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BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
OF THE STATE OF WYOMING

IN THE MATTER OF:	)	
BASIN ELECTRIC POWER COOPERATIVE	)	Docket No. 07-2801
DRY FORK STATION,	)	Presiding Officer, F. David Searle
AIR PERMIT CT-4631	)	
_____	)	

**INDEX TO PROTESTANTS' RESPONSE TO BASIN ELECTRIC POWER  
COOPERATIVE INC'S MOTION TO DISMISS APPEAL**

- Exhibit 1 In the Matter of the Appeal to the Approval of Application AP-W72 to Modify Air Quality Permit CT-460, MD-745, Docket No. 02-2801 (Order July 20, 2003)
- Exhibit 2 In the Matter of Objections to the Air Quality Permit No. MD-1041 of Ken Harvey Rabbit Pit, Docket No. 04-2801 (Finds of Fact, Conclusion of Law and Order, April 21, 2006)
- Exhibit 3 In the Matter of the Appeal of the Revocation of Permit No. CT-1325B, Two Elk Power Plant, (October 19, 2007)
- Exhibit 4 1992 Wyoming Laws 1<sup>st</sup> Sp. Sess. Ch. 60 (H.B. 37)
- Exhibit 5 1992 Wyoming Laws 1<sup>st</sup> Sp. Sess. Ch. 70 (H.B. 33)

# **EXHIBIT 1**

**FILED**

**JUL 30 2003**

**Terri A. Lorenzon, Director  
Environmental Quality Council**

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

IN THE MATTER OF THE APPEAL )  
TO THE APPROVAL OF APPLICATION )  
AP-W72 TO MODIFY AIR QUALITY ) DOCKET NO. 02-2801  
PERMIT CT-460, MD-745 )

**ORDER**

This matter came before the Environmental Quality Council (EQC) for hearing on February 27, 2003, in Jackson, Wyoming. EQC members Thomas Dunn and Wendy Hutchinson, John Morris and Dr. Jason Shogren conducted the hearing, with Mr. Dunn serving as hearing examiner. Terri A. Lorenzon, attorney for the EQC, assisted with the hearing. Evans Construction Company (Evans) was represented by Matthew E. Turner and David K. Larson, from Mullikin, Larson & Swift, Jackson, Wyoming. Scott Garland of Moore, Myers & Garland, PLLC, represented Alice and Rodman Moorhead III.

1. Evans Construction Company, a sand and gravel operator, applied for a permit revision from the Department of Environmental Quality (DEQ) Air Quality Division(AQD).
2. The Protestants, Alice and Rodman Moorhead III (Moorheads) protested the issuance of the revised Evans air quality permit, CT-460, MD-745.
3. The Moorheads were also part of a group of thirteen Protestants who objected to the revision of a small mine permit for Evans Construction, TFN 4 1/65. The air quality permit was being revised to update the Evans Construction equipment list.
4. The Moorheads' objection to the air quality permit for Evans Construction was withdrawn as part of a settlement of the objections to the small mine permit. Evans incorporated the terms of the joint stipulation in its small mine permit.
5. At the hearing, Rodman Moorhead III, moved to withdraw his agreement with the joint stipulation, bifurcate the air quality case, and for a continuance of the hearing. Mr. Moorhead was not present at this hearing to proceed with his case or argue his motions.

6. All of the Protestants withdrew their objections to the Evans Small Mining Permit Application, Permit No. 608s, TFN 4 1/65.

#### **CONCLUSIONS OF LAW**

1. The EQC has jurisdiction over the subject matter and the parties to this proceeding.
2. Notice of the contested case hearing was published in a local news paper as required by the DEQ Rules of Practice and Procedure.
3. The Moorheads were notified of the hearing date and the deadline for filing motions.
4. The Moorheads had an obligation to appear before the EQC to present arguments on their motions or to be prepared to present evidence.
5. The Moorheads' motions should be denied and their stipulation to withdraw their objections to the air quality permit should be accepted.

#### **IT IS HEREBY ORDERED THAT**

1. Alice and Rodman Moorheads' motion to withdraw their agreement with the joint stipulation, bifurcate the air quality case and for a continuance of the hearing is denied.
2. This case is dismissed and the Department of Environmental Quality shall issue the revised air quality permit for Evans Construction, CT-460, MD-745.

DATED this 28<sup>th</sup> day of July, 2003.



Thomas Dunn, Hearing Examiner  
Environmental Quality Council  
Herschler Building, Room 1714  
122 West 25th Street  
Cheyenne, WY 82002  
Tel: (307) 777-7170  
FAX: 307-777-6134

CERTIFICATE OF SERVICE

I, Joe F. Girardin, certify that at Cheyenne, Wyoming, on the 30th day of July 2003, I served a copy of the foregoing ORDER by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

Carol Kaminski  
PO Box 2576  
Jackson, WY 83001

Ben Graham  
Evans Construction Company  
PO Box 4309  
Jackson, WY 83001

Scott Garland  
MOORE MYERS & GARLAND  
Attorneys at Law  
PO Box 8498  
Jackson Hole, WY 83002

and also to the following persons via interoffice mail:


John Corra, Director  
Department of Environmental Quality  
122 W. 25<sup>th</sup> Street, Herschler Building  
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John Burbridge  
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Joe F. Girardin, Paralegal  
Environmental Quality Council

# **EXHIBIT 2**

**FILED**

**APR 21 2006**

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

Terri A. Lorenzon, Director  
Environmental Quality Council

IN THE MATTER OF OBJECTIONS TO THE )  
AIR QUALITY PERMIT NO. MD-1041 )  
OF KEN HARVEY RABBIT PIT )

DOCKET NO. 04-2801

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

The Environmental Quality Council (Council) held a public hearing and heard the testimony on this matter on June 22, 2005 and on August 19, 2005 at the Town Hall, Council Chambers, 4320 Broadway, Thermopolis, Wyoming. Ken Harvey (Harvey) was represented by Jerry D. Williams, Esq., The Protestants, Gary & Sharon Crane (Crane) and Paul & Carrie Galovich (Galovich) were represented by Mistee L. Godwin, Esq. of Brown, Drew and Massey, LLP, and The Department of Environmental Quality, (DEQ) Air Quality Division, (AQD) was represented by Nancy E. Vehr, Esq., Senior Assistant Attorney General. Members of the Council present were Wendy Hutchinson, Hearing Examiner, Jon Brady, Richard C. Moore, P.E. and Mark Gordon. Also present for the Council was Terri A. Lorenzon, Esq.

At a public meeting held on November 16, 2005, the Council, by a vote of a majority of the Council members, reached a decision in this matter. The Council hereby issues the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

1. The Rabbit Gravel Pit is located in the SW1/4NE1/4, Section 8, T43N, R94W, and it is approximately 6 miles north of Thermopolis. The Rabbit Pit is owned by Ken Harvey, and the Hot Springs County land use for the site of the Rabbit Pit is classified as industrial.
2. The Rabbit Pit is located adjacent to property owned by Gary and Sharon Crane, and across a county road, East Sunnyside Lane, from property owned by Paul and Carrie Galovich.
3. The Rabbit Pit has been operated as a 10 acre exemption pursuant to the Environmental Quality Act, W.S. 35-11-101 *et seq.* 2005 and the DEQ mine permit regulations. A water quality permit was issued to an operator of the Rabbit Pit but neither the status of the pit as exempt or the water quality permit are at issue in this proceeding.

4. Hot Springs County entered into an agreement with Ken Harvey to operate the Rabbit Pit and the County mined gravel for local road projects. Witnesses did not provide a date on which operations began but the record shows that in 2001 the County contracted with a third party to crush 25,000 yards of gravel at the Rabbit Pit. This was the first of two crushing operations that have been conducted at the Rabbit Pit.
5. In anticipation of operating the pit, on October 3, 2002, the Wyoming Department of Transportation (WYDOT) obtained an air quality permit, Permit CT-3036, for the Rabbit Pit. An air quality permit was not required by the DEQ at the time and Permit CT-3036 applied solely to WYDOT. One of the conditions of this permit was, "That no crushing/screening equipment, asphalt plants, or concrete batch plants are authorized at this pit." WYDOT never mined any gravel from the Rabbit Pit.
6. In 2003 the County contracted with a third party to crush 50,000 yards of gravel at the Rabbit Pit. It took approximately three weeks, working ten hour shifts, to complete this crushing project. The existing stockpile at the Rabbit Pit represents the remaining 20,000 to 25,000 yards of gravel from the second crushing operation. Current operations at the site consist of loading and hauling materials from the stockpile to various County projects.
7. In 2003, the DEQ received a complaint about the crushing operations occurring at the Rabbit Pit. The DEQ Air Quality Division (AQD) asked Ken Harvey to submit an air quality permit application to analyze the air quality impacts of crushing/screening operations at the Rabbit Pit. Ken Harvey submitted an application for an air quality permit on December 10, 2003 and he sought the authority to allow crushing/screening equipment, hot mix plants, concrete batch plants, and stockpiling at the Rabbit Pit. Although Harvey did not indicate that he wanted to modify permit CT-3036, that permit previously issued to WYDOT, the AQD referred to the permit application as a proposed modification of CT-3036.
8. Ken Harvey estimated that the gravel pit would produce 25-50 thousand yards of gravel/year.
9. The permit application analysis for the Ken Harvey application identified fugitive particulate matter as the pollutant of primary concern. The AQD estimated that the crushing and screening operations would generate 0.6 tons of total suspended particulates (TSP) emissions for every 50,000 tons of material produced.
10. The AQD estimated that crushing and screening operations would generate 0.3 tons of PM<sub>10</sub> for every 50,000 tons of material produced. PM<sub>10</sub> particulates are 10 microns and less in size.
11. The AQD estimated the amount of TSP and PM<sub>10</sub> emissions using the emission



factors set forth in an EPA document titled “AP-42 Compilation of Emission Factors” which is used by all states.

