shall be public record unless the applicant can demonstrate to the Council, at the time of permitting, that the information consists of trade secrets, privileged information, or confidential commercial information. In such case, the applicant shall stamp as "confidential" each page containing privileged information.

(c) Waste receipt and surcharge reporting shall be on a quarterly basis through the use of monthly recapitulation sheets of the daily records.

(d) In accordance with W.S. 35-12-113(g), the Permittee shall remit the surcharge no later than the last day of the second month following the end of the quarter. Failure to remit the full payment as required by this section may constitute grounds for permit revocation in accordance with W.S. 35-12-116, after notice and reasonable opportunity to correct the failure.

(e) Upon a fourteen (14) day advance notice, the Permittee shall allow audits by the Division, or its auditors. The Permittee shall provide the Division access to all records and provide the copying of all records dealing with compliance of the permit requirements and payment of the waste management surcharge.

(f) Without advance notice, the Division or its designated agent may inspect manifests for shipments to determine accuracy of record keeping and weight scales.

(g) For audit purposes, all records required by this section will be maintained a minimum of five years.

(h) All measuring devices utilized to determine the surcharge payment shall be certified by the Wyoming Department of Agriculture in accordance with W.S. 40-10-117 through 40-10-123 and inspected and recertified annually.

(i) The waste management surcharge rate shall be a minimum of \$10 per short ton for non-hazardous wastes received and \$25 per short ton for hazardous waste. The Council may impose a higher rate at the time of permitting or annually thereafter. The rate may also be lowered as long as the surcharge remains at or above the minimum set in W.S. 35-12-113(g). The Council shall consider any of the following criteria as a basis for adjusting the surcharge rate:

(i) National or regional cost escalation for waste disposal;

(ii) Level of short and long term liabilities and risk to public health, safety and welfare.

(iii) Encouragement of the use and demonstration of new and advanced technologies which benefit the community and state;

(iv) Economic benefits accruing to the local community from the facility, including but not limited to, voluntary mitigation measures, employment opportunities, and importance to the economic stability; or

(v) Utilization of waste reduction, recycling and treatment practices at the origin of the wastes.

(j) The Council shall authorize a reduction in the waste management surcharge rate to encourage recycling, reuse, or treatment of hazardous wastes in accordance with W.S. 35-12-113(g). To obtain the credit, the Permittee must provide for removal and recovery of useful components of the waste stream above the minimum required by W.S. 35-11-508(a) (iii). For hazardous wastes, the treatment process shall reduce the hazards and long-term risks from the wastes above the minimum treatment processes required by rules promulgated under the Environmental Quality Act. The Council may authorize a credit at, or greater than, the minimum of W.S. 35-12-113(g) if the Council finds:

(i) Economic viability - where the Permittee can demonstrate a recycling or treatment technology or method which would not be economically viable through costs in excess of the minimum credit, the Council may grant a higher credit to promote the technology or method, if the Council determines the recycling or treatment technology or method beneficial to the State.

(ii) Economic development - the credit may be increased to broaden the local economic base in the form of a subsidy to develop local recycling, reuse, or treatment enterprises. This subsidy may only be approved to increase business profitability in the growth years of the enterprise.

(k) Upon submittal of a permit application, request for waiver, or annually after permit approval, the Director may require the Permittee or applicant to provide cost data so that the Division may evaluate the merits of a surcharge rate adjustment. The information requested may include, but

is not limited to:

- (i) Breakdown of operation costs.
- (ii) Breakdown of construction costs.
- (iii) Breakdown of transportation costs.
- (iv) Current tipping charges.

Section 17. **Fees and Public Records.**

(a) Application Fee. The fee required by W.S. 35-12-109(b) is prepared on the basis of features of the proposed application and facility as are any increases in the Application Fee as required by W.S. 35-12-109(d).

(b) Public records may be inspected and copies provided upon written request specifying the document(s) requested. ~~The Department may require reimbursement of costs incurred in reproducing the requested document(s). Costs will be the actual costs incurred to process the request.~~

(c) These rules incorporate by reference the following rules and regulations, as in effect of September 6, 2016:

(i) Wyoming Department Of Administration and Information, Director's Office, Chapter 2, Uniform Procedures, Fees, Costs, and Charge for Inspection, Copying, and Producing Public Records, available at <https://rules.wyo.gov>.

(d) These rules do not incorporate later amendments or editions of the incorporated matter.

(e) All incorporated matter is available for public inspection at the Department's Cheyenne office. Contact information for the Cheyenne Office may be obtained at <http://deq.wyoming.gov> or from (307) 777-7369.