



Jan D.

2002 - 052

# Office of the Attorney General

Governor  
Jim Geringer

Water & Natural Resources Division  
123 Capitol Building  
Cheyenne, Wyoming 82002  
307-777-6946 Telephone  
307-777-3542 Fax

Deputy Attorney General  
Thomas J. Davidson

Attorney General  
Hoke MacMillan

April 22, 2002

Ms. Terri Lorenzon  
Director  
Wyoming Environmental Quality Council  
Herschler Building, Room 1714  
Cheyenne, WY 82002

RE: Request for Opinion

Dear Ms. Lorenzon:

Your letter of March 22, 2002 requests an informal Attorney General's opinion on the citizen's responsibility for the work and costs associated with rulemaking and whether the Environmental Quality Council (EQC or Council) and the Department of Environmental Quality (DEQ) can pay for some or all of the costs when it is a citizen who petitions the Council to initiate rulemaking. As explained below, once the Council initiates rulemaking, the respective roles of the Council and the DEQ are the same when the proposed rule comes by petition from an "interested person" as when it comes upon recommendation from the DEQ.

The Council is an "agency" as defined in W.S. 16-3-101(b)(i). All rules for implementing and administering the Wyoming Environmental Quality Act (WEQA) are promulgated by the Council. W.S. 35-11-112(a)(i). This includes adoption, amendment or repeal of such rules. W.S. 35-11-112(a)(ii). Generally, proposed rules come before the Council upon recommendation from the DEQ and the appropriate Advisory Board. W.S. 35-11-112(a)(i); W.S. 35-11-114(b). Once the Council initiates rulemaking, the process is governed by the Wyoming Administrative Procedure Act (WAPA). W.S. 35-11-112(f); W.S. 16-3-103.

The "agency's" (Council's) responsibilities following the initiation of rulemaking include, among other things:

- providing notice of the rulemaking as required by W.S. 16-3-103(a)(i), and
- providing opportunity for and consideration of public comment and written responses

Ms. Terri Lorenzon  
April 22, 2002  
Page 2

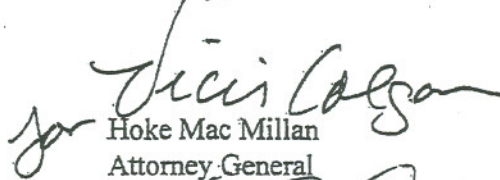
to any objections in accordance with W.S. 16-3-103(a)(ii).


The "agency's" (Council's) responsibilities following the adoption of rules include, among other things, preparation of the final rule, submittal to the Governor for approval, and filing with the state registrar of rules within 60 days of its adoption. W.S. 16-3-103(c)&(d); W.S. 16-3-104(a).


The DEQ may not participate in the Council's deliberations on proposed rules (W.S. 35-11-109(a)(x)), but may assist the Council as provided in W.S. 35-11-112(d).

Any "interested person" may petition the Council to request promulgation, amendment or repeal of a rule. W.S. 16-3-106. If the Council decides not to proceed with the requested rulemaking, that decision is final and not subject to review. W.S. 16-3-106. However, once the Council initiates rulemaking, the process and the Council's role are the same for rules proposed by "interested persons" as for rules recommended by the DEQ.

Sincerely,

  
Hoke Mac Millan  
Attorney General

  
Thomas J. Davidson  
Deputy Attorney General

  
Mike Barrash  
Sr. Assistant Attorney General