12. When WYDOT obtained an air quality permit for the Rabbit Pit, the AQD had issued the permit to the operator of the pit. In June of 2004, DEQ changed its policy and began issuing the air quality permits to the owners of gravel pits. DEQ changed its policy to avoid a lapse in coverage of operations when the operator at the site changes and to have a party responsible for the site when operations are complete.
13. The AQD analyzes and permits the equipment that is brought into a pit separately. The crushing/screening equipment as well as hot mix plants and concrete batch plants have individual air quality permits, as this equipment is mobile.
14. DEQ requires Best Available Control Technology (BACT) in all air quality permits. The DEQ/AQD determined that the use of water and/or chemical dust suppressants on the work areas, access roads and haul roads would be the BACT for the operations at the Rabbit Pit.
15. The AQD proposed five permit conditions for the Rabbit Pit air quality permit, including:
  3. That any crushing/screening equipment, asphalt plants, or concrete batch plants shall have separate, valid air quality permit(s) prior to locating/operating at this site.
  4. That any crushing/screening equipment operated at this site shall utilize water spray control measures at all belt transfer points, shaker screens, and discharge points of the primary and secondary crushers as necessary to limit visible emissions to twenty (20) percent opacity or applicable limits set forth by Wyoming Air Quality Standards & Regulations, Chapter 5, Section 2, Subpart OOO, as determined by 40 CFR Part 60, Appendix A, Method 9.
  5. That all unpaved portions of the haul roads, access roads, work areas, and stockpiles associated with this facility shall be treated with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust from vehicular traffic and wind erosion.
16. The AQD determined that the Rabbit Pit operations would meet the National Ambient Air Quality Standard (NAAQS) if BACT was applied.
17. The AQD determined that with BACT in place, the particulate emissions from the Rabbit Pit would be minimal and would not lead to a violation of the PM<sub>10</sub> NAAQS and therefore would not pose a significant health risk.
18. On April 23, 2004, the AQD sent a copy of the DEQ/AQD Permit Application analysis to Ken Harvey. Thirty days of public notice was issued to take comments on the proposed permit. Notice was published in the Thermopolis

Independent Record.

19. Public comments were received, a public hearing was scheduled by the AQD, public notice of the hearing was issued, and the hearing was held on June 21, 2005.
20. Based on the permit analysis and the experience of the AQD staff, the AQD concluded the regulations promulgated to further the policy and purpose of the Act in Chapter 6, section 2(c) of the Wyoming Air Quality Standards and Regulations had been met. The AQD stated:
  1. The proposed facility (the Rabbit Pit) will comply with the DEQ/AQD rules and regulations and the intent of the WEQA.
  2. The proposed facility will not prevent the attainment or maintenance of any ambient air quality standard or cause significant deterioration of existing ambient air quality.
  3. The proposed facility will be located in accordance with proper land use planning as determined by the appropriate agency charged with such responsibility.
  4. The proposed facility will utilize BACT with consideration of the technical practicability and economic reasonableness of reducing or eliminating emissions from the facility.
  5. The proposed facility will have provisions for measuring the emissions of significant air contaminants as determined by the AQD Administrator.
  6. The proposed facility will achieve the performance specified in the application for the permit to construct or modify as the conditions proposed for the permit become legal obligations once the permit for the facility is issued and other equipment that is brought to the site for use will be permitted separately.
21. On August 3, 2004 the DEQ/AQD issued MD-1041 to Ken Harvey and the five conditions proposed in the Permit Application Analysis were placed into the permit.
22. On August 3, 2004, the AQD sent a copy of the decision and final permit to interested persons, including Paul Galovich.
23. Paul and Carrie Galovich and Gary and Sharon Crane filed appeals of the decision to issue Permit No. MD-1041 for the Ken Harvey Rabbit Pit.
24. At the hearing, Protestants did not present any evidence or data from a similarly sized gravel pit that would demonstrate the AQD analysis of particulate emissions was flawed and that a violation of the NAAQS would be likely.

25. Although the Protestants argued that site specific monitoring or modeling should be conducted, no evidence was introduced to justify this requirement. The level of production at this pit, when compared with large sources such as surface coal mines, would not generate emissions that warrant site specific monitoring or modeling.

### CONCLUSIONS OF LAW

1. Pursuant to W.S. 35-11-112(c)(ii), the Council has the power to suspend, deny, revoke or modify Air Quality Permit MD-1041. The Environmental Quality Council has jurisdiction over the subject matter of and the parties to this proceeding.
2. The regulations promulgated to further the policy and purpose of the Act is Chapter 6, section 2(c) of the Wyoming Air Quality Standards and Regulations. These regulations have been met.
3. Permit No. MD-1041 should be issued in accordance with W.S. §35-11-801(a) which states:

When the Department has, by rule or regulation, required a permit to be obtained, it is the duty of the Director to issue such permits upon proof by the applicants that the procedures of this Act and the rules and regulations promulgated hereunder have been complied with.

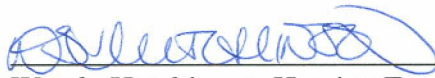
4. After conducting an exhaustive review of the facts and law during the contested case hearing, it is concluded that Harvey has met all requirements to obtain the air quality permit. It is also concluded that although Harvey has met those requirements the Protestants are impacted by the proximity of the Rabbit Pit to the Protestants property, conditions should be added to the permit to minimize the impact of dust on the adjacent landowners.

**IT IS HEREBY ORDERED THAT:** The Director of the Department of Environmental Quality shall modify Air Quality Permit MD-1041 with the following conditions.

1. Condition 5 of the Permit shall be modified to state:
  5. That all unpaved portions of the haul roads, access roads, work areas and stockpiles associated with this facility, shall be treated with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust from vehicular traffic and wind erosion. If water is chosen as the dust suppressant method, water application equipment must be located on site during loading operations.
2. New Conditions 6 through 8 shall state:

6. All operations shall be limited a Monday through Friday work week.
7. Notice shall be sent to the adjoining property owners before any screening and/or crushing or asphalt or batch plants are located at the mine.
8. The Permittee shall advise all operators operating under a relocate permit of the permit conditions for this pit.

DATED this 19<sup>th</sup> day of April, 2006.



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Wendy Hutchinson, Hearing Examiner  
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# **EXHIBIT 3**

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

In the Matter of the Appeal            )  
Of the Revocation of                    )  
Permit No. CT-1352B                    )     Docket No.  
Two Elk Power Plant                    )

**PETITION FOR REVIEW AND REQUEST FOR IMMEDIATE STAY**

Two Elk Generation Partners, Limited Partnership (“TEGP”) petitions the Wyoming Environmental Quality Council (“Council”) to review the Department of Environmental Quality’s (“DEQ’s”) August 22, 2007 revocation of Permit No. CT-1352B for construction of the Two Elk solid waste disposal facility (“Two Elk”), located in Campbell County, Wyoming. The Two Elk facility will recycle and dispose of non-commercial or waste coal exposed during the mining process from adjacent surface coal mines, also producing electricity in the process. TEGP requests an expedited hearing in this matter in accordance with Wyo. Stat. § 35-11-112(a)(iv) and DEQ Rules of Practice and Procedure and an immediate stay of the effectiveness of the DEQ’s August 22, 2007 revocation letter pending the Council’s review of this matter. In accordance with Chapter 1, Section 3(c), DEQ Rules of Practice and Procedure, TEGP provides the following in support of its petition for hearing and request for immediate stay.

**INTRODUCTION**

1. The name and address of the petitioner is Two Elk Generation Partners, Ltd., 8400 E. Orchard Rd., Suite 4000, Greenwood Village, CO 80111. Legal Counsel for TEGP are Dennis Arfmann, Hogan & Hartson LLP, 1470 Walnut Street, Suite 200 Boulder, CO 80302 and Rebecca W. Watson, Hogan & Hartson LLP, 1200 Seventeenth Street, Suite 1500, Denver CO

80202. TEGP's general partner is Two Elk Power Company, which is a wholly-owned subsidiary of North American Power Group, Ltd. ("NAPG").

2. Under Wyo. Stat. § 35-11-112(a)(iv), the Council is required to conduct hearings in any case contesting the "suspension [or] revocation" of a permit or license.

3. By order of the Commission, the DEQ issued Permit No. CT-1352B, authorizing construction of the Two Elk facility, on May 29, 2003. Permit No. CT-1352B contains various conditions, including that "[i]f construction or modification does not commence within 24 months of the date of the Council's Order approving the stipulated modification of this permit or construction is discontinued for a period of 24 months or more, in accordance with [Wyoming Air Quality Standards and Regulations, 'WAQSR'] Chapter 6, Section 2(h), the permit will become invalid." (Attachment A, DEQ Permit No. CT-1352B, issued May 29, 2003, and filed June 2, 2003 ("Permit No. CT-1352B") ¶ 4.)

4. On July 18, 2005, the Council issued an Order finding:

DEQ has determined that, prior to May 29, 2005, TEGP completed the construction of the foundation for the main stack, and entered into a binding written contract to purchase a site-specific main boiler, which contract is not contingent upon any additional notice to proceed or exercise of an option. TEGP submitted documentation of the commencement of construction to the DEQ. TEGP has, therefore, commenced construction as required by Condition 4 of Permit No. CT-1352B.

Now that DEQ has determined that construction has commenced, and the parties have complied with and fulfilled the terms of the Joint Stipulation, the EQC does not need to

retain jurisdiction over this matter. (Attachment B, Order Granting Motion to Dismiss, Council Docket No. 02-2601, dated July 18, 2005 (“July 18, 2005 Order”) 2.)

5. In the July 18, 2005 Order, the Council also confirmed DEQ’s issuance of Permit No. CT-1352B, and ordered TEGP to submit monthly status reports to the DEQ beginning August 1, 2005, and quarterly status reports to the Council beginning October 1, 2005. The Council required the status reports to “include information on engineering, procurement, financing, and construction aspects of the project.” (*Id.*)

6. On August 22, 2007, David Finley, Administrator of the DEQ Air Quality Division (“AQD”) sent a letter to TEGP informing it of DEQ’s conclusion that “[b]ecause construction [at Two Elk] has been discontinued for a period of 24 months or more,” under permit condition No. 4 and WAQSR, Chapter 6, Section 2(h), Permit No. CT-1352B had “automatically” expired and become invalid. (Attachment C, Letter from David Finley, Administrator AQD, to Daniel D. Yueh, Vice President of NAPG (Aug. 22, 2007) (“August 22 Letter”).<sup>1</sup>) The conclusion that Permit No. CT-1352B had expired and become invalid effected a revocation of the permit.

7. TEGP requests that the Council order an immediate stay of the effectiveness of the August 22 Letter and confirm that Permit No. CT-1352B remains in effect pending the Council’s review of this matter. Since receiving the letter revoking its permit, TEGP has no authority to continue with any construction activities at the Two Elk facility that are covered by the permit. The revocation of Permit No. CT-1352B has interrupted the construction schedule

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<sup>1</sup> The first page of the letter bears the date “August 20, 2007,” but the header on the second page bears the date “August 22, 2007,” and the facsimile date stamp from transmission to TEGP is “August 22, 2007.” This suggests that the header automatically updated to reflect the date of printing and transmittal to TEGP; counsel for DEQ confirmed in a telephone call that the correct date of the DEQ decision was August 22 and not August 20, 2007 (October 18, 2007 telephone call D. Arfmann and N. Voight), accordingly, the letter is hereinafter referred to as the “August 22 Letter” notwithstanding the date on the first page.



for the facility at a critical moment, as essential earthwork and other foundation construction must be completed before the ground freezes for the winter. (*See* Attachment D, Affidavit of Michael Ruffatto; *see also* Attachment L, Affidavit of M. Bradley Enzi)

8. The effectiveness of the August 22 Letter should also be stayed because the DEQ concluded that Permit No. CT-1352B had expired and become invalid without providing TEGP notice and an opportunity for a hearing and thus, the revocation is invalid as a matter of law. The Wyoming Administrative Procedure Act (“APA”) states that “[n]o revocation, suspension, annulment or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for retention of the license.” Wyo. Stat. § 16-3-113(c). The definition of “license” under the APA includes a “permit.” Wyo. Stat. § 16-3-101(b)(iii). The DEQ’s August 22 Letter to NAPG and TEGP does not satisfy any of the procedural requirements of the APA. *See, e.g., Slagle v. Wyoming State Bd. of Nursing*, 954 P.2d 979 (Wyo. 1998). The DEQ’s conclusion that the construction permit “automatically” became invalid thus violates the plain text of the APA.

9. DEQ’s August 22 Letter also violates TEGP’s right to due process as set forth in the 14<sup>th</sup> Amendment of the United States Constitution and Article 1, Section 6 of the Wyoming Constitution and for this reason, should be immediately stayed. Without the construction permit from the DEQ, TEGP cannot conduct business and cannot continue construction of the Two Elk facility. As such, TEGP’s permit represents a property interest and procedural due process dictates that DEQ provide notice and an opportunity for a hearing before taking any action to invalidate the permit. *Slagle*, 954 P.2d at 982; *Pfeil v. Amax Coal West, Inc.*, 908 P.2d 956, 961 (Wyo. 1995).

10. TEGP further requests that the Council vacate the August 22 Letter because (a) construction at the Two Elk facility has never been discontinued for a period of 24 months or more, and (b) as explained above, DEQ issued the August 22 Letter without affording TEGP due process.

#### GOVERNING LAW AND AGENCY POLICY

11. Under WAQSR Chapter 6, Section 2(h), a permit to construct “shall become invalid if construction is not commenced within 24 months after receipt of such approval or if construction is discontinued for a period of 24 months or more. The Administrator may extend such time period(s) upon a satisfactory showing that an extension is justified.”

12. Two Elk is a “major stationary source” within the meaning of WAQSR Chapter 6, Section 4(a) and thus, is subject to the permitting requirements for Prevention of Significant Deterioration (“PSD”) found in Chapter 6, Section 4. “Construction” is defined under this section as “any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in emissions.” WAQSR Chapter 6, Section 4(a).

13. Additionally, the WAQSR define “commenced,” as applied to construction of a major stationary source or major modification, to mean “the owner or operator has obtained a Construction Permit required by Chapter 6, Section 2 and either has (i) begun, or caused to begin, a continuous program of actual on-site construction of the source or (ii) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed within a reasonable time.” *Id.* The WAQSR also define “begin actual construction” as, “in general, initiation of physical on-site construction activities on an emissions unit which

are of a permanent nature.” *Id.* The definition of “begin actual construction” further explains that “[s]uch activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.” *(Id.)*

14. In guidance memoranda that relate to the definition of construction in the PSD context, the U.S. Environmental Protection Agency (“EPA”) has published its conclusion that “[s]ignificant and continuous site preparation work such as major clearing or excavation or placement, assembly, or installation of unique facilities or equipment at the site” represents “construction.” (Attachment E, Memorandum from EPA Assistant Administrator for Air and Waste Management to Regional Administrators (Dec. 18, 1975); Attachment F, Memorandum from EPA Director of Division of Stationary Source Enforcement to Chief General Enforcement Branch, Region 2 (Feb. 13, 1978)). EPA has interpreted “[p]hysical on-site construction” to refer to site-specific “placement, assembly, or installation of materials, equipment or facilities which will make up part of the ultimate structure of the source.” (Attachment G, Memorandum from EPA Director, Division of Stationary Source Enforcement to Chief, Air Enforcement Branch, Region V (July 1, 1978).) EPA has further noted, “[p]lacement of footings, pilings and other materials needed to support the ultimate structures clearly constitutes on-site construction.” *(Id.)*

15. EPA has also explained that “to satisfy the commence construction requirements, a contractual obligation must be a site specific commitment” for activities such as “placement, assembly, or installation of materials, equipment, or facilities which will make up part of the ultimate structure of the source” and “must also be one which cannot be cancelled or modified without substantial loss.” (Attachment G.)

16. Additionally, EPA policy provides that a source may be “so irrevocably committed to a particular site that it should be considered as having commenced construction.” (Attachment E.) EPA has further explained,

Such situations could include sources which are only a few days or weeks from commencing on-site construction or sources which have contracted for or constructed unique site specific facilities or equipment which are not yet being installed on-site. Such situations will be rare but may be taken into account in determining whether the source is in effectively the same position as if it had commenced on-site construction.

(*Id.*) Thus “construction” of a source may include “physical, on-site construction,” site-specific contractual obligations, or other contractual obligations that demonstrate “irrevocable commitment” to the site.

17. The Clean Air Act prohibits construction without a permit. 42 U.S.C. § 7475(a)(1). Further, EPA guidance establishes that engaging in certain activities in the absence of a PSD permit would subject the responsible party to liability for having illegally “commenced construction” on a major source or modification without appropriate authorization. For example,

[a]ll on-site activities of a permanent nature aimed at completing a PSD source for which a permit has yet to be obtained are prohibited under all circumstances [without a PSD permit]. These prohibited “construction” activities include installation of building supports and foundations, paving, laying of underground pipe work, construction of permanent storage structures, and activities of a similar nature.

(Attachment H, Memorandum from EPA Director, Division of Stationary Source Enforcement to Enforcement Division Directors Regions I-X (Dec. 18, 1978); Attachment I, Memorandum from EPA Director, Division of Stationary Source Enforcement to Chief, Air Branch, Region I, (Oct. 10, 1978) (noting that “[d]rains, piping, and footings . . . and any other installations necessary to accommodate” or “specific to” a source subject to PSD review may not be constructed until the PSD permit is issued).)

18. In other guidance memoranda, EPA has discussed whether excavation activity including blasting and removal of rock and soil constitute “preparatory” activities that could proceed in advance of the issuance of a PSD permit. (Attachment J, Memorandum from Director, Stationary Source Compliance, EPA Office of Air Quality Planning and Standards, to Chief, Air Enforcement Branch, Region III (May 13, 1993) 2.) EPA explained,

Although the memorandum from Edward Reich dated December 18, 1978 distinguished activities of a preparatory nature from those of a permanent nature, our policy also focuses on the relation of the activity to the PSD source. Construction of a retaining wall is considered an activity under “begin actual construction” because it is of a permanent nature. The excavation is also permanent and is an integral part of the PSD source.

(*Id.* at 2.) In contrast to site clearing and grading, EPA explained, “The excavation activities in this case . . . are costly, they significantly alter the site, are an integral part of the overall construction project, and are clearly of a permanent nature. Consequently, these activities are within the meaning of “begin actual construction.” . . . [W]e believe that the excavation is a prohibited activity . . . .” (*Id.* at 3; *see also* Attachment K, Letter from Director, EPA Office of Air Quality Planning and Standards, to Commissioner, Minnesota Pollution Control Agency

(Dec. 13, 1995) (“Prohibited (permanent and/or preparatory) preconstruction activities under 40 CFR 52.21(b)(i)(1) and (b)(11) would include any construction that is costly, significantly alters the site, and/or permanent in nature. This would include, but is not limited to: (1) excavating, blasting, removing rock and soil, and backfilling, and (2) installing footings, foundations, permanent storage structures, pipe, and retaining walls.”)

#### CONSTRUCTION AND IRREVOCABLE COMMITMENTS AT THE TWO ELK FACILITY

19. Since commencing construction in 2005, TEGP has engaged in physical, on-site construction activities including, without limitation, excavation, demolition, relocation, and installation of oil and gas pipelines, road construction activities, and has entered and maintained in effect numerous contractual obligations that satisfy the EPA and this Council’s interpretation of construction and that further demonstrate TEGP’s irrevocable commitment to the Two Elk project. Construction at Two Elk has never been discontinued for a period of 24 months or more, as DEQ asserted in the August 22 Letter. Consequently, the DEQ had no grounds to revoke Permit No. CT-1352B, and the Council should vacate the August 22 Letter.

20. Beginning in June 2005 and ending in September 2005, TEGP initiated and paid for the excavation, demolition, relocation, and reconstruction of an oil pipeline operated by Belle Fourche that interfered with the footprint of the Two Elk facility. This excavation, demolition, and construction was an integral part of the overall construction of the facility as the pipeline had to be moved prior to grading the site and building the Two Elk facility. (*See Attachment D*)

21. Upon information and belief, from April 2006 to June 2007, Justice Oil and Gas Company reworked an existing oil and gas well that created safety concerns with the construction of the Two Elk facility and excavated, demolished, relocated, and reconstructed a high pressure natural gas pipeline that interfered with the footprint of the Two Elk facility. The

new pipeline will, in part, provide gas to the Two Elk facility and construction of the facility could not safely proceed until this pipeline was relocated. TEGP has also requested other natural gas service and supplies for a combustion turbine, also authorized to be constructed under DEQ Permit 1352B. (See Attachment D; Attachment L)

22. Construction of the main access road for the Two Elk facility is underway. This work included surveying the access road, the Wyoming State Highway 450, and road drainage areas, field staking, and soil borings and geotechnical analysis in the summer and fall of 2006. (See Attachment D; Attachment L)

23. TEGP entered into an Interim Notice to Proceed Agreement (“INTP”) with TEGP’s primary contractor authorizing the contractor to commence work under the Turnkey Engineering, Procurement and Construction Contract (“EPC Contract”), substantially negotiated between the parties, for the design, engineering, procurement, construction and startup services necessary to complete the Two Elk facility. In accordance with the INTP, the primary contractor issued a purchase order to a subcontractor for Two Elk’s main boiler in the amount of \$48,000,000, which remains valid. In addition, TEGP, among other activities, separately paid \$500,000 to ALSTOM Power to reserve a production slot in the manufacturing cycle for Two Elk’s steam turbine – the total cost of which will be in excess of \$25,000,000; entered into contracts to pay for electrical transmission upgrades to interconnect the Two Elk facility to the electrical grid system with current estimated costs of \$60,000,000, under which TEGP has an obligation to make a \$1,000,000 payment to PacifiCorp on or before November 27, 2007; and entered into contracts for site grading and road construction with Wyoming contractors in excess of \$2,000,000. In the Council’s July 18, 2005 Order, the Council found the contract to purchase a site-specific boiler was a commencement of construction. These contracts are valid and

contain financial penalties for failure to perform. These agreements and the financial penalties associated with their nonperformance, along with other construction and financing agreements entered into and conducted by TEGP, demonstrate TEGP's significant and irrevocable commitment to the Two Elk project. (See Attachment D; Attachment L)

24. Beginning in August 2005, following the Council's July 18, 2005 Order, TEGP provided the DEQ with monthly status reports, as required by Order, describing its construction and contractual activities associated with the development of the Two Elk facility, including activities relating to licensing and permitting the Two Elk facility, financing the project, transmission and power purchase agreements, engineering, procurement, and physical construction. The monthly reports, while not required by statute, were required by the Council to improve communication between Wyoming DEQ and TEGP regarding the Two Elk facility and ensure that DEQ would raise any questions or concerns with TEGP in a timely fashion. (See Attachment L) The status reports included information that was updated monthly. Particular monthly reports: (1) advised the DEQ that TEGP's primary contractor and its boiler supplier had provided notices of *force majeure* relating to the effects of Hurricanes Katrina and Rita; (2) advised the DEQ of the status of Wyoming Department of Transportation permitting for the highway interconnection for the main access road; and (3) advised the DEQ of PacifiCorps' requests for extensions of time beyond the requirements of its Open Access Transmission Tariff and the requirement for additional facilities studies before an interconnection agreement for the Two Elk facility could be offered or executed. (See Attachment D; Attachment L)

25. At no time prior to the August 22 Letter did DEQ indicate to TEGP (either orally or in writing) that it had any questions about a particular report or concerns as to whether TEGP was "continuing" construction in accordance with Permit No. CT-1352B and WAQSR Ch. 6,



Section 2(h). In fact, Brad Enzi, Vice President of Two Elk Power Company (the sole general partner of TEGP), was in Wyoming DEQ's offices for meetings with staff on a regular basis during the summer of 2007 and repeatedly asked whether Wyoming DEQ staff had any questions or concerns regarding the Two Elk facility that TEGP could address. (*See* Attachment L). Then, without any prior notice or discussion, TEGP received the August 22 Letter from DEQ revoking the permit. In its letter DEQ states that the permit "expiration occurred automatically and did not require any action by DEQ/AQD to take effect." (Attachment C at 2.) The DEQ never provided TEGP with notice or an opportunity to demonstrate its compliance with all lawful requirements for retention of the permit before DEQ concluded that the permit had expired and become invalid.

26. State and local agencies have recognized TEGP's continuing construction activities at the Two Elk facility. The State of Wyoming and Campbell County have increased TEGP's property valuation over seventeen fold from 2006 to 2007 due to "construction work in progress" at the Two Elk facility, thereby increasing the corresponding tax assessment from \$21,011 in 2006 to \$383,080 in 2007. The 2007 assessed property value was based upon the State of Wyoming Department of Revenue's determination that construction work in progress as of December 31, 2006 totaled slightly more than \$51,500,000. (*See* Attachment D; Attachment L)

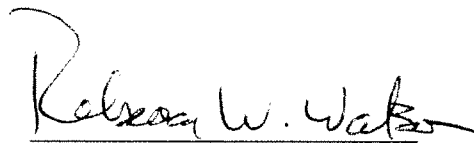
27. While construction has continued at the Two Elk facility, TEGP has made community impact payments in the amount of \$35,560 to the Campbell County School District and \$12,000 to Wyoming Game and Fish. In addition, upon information and belief, Wyoming DEQ also has made community impact assistance payments, related to continuing construction of the Two Elk facility, during 2005 and 2006. (*See* Attachment D; Attachment L)

28. TEGP will incur a substantial financial loss if it is not allowed to proceed. Additionally, Campbell County will lose a significant investment if the Two Elk project is not allowed to proceed on schedule or delayed, and the economic benefits of the project to the County and the State of Wyoming will be significantly delayed or lost. Moreover, non-commercial or waste coal that would otherwise be disposed of at the Two Elk facility will be exposed to the atmosphere and re-inserted into mine pits, either to be lost forever or later require incremental mining.

29. TEGP respectfully requests: (1) that the Council order an immediate stay of the effectiveness of the DEQ's August 22 Letter revoking Permit No. CT-1352B until a hearing can be held in this matter, consistent with the requirements of the Wyoming APA and due process; and (2) that the Council vacate the August 22 Letter and find that construction at Two Elk has not been discontinued for a period of 24 months or more.

30. **TEGP FURTHER REQUESTS AN EXPEDITED HEARING ON THIS MATTER.**

Dated this 19<sup>th</sup> day of October, 2007.

A handwritten signature in black ink that reads "Rebecca W. Watson". The signature is written in a cursive style and is underlined.

Rebecca W. Watson (Wyoming # 5-1683 )  
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# **EXHIBIT 4**

WYOMING 1992 SESSION LAWS  
1992 SPECIAL SESSION OF THE 51ST LEGISLATURE

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Additions are indicated by <<+ Text +>>; deletions by <<- Text ->>. Changes in tables are made but not highlighted. Vetoed provisions within tabular material are not displayed.

Ch. 60

H.B. No. 37

ENVIRONMENTAL QUALITY DEPARTMENT--DIVISIONS--COUNCIL

AN ACT to create W.S. 9-2-2013; to amend W.S. 9-2-1704(d) by creating a new paragraph (x), 35-11-103(a)(v) and (e)(xxiv), 35-11-104, 35-11-105(a) by creating new paragraphs (iv) through (vi), 35-11-106, 35-11-107(a) and by creating a new subsection (e), 35-11-108, 35-11-109(a)(x) and (xii) and by creating a new paragraph (xiii), 35-11-110(a) introductory paragraph and (ii) and by creating new subsections (b) through (e), 35-11-111(a), 35-11-112(a) introductory paragraph, 35-11-113(a), 35-11-114(a), 35-11-201, 35-11-303(a) introductory paragraph, 35-11-401(j), 35-11-402(a) introductory paragraph, (vii) introductory paragraph, (x) and (xi), 35-11-403(a)(iv), 35-11-404(g) and (m), 35-11-405(c), 35-11-406(k), (o) and (p), 35-11-408, 35-11-411(b), 35-11-414(a) and (b) introductory paragraph, 35-11-417(b), (d) and (e), 35-11-429(a)(iii) and (iv), 35-11-501, 35-11-502(e), (f), (h) and (j), 35-11-503(a) introductory paragraph and (v)(A) and (B), 35-11-504(m), 35-11-601(q) introductory paragraph, 35-11-801(a), 35-11-1202(b), 35-11-1204(a) introductory paragraph and (d), 35-11-1301(a)(i), 35-11-1302(a) introductory paragraph, 35-12-102(a)(v) and by creating new paragraphs (xii) and (xiii), 35-12-103, 35-12-105, 35-12-107(b) introductory paragraph and (f), 35-12-109(a) introductory paragraph and (b), 35-12-110(b) introductory paragraph, 35-12-111(d), 35-12-112, 35-12-113(e) and (g) introductory paragraph, 35-12-114(a), 35-12-117(a) introductory paragraph, 35-12-118(d), 35-12-119(a) and (b); and to repeal W.S. 9-2-2009(c)(v) and (vi), 35-11-107(b) through (d), 35-12-102(a)(ix), 35-12-110(b)(xii) relating to government reorganization; removing the department of environmental quality from the department of natural resources and reestablishing the department of environmental quality as a separate department; specifying divisions of the department; providing powers and duties; placing the state office of industrial siting administration and industrial siting council in the department; providing qualifications of director of the department; establishing the environmental quality council as a separate operating agency; making the director an advisor to the environmental quality council; providing powers and duties of administrators; providing powers and duties of environmental quality council; providing for advisory boards and duties; providing for the delegation of duties within the department; repealing executed sections relating to the department; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

## Section 1.

(a) W.S. 9-2-2009 created the department of natural resources and required the director to submit a reorganization plan. Pursuant to W.S. 9-2-1707(a)(iii) and 9-2-2001(b), the Department of Natural Resources Plan dated November 15, 1991, was approved by the governor and submitted to the legislature as required by law. The legislature hereby approves a portion of that plan for implementation on April 1, 1992, subject to the following:

(i) The portion of the plan proposed, and which the legislature approves, establishes a separate department of environmental quality comprised of the existing department of environmental quality, the existing state office of industrial siting administration and the industrial siting council. The existing environmental quality council shall function as a separate operating agency.

(b) All positions, personnel, appropriations, property, equipment and authority in agencies or programs transferred to the department of environmental quality under a Type 1 transfer as a result of W.S. 9-2-2009, the plan and this act are under the control and are the responsibility of the department of environmental quality or its boards and commissions as specified by law. Except as specifically provided in this act, the terms of all persons previously appointed to a board, commission or council within an agency or program which is transferred to the department of environmental quality under this act are not affected by this act. The validity of rules, regulations, contracts, agreements or other obligations of agencies or programs transferred to the department of environmental quality under this act is not affected by this act.

(c) Notwithstanding any other provision of law, the governor may authorize the use of vacant positions within the agencies specified in this act and money from any fund or account otherwise authorized for use by those agencies to defray the cost of implementing the plan under this act.

(d) Notwithstanding W.S. 9-2-2013, the current director of environmental quality may, upon the effective date of this act, continue in that office and serve as the director of the department at the pleasure of the governor. Any vacancy in the office of the director shall be filled in accordance with W.S. 9-2-2013.

Section 2. W.S. 9-2-2013 is created to read:

<< WY ST § 9-2-2013 >>

<<+9-2-2013. Department of environmental quality created; director appointed; structure.+>>

<<+(a) As part of the reorganization of Wyoming state government, there is created the department of environmental quality consisting of the existing state department of environmental quality, the state office of industrial siting administration and the industrial siting council. Except for the existing environmental quality council, which shall not be within the department of environmental quality but

shall be a separate operating agency, and those programs or functions specified by law to be performed by another entity all programs and functions specified in chapters 11 and 12 of title 35 shall be with the department of environmental quality. Except for W.S. 9-2-1703(a)(v) and (ix), the limitation of number of principal departments contained in W.S. 9-2-1703(a)(iii), 9-2-1704(a) and (b), 9-2-1706(c)(i)(D) and 9-2-1707(a)(iii) and (iv), the provisions of the Wyoming Government Reorganization Act of 1989, W.S. 9-2-1701 through 9-2-1708, apply to this section.+>>

<<+(b) The administrative head of the department shall be a director who shall serve at the pleasure of the governor and may be removed by him as provided in W.S. 9-1-202. The director shall be appointed by the governor with the advice and consent of the senate.+>>

<<+(c) The department shall not be subject to a transition period as defined in W.S. 9-2-1703(a)(ix). A reorganization plan shall not be required of the director.+>>

Section 3. W.S. 9-2-1704(d) by creating a new paragraph (x), 35-11-103(a)(v) and (e)(xxiv), 35-11-104, 35-11-105(a) by creating new paragraphs (iv) through (vi), 35-11-106, 35-11-107(a) and by creating a new subsection (e), 35-11-108, 35-11-109(a)(x) and (xii) and by creating a new paragraph (xiii), 35-11-110(a) introductory paragraph and (ii) and by creating new subsections (b) through (e), 35-11-111(a), 35-11-112(a) introductory paragraph, 35-11-113(a), 35-11-114(a), 35-11-201, 35-11-303(a) introductory paragraph, 35-11-401(j), 35-11-402(a) introductory paragraph, (vii) introductory paragraph, (x) and (xi), 35-11-403(a)(iv), 35-11-404(g) and (m), 35-11-405(c), 35-11-406(k), (o) and (p), 35-11-408, 35-11-411(b), 35-11-414(a) and (b) introductory paragraph, 35-11-417(b), (d) and (e), 35-11-429(a)(iii) and (iv), 35-11-501, 35-11-502(e), (f), (h) and (j), 35-11-503(a) introductory paragraph and (v)(A) and (B), 35-11-504(m), 35-11-601(q) introductory paragraph, 35-11-801(a), 35-11-1202(b), 35-11-1204(a) introductory paragraph and (d), 35-11-1301(a)(i), 35-11-1302(a) introductory paragraph, 35-12-102(a)(v) and by creating new paragraphs (xii) and (xiii), 35-12-103, 35-12-105, 35-12-107(b) introductory paragraph and (f), 35-12-109(a) introductory paragraph and (b), 35-12-110(b) introductory paragraph, 35-12-111(d), 35-12-112, 35-12-113(e) and (g) introductory paragraph, 35-12-114(a), 35-12-117(a) introductory paragraph, 35-12-118(d), 35-12-119(a) and (b) are amended to read:

<< WY ST § 9-2-1704 >>

9-2-1704. Reorganization plan; structure; time frame.

(d) The entities of state government specified in this subsection are designated as separate operating agencies, which are separate and distinct from the departments and offices specified in subsection (a) of this section because of their quasi-judicial responsibility or because of their unique, specialized function which precludes their inclusion in another department. This act does not otherwise apply to separate operating agencies. Separate operating agencies are as follows:

<<+(x) Environmental quality council.+>>

## &lt;&lt; WY ST § 35-11-103 &gt;&gt;

35-11-103. Definitions.

(a) For the purpose of this act, unless the context otherwise requires:

(v) "Administrator" means the administrator of each division of <<-air, land, and water quality->> <<+the department+>>;

(e) Specific definitions for land quality:

(xxiv) "Deficiency" means an omission or lack of sufficient information serious enough to preclude correction or compliance by stipulation in the approved permit to be issued by the <<-administrator->> <<+director+>>;

## &lt;&lt; WY ST § 35-11-104 &gt;&gt;

35-11-104. Department of environmental quality created. <<-Effective July 1, 1973,->> <<+T+>>here is created a department within the executive branch entitled "The State Department of Environmental Quality" <<+as provided in W.S. 9-2-2013+>>.

## &lt;&lt; WY ST § 35-11-105 &gt;&gt;

35-11-105. Divisions enumerated.

(a) The department shall consist of the following divisions:

<<+(iv) Solid and hazardous waste management division;+>>

<<+(v) Abandoned mine land division;+>>

<<+(vi) Industrial siting division.+>>

## &lt;&lt; WY ST § 35-11-106 &gt;&gt;

35-11-106. Powers, duties, functions and regulatory authority.

(a) All powers, duties, functions and regulatory authority vested in the <<- air resources council, the water pollution advisory council, the air quality section and the sanitary engineering services branches of the division of health and medical services, and the open cut land reclamation section of the office of the commissioner of public lands->> <<+state office of industrial siting administration+>> are transferred to the department, as of <<-the effective date of this act->> <<+April 1, 1992+>>. The performance of such acts or functions by the <<+industrial siting division of the+>> department <<-of these respective divisions->> shall have the same effect as if done by the former <<-department, councils, divisions, sections or branches->> <<+state office of industrial siting administration+>> as referred to or designated by law, contract or other document.



The reference or designation to the former <<-department, councils, divisions, sections or branches->> <<+state office of industrial siting administration+>> shall now apply to the <<+industrial siting division of the+>> department. <<+ The industrial siting council shall retain all powers, duties, functions and regulatory authority but shall be within the department.+>>

(b) All rules, regulations and orders of the former <<-department, councils, divisions, sections or branches->> <<+state office of industrial siting administration, the industrial siting council, abandoned mine reclamation program, solid waste management program or any other program or entity transferred to the department by this act which were+>> lawfully adopted prior to <<-the effective date of this act->> <<+April 1, 1992+>> are adopted as the rules, regulations and orders of the department and shall continue to be effective until revised, amended, repealed or nullified pursuant to law.

<< WY ST § 35-11-107 >>

35-11-107. Records and physical properties; rights of personnel; successors.

(a) All records, physical property and personnel including their rights and privileges under the merit system, retirement system and personnel <<- department->> system, and any appropriated or unused funds of the former <<-councils, divisions, sections or branches->> <<+state office of industrial siting administration and of the industrial siting council+>> shall be transferred to the department as of the effective date of this act. All records, lists or other information which by law are confidential or privileged in nature shall remain as such.

<<+(e) The industrial siting division is the successor to the powers, duties, functions and regulatory authority of the state office of industrial siting administration which is abolished effective April 1, 1992.+>>

<< WY ST § 35-11-108 >>

35-11-108. Appointment of director and division administrators; qualifications of director; term; salaries; employment of assistants. The governor with the advice and consent of the <<-council->> <<+senate+>> shall appoint a director of the department who is the department's executive and administrative head. <<+The director shall possess technical qualifications and administrative and other experience sufficient to fulfill the duties of his position.+>> The director<<-, with the governor's approval,->> shall appoint administrators for each of the divisions of <<+ abandoned mine land, industrial siting, solid and hazardous waste management, air quality+>>, water <<+quality+>> and land quality, who are the executive and administrative heads of their respective divisions<<+.+>> <<+The administrators shall serve at the pleasure of the director+>> and are responsible to and under the control and supervision of the director. The salary and qualifications of each administrator shall be determined by the personnel division. The director, with the advice of the respective administrators, may employ professional, technical and other assistants, along with other employees as may be necessary to carry out the purposes of this act. The governor may remove the director <<-or any administrator->> as provided in W.S. 9-1-202.

## &lt;&lt; WY ST § 35-11-109 &gt;&gt;

35-11-109. Powers and duties of director.

(a) In addition to any other powers and duties imposed by law, the director of the department shall:

(x) Serve as <<-executive secretary->> <<+advisor+>> to the council<<+,+>> without vote<<+, on all matters other than the consideration of rules proposed by the department or contested case proceedings in which the department is a party+>>;

(xii) <<-For purposes of carrying out the provisions of article 5 of this act,->> <<+E+>>exercise all the powers granted to administrators by W.S. 35-11-110<<+;+>><<-.->>

<<+(xiii) Issue, deny, amend, suspend or revoke permits and licenses and determine the amount of bonds to be posted by the operator to insure reclamation of any affected lands.+>>

## &lt;&lt; WY ST § 35-11-110 &gt;&gt;

35-11-110. Powers of administrators of the divisions.

(a) The administrators <<+of the air quality, land quality and water quality divisions,+>> under the control and supervision of the director, shall enforce and administer this act and the rules, regulations and standards promulgated hereunder. Each administrator shall have the following powers:

(ii) To <<-issue, deny, amend, suspend or revoke->> <<+make recommendations to the director regarding the issuance, denial, amendment, suspension or revocation of+>> permits and licenses and to <<- determine->> <<+make recommendations to the director regarding+>> the amount of bond to be posted by the operator to insure reclamation of any affected lands;

<<+(b) The administrator of the land quality division shall have, in addition to the powers set forth in subsection (a) of this section, the power to issue, deny, amend, suspend or revoke licenses and to determine the amount of bonds to be posted by an operator to insure reclamation of affected lands in accordance with the specific authority granted the administrator under article 4 of this act.+>>

<<+(c) The administrator of the solid and hazardous waste management division shall have the powers set forth in paragraphs (a)(ii) through (x) of this section.+>>

<<+(d) The administrator of the abandoned mine land division shall enforce and administer the provisions of W.S. 35-11-1201 through 35-11-1208 and 35-11- 1301 through 35-11-1304. He shall have the powers set forth in paragraph (a)(x) of this section.+>>

<<+(e) The administrator of the industrial siting division shall enforce and administer the provisions of W.S. 35-12-101 through 35-12-119. He shall have the powers set forth in paragraph (a)(x) of this section.+>>

<< WY ST § 35-11-111 >>

35-11-111. Independent environmental quality council created; removal; terms; officers; meetings; expenses.

(a) There is created <<+as a separate operating agency of state government+>> an independent council consisting of seven (7) members to be known as the environmental quality council. Not more than four (4) of the members shall be of the same political party. Council members shall be appointed by the governor with the advice and consent of the senate. The governor may remove any council member as provided in W.S. 9-1-202. No employee of the state, other than employees of institutions of higher education, shall be a member of the council. At all times, there shall be at least one (1) member from the minerals industry and one (1) member from agriculture. Any member receiving more than ten percent (10%) of his income from any permit applicant shall not act on a permit application from that applicant.

<< WY ST § 35-11-112 >>

35-11-112. Powers and duties of the environmental quality council.

(a) The council shall act as the hearing examiner for the department and shall hear and determine all cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by the department or <<-any division thereof->> <<+its air quality, land quality, solid and hazardous waste management or water quality divisions. Notwithstanding any other provision of this act, including this section, the council shall have no authority to promulgate rules or to hear or determine any case or issue arising under the laws, rules, regulations, standards or orders issued or administered by the industrial siting or abandoned mine land divisions of the department.+>> The council shall:

<< WY ST § 35-11-113 >>

35-11-113. Advisory boards created; membership; removal; terms; meetings; expenses.

(a) There is created within the department three (3) advisory boards, one (1) for each <<-division->> <<+of the air quality, land quality and water quality divisions+>>. Each advisory board shall consist of five (5) members appointed by the governor. Each board shall have one (1) member who represents industry, one (1) member who represents agriculture, one (1) member who represents political subdivisions and two (2) members who represent the public interest. Not more than three (3) members of each board shall be from the same political party. The governor may remove any member of any of the advisory boards as provided in W.S. 9-1-202.

<< WY ST § 35-11-114 >>

35-11-114. Powers and duties of the advisory boards.

(a) The advisory board shall recommend to the council through the administrator and director, comprehensive plans and programs for <<+the management of solid and hazardous waste,+>> the prevention, control and abatement of air, water and land pollution and the protection of public water supplies.

<< WY ST § 35-11-201 >>

35-11-201. Discharge or emission of contaminants; restrictions. No person shall cause, threaten or allow the discharge or emission of any air contaminant in any form so as to cause pollution which violates rules, regulations and standards adopted by the <<-administrator after consultation with the advisory board->> <<+council+>>.

<< WY ST § 35-11-303 >>

35-11-303. Duties of the administrator of water quality division.

(a) In addition to other duties imposed by law, the administrator of the water quality division <<+at the direction of the director+>>:

<< WY ST § 35-11-401 >>

35-11-401. Compliance generally; exceptions.

(j) The council, <<-after consultation with the administrator and the advisory board->> <<+upon recommendation from the advisory board through the administrator and director+>>, may modify or suspend certain requirements of W.S. 35-11-406(a), (b), (d), (f) and (g) by rules and regulations, for surface mining operations involving not more than ten thousand (10,000) yards of overburden and ten (10) acres of affected land in any one (1) year, if the application requirements insure reclamation in accordance with the purposes of this act.

<< WY ST § 35-11-402 >>

35-11-402. Establishment of standards.

(a) The council shall, upon recommendation by the advisory board <<+through the administrator and the director+>>, establish rules and regulations pursuant to the following reclamation standards for the affected areas, including but not limited to:

(vii) In administering established rules and regulations on such standards the administrator <<-and advisory board->> shall consider all the facts and circumstances bearing upon any reclamation plan. In consideration of reclamation plans for any mining operation that is presently being conducted in the state under a permit issued by the state land commission under the "Open Cut Land Reclamation

Act of 1969", particular attention shall be paid to:

(x) Rules and regulations for the criteria for review and information and public notice requirements for permit revisions. A permit may be revised without public notice or hearing for revisions, including incidental boundary revisions to the area covered by the permit, if these do not propose significant alterations in the reclamation plan. Subject to applicable standards, any permit, except for surface coal mining permits, may be revised, in the permitted area, by identifying proposed alterations to the mining or reclamation plan in the annual report or addendum thereto, or by obtaining prior approval from the <<-department->> <<+director+>>, at the operator's discretion;

(xi) Rules and regulations for conducting coal exploration operations which shall include prior notice of intention to explore, written approval by the <<-administrator->> <<+director+>> for the removal of more than two hundred fifty (250) tons of coal and reclamation provisions for new and existing operations in accordance with the reclamation standards governing surface mining;

<< WY ST § 35-11-403 >>

35-11-403. Powers of the administrator of land quality division.

(a) The administrator of the land quality division shall have the following powers:

(iv) To recommend to the director, <<-after consultation with the advisory board,->> the issuance, denial, amendment, revocation and suspension of permits, licenses and special exploration licenses in accordance with the provisions of this act.

<< WY ST § 35-11-404 >>

35-11-404. Drill holes to be capped, sealed or plugged.

(g) Except for drilling in conjunction with coal mining or coal exploration operations, <<+the director in consultation with+>> the administrator, land quality division, may waive any of the administrative provisions of this act pertaining to aquifers following a formal written application for a waiver of any particular provisions, if in the opinion of the <<-administrator, land quality division,->> <<+director+>> waiver of any such provisions shall not adversely affect the interests of the state of Wyoming and would create an undue hardship upon application. Waivers shall be in writing and may be appealed under the provisions of the Wyoming Administrative Procedure Act.

(m) When exploratory drill holes have been abandoned in violation of these provisions, the <<+director in consultation with the+>> administrator, land quality division may then cause such holes to be capped, sealed or plugged and the state of Wyoming is granted a cause of action against the person refusing to comply with the provisions of this <<-act->> <<+section+>> for the recovery of the reasonable costs incurred by the <<-administrator, land quality division->> <<+director+>> in having

the holes properly capped, sealed or plugged.

<< WY ST § 35-11-405 >>

35-11-405. Permit defined; no mining operation without valid permit; when validity terminated.

(c) All surface coal mining permits issued subsequent to approval of the state program pursuant to P.L. 95-87 shall be issued for a term of not to exceed five (5) years. If the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation and if the application is complete for this specified longer term, the <<-administrator->> <<+director+>> shall grant a permit for a longer term.

<< WY ST § 35-11-406 >>

35-11-406. Application for permit; generally; denial; limitations.

(k) Any interested person has the right to file written objections to the application with the administrator within thirty (30) days after the last publication of the above notice. For surface coal mining operations, the <<-administrator->> <<+director+>> may hold an informal conference if requested and take action on the application in accordance with the department's rules of practice and procedure, with the right of appeal to the council which shall be heard and tried de novo. A conference shall be held if the <<-administrator->> <<+director+>> determines that the nature of the complaint or the position of the complainants indicates that an attempt to informally resolve the disputes is preferable to a contested case proceeding. An informal conference or a public hearing shall be held within twenty (20) days after the final date for filing objections unless a different period is stipulated to by the parties. The council or <<-administrator->> <<+director+>> shall publish notice of the time, date and location of the hearing or conference in a newspaper of general circulation in the locality of the proposed operation once a week for two (2) consecutive weeks immediately prior to the hearing or conference. The hearing shall be conducted as a contested case in accordance with the Wyoming Administrative Procedure Act, and right of judicial review shall be afforded as provided in that act.

(o) No permit shall be issued to an applicant after a finding by the <<-administrator->> <<+director+>> or council, after opportunity for hearing, that the applicant or operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of such nature and duration with such resulting irreparable harm to the environment as to indicate reckless, knowing or intentional conduct.

(p) The <<-administrator->> <<+director+>> shall render a decision on the application within thirty (30) days after completion of the notice period if no informal conference or hearing is requested. If an informal conference is held, all parties to the conference shall be furnished with a copy of the final written decision of the <<-administrator and->> director issuing or denying the permit within sixty (60) days of the conference. If a hearing is held, the council shall

issue findings of fact and a decision on the application within sixty (60) days after the final hearing. The <<- administrator->> <<+director+>> shall issue or deny the permit no later than fifteen (15) days from receipt of any findings of fact and decision of the environmental quality council.

<< WY ST § 35-11-408 >>

35-11-408. Permit transfer. A permit holder desiring to transfer his permit shall apply to the administrator. The potential transferee shall file with the administrator a statement of qualifications to hold a permit as though he were the original applicant for the permit and shall further agree to be bound by all of the terms and conditions of the original permit. The administrator<<-, after consulting with the advisory board,->> shall recommend approval or denial of the transfer to the director. No transfer of a permit will be allowed if the current permit holder is in violation of this act, unless the transferee agrees to bring the permit into compliance with the provisions of this act.

<< WY ST § 35-11-411 >>

35-11-411. Annual report.

(b) Upon receipt of the annual report the administrator shall make such further inquiry as shall be deemed necessary<<+.+>> <<-after consultation with the advisory board.->> If the administrator objects to any part of the report or requires further information he shall notify the permittee as soon as possible and shall allow a reasonable opportunity to provide the required information, or take such action as shall be necessary to remove the objection.

<< WY ST § 35-11-414 >>

35-11-414. Special license to explore for minerals by dozing; application; standards; fee; bond; denial; appeal.

(a) Any person desiring to engage in mineral exploration by dozing shall apply to the administrator for a special license. The application shall be in accordance with rules and regulations adopted <<-by the administrator,->> pursuant to the standards set forth in subsection (b) of this section, <<+by the council upon recommendation by the director+>> after consultation with the <<+administrator and+>> advisory board<<+,+>> and shall be accompanied by a fee of twenty-five dollars (\$25.00).

(b) <<-After consultation with the advisory board, the administrator->> <<+The council+>> shall establish rules and regulations pursuant to the following reclamation standards for exploration by dozing:

<< WY ST § 35-11-417 >>

35-11-417. Bonding provisions.

(b) All bonds shall be signed by the operator as principal, by a good and

sufficient corporate surety licensed to do business in the state, and be made payable to the state of Wyoming. At the discretion of the <<-advisory board->> <<+director+>>, the record mineral owner of the land to be mined may also be required to join as principal.

(d) The council may promulgate rules and regulations for a self-bonding program for mining operations under which the administrator may accept the bond of the operator itself without separate surety when the operator demonstrates to the satisfaction of the <<-administrator->> <<+director+>> the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond this amount. This subsection shall not become operative until the council has promulgated rules and regulations for the self-bonding program which require that the protection provided by self-bonding shall be consistent with the objectives and purposes of this act.

(e) When the reclamation plan for any affected land has been completed, the administrator<<- , after consultation with the advisory board,->> may recommend to the director the release of up to seventy-five percent (75%) of the bond required for that affected land. The remaining portion of the bond shall be not less than ten thousand dollars (\$10,000.00), and shall be held for a period of at least five (5) years after the date of reduction to assure proper revegetation and restoration of groundwater. The retained portion of the bond may be returned to the operator at an earlier date if a release signed by the surface owner and approved by the administrator and director is obtained.

<< WY ST § 35-11-429 >>

35-11-429. In situ mining permit; contents of permit.

(a) Every permit shall:

(iii) Authorize the council upon the recommendation of the <<- administrator->> <<+director+>> to modify water quality criteria used for groundwater restoration when information made available after issuance of the permit warrants a modification;

(iv) Prohibit any significant change in mining technique, method of operation, recovery fluid used, mining and reclamation plans or other activities that would jeopardize reclamation or protection of any waters of the state unless a permit revision has been approved by the <<- administrator->> <<+director+>> pursuant to this act;

<< WY ST § 35-11-501 >>

35-11-501. Duties of the administrator of the solid and hazardous waste management division.

<<+(a)+>> In addition to the other powers and duties enumerated in this act, the director of the department <<+through the administrator of the solid and hazardous



waste management division+>> shall coordinate the activities of all state agencies concerned with solid waste management and disposal. <<-In this capacity->> <<+T+>>he <<-director->> <<+administrator+>> shall advise and consult with any person or municipality with respect to provisions of technical assistance in solid waste management technology, including collection, storage and disposal.

<<+(b) The administrator of the solid and hazardous waste management division shall enforce and administer this article and the rules, regulations and standards promulgated under this article.+>>

<< WY ST § 35-11-502 >>

35-11-502. Solid waste management facilities permits.

(e) The <<-director->> <<+administrator+>> shall notify the applicant within sixty (60) days of submission of the application whether or not it is complete. If the <<-director->> <<+administrator+>> deems the application incomplete, he shall so advise and state in writing to the applicant the information required. All items not specified as incomplete at the end of the first sixty (60) day period shall be deemed complete for the purposes of this subsection.

(f) If the applicant resubmits an application or further information, the <<-director->> <<+administrator+>> shall review the application or additional information within sixty (60) days of each submission and advise the applicant in writing if the application or additional information is complete.

(h) The <<-director->> <<+administrator+>> shall review the application and unless the applicant requests a delay advise the applicant in writing within ninety (90) days from the date of determining the application is complete, that a proposed permit is suitable for publication under subsection (j) of this section, that the application is deficient or that the application is denied. All reasons for deficiency or denial shall be stated in writing to the applicant. All items not specified as being deficient at the end of the first ninety (90) day period shall be deemed complete for the purposes of this subsection. If the applicant submits additional information in response to any deficiency notice, the <<-director->> <<+administrator+>> shall review such additional information within thirty (30) days of submission and advise the applicant in writing if a proposed permit is suitable for publication under subsection (j) of this section, that the application is still deficient or that the <<+director has denied the+>> application<<+.+>> <<-is denied.->>

(j) The applicant shall give written notice of the proposed permit to the governing board of any county where the applicant plans to locate the facility and to any governing board of municipalities which may be affected by the facility. The applicant shall simultaneously cause notice of the proposed permit to be published in a newspaper of general circulation within the county where the applicant plans to locate the facility. The notice shall be published once a week for two (2) consecutive weeks commencing within fifteen (15) days after being notified by the <<-director->> <<+ administrator+>> that the application is suitable for publication. The notice shall contain information regarding the identity of the applicant, the location of the proposed operation, the method and

length of the operation, the location at which information about the application may be obtained, and the location and final date for filing objections to the application.

<< WY ST § 35-11-503 >>

35-11-503. Authority to promulgate rules and regulations for solid waste management facilities.

(a) The director, <<+upon recommendation from the administrator+>> after consultation with the water advisory board, is authorized to recommend that the council promulgate rules, regulations, standards and permit systems for solid waste management facilities in order to protect human health and the environment. <<-Such->> <<+The+>> rules, regulations, standards and permit systems shall govern the management of any waste, including liquid, solid, or semisolid waste, which is managed within the boundary of any solid waste management facility, and:

(v) Shall provide for consistency and equivalency with rules and regulations adopted by the United States environmental protection agency under authority of Subtitle C of the Resource Conservation and Recovery Act, P.L. 94-580, for those facilities subject to such federal requirements, provided that:

(A) The director <<+after consultation with the administrator+>> may petition the council to promulgate rules and regulations more stringent than federal rules if adequate cause exists to determine that circumstances specific to the state compel adoption of more stringent rules to adequately protect the public health and environment of the state;

(B) The imposition of the rules under this paragraph is consistent and equivalent with the imposition of rules by the United States environmental protection agency, except that the director <<+after consultation with the administrator+>> may petition the council to determine for individual permits or orders that adequate cause exists for permit conditions or orders more stringent than federal regulations;

<< WY ST § 35-11-504 >>

35-11-504. Bonding for solid waste management facilities.

(m) When the director determines that the violation has been remedied or the damage abated, the director shall release that portion of the bond or financial assurance instrument being held under paragraph (a)(ii) of this section. When the director determines that closure activities have been successfully completed at any solid waste management facility, the director shall release that portion of the bond or financial assurance instrument being held to guarantee performance of activities specified in <<-subparagraph->> <<+subparagraphs+>> (a)(i)(A) through (E) of this section. The remaining portion of the bond or financial assurance instrument shall be held for a period of not less than five (5) years after the date of facility closure, or so long thereafter as necessary to assure proper performance of any post-closure activities specified in subparagraph (a)(i)(F) of this section. The retained portion of the bond or other financial assurance

instrument may be returned to the operator at an earlier date if the director determines that the facility has been adequately stabilized and that environmental monitoring or control systems have demonstrated that the facility closure is protective of public health and the environment consistent with the purposes of this act.

<< WY ST § 35-11-601 >>

35-11-601. Applications; authority to grant; hearing; limitations; renewals; judicial review; emergencies.

(q) In order to encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, residential or public use (including recreational facilities), the <<-administrator->> <<+ director+>>, with approval by the secretary <<+of the interior+>>, may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated by the council under this act. Such departures may be authorized if:

<< WY ST § 35-11-801 >>

35-11-801. Issuance of permits and licenses.

(a) When <<-an administrator, after consultation with the appropriate advisory board,->> <<+the department+>> has, by rule or regulation, required a permit to be obtained it is the duty of the director to issue such permits upon proof by the applicant that the procedures of this act and the rules and regulations promulgated hereunder have been complied with. In granting permits, the director may impose such conditions as may be necessary to accomplish the purpose of this act which are not inconsistent with the existing rules, regulations and standards. <<+An administrator shall not issue permits and may issue a license under this act only as specifically authorized in this act.+>>

<< WY ST § 35-11-1202 >>

35-11-1202. State reclamation plan.

(b) The state reclamation plan shall be developed by the governor, after recommendation from the director. The director <<+after consulting the administrator of the abandoned land mine division+>> shall make this recommendation only after he has prepared a proposed plan and afforded, at a minimum, an opportunity for the public to inspect and comment on this proposed plan in each county having land and water resources which qualify for acquisition, reclamation or restoration under subsection (a) of this section. All comments shall be recorded and considered in the development of the plan.

<< WY ST § 35-11-1204 >>

35-11-1204. Right of entry.

(a) The director<<+, administrator of the abandoned mine land division,+>> or <<-his->> <<+their+>> designated authorized representative shall have the right to enter upon or have access to any property adversely affected by past coal mining practices to restore, reclaim, abate, control or prevent the adverse effects if the director makes a finding that:

(d) The director<<+, administrator of the abandoned mine land division, or their designated authorized representatives+>> shall have the right to enter upon any property for the purpose of conducting exploratory work to determine the feasibility to restore, reclaim, abate, control or prevent the adverse effects.

<< WY ST § 35-11-1301 >>

35-11-1301. Definitions.

(a) As used in this act:

(i) "Administrator" means the administrator of the <<-land quality->> <<+abandoned mine land+>> division of the department of environmental quality;

<< WY ST § 35-11-1302 >>

35-11-1302. Mine subsidence loss insurance program; established; rulemaking authority.

(a) The governor shall establish an insurance program to cover mine subsidence loss to specified structures in this state. The program shall be operated by the <<+director of the department of environmental quality through the+>> administrator who shall contract for all services related to advertising, sales of the coverage and claims adjustment and may contract for other services necessary to the efficient operation of the program. The program shall cover all structures insured under this act for mine subsidence damage occurring after the effective date of the coverage, consistent with the contract terms and conditions. The program shall also cover structures which have been damaged before the effective date of this act, provided that:

<< WY ST § 35-12-102 >>

35-12-102. Definitions.

(a) As used in this chapter:

(v) "Director" means the director of the <<-office->> <<+department of environmental quality+>>;

<<+(xii) "Administrator" means the administrator of the division;+>>

<<+(xiii) "Division" means the industrial siting division of the department of environmental quality.+>>

<< WY ST § 35-12-103 >>

35-12-103. Division of industrial siting administration created within the department of environmental quality. There is created within the <<- governor's office, "the state office of industrial siting administration"->> <<+department of environmental quality the industrial siting division+>>.

<< WY ST § 35-12-105 >>

35-12-105. Appointment and duties of director and administrator; staff; rules and regulations.

(a) The <<-governor->> <<+director+>> shall appoint <<-a director->> <<+an administrator+>> of the <<-office->> <<+ division+>> who shall serve at the <<-governor's->> <<+director's+>> pleasure as the executive and administrative head of the <<-office. The governor may remove the director as provided in W.S. 9-1-202->> <<+ division. The administrator is responsible to and under control and supervision of the director.+>> The director <<-with the approval of the council->> shall employ such <<+other+>> staff as deemed necessary by the director to carry out the functions and responsibilities of the <<- office->> <<+division+>>.

(b) The council shall promulgate rules and regulations pursuant to the Wyoming Administrative Procedure Act, implementing this chapter. The director<<+, or the administrator if designated by the director,+>> shall administer and enforce this chapter and any rules, regulations and orders approved or issued by the council.

(c) The director<<+, administrator+>> and the staff <<+of the division+>> are authorized to the extent possible, at the request of local governments, to provide technical assistance to local governments in the negotiation of agreements with applicants as provided for in W.S. 35-12-107 and 35-12-113(a)(vi).

<< WY ST § 35-12-107 >>

35-12-107. Request for waiver of permit application; form.

(b) A request for a waiver shall be filed with the <<-office->> <<+ division+>>, in a form as prescribed by council rules and regulations, and shall contain the following information:

(f) Within fourteen (14) days of the public meeting, the applicant shall meet with the <<-office->> <<+director+>> and each local government affected by the proposed facility to determine the mitigation required to minimize any adverse impacts resulting from the proposed facility.

<< WY ST § 35-12-109 >>

35-12-109. Application for permit; form; fee; financial accounting.

(a) An application for a permit shall be filed with the <<-office->> <<+

division+>>, in a form as prescribed by council rules and regulations, and shall contain the following information:

(b) At the time of filing an application or a written request for a waiver of the application provisions of this chapter as provided in W.S. 35-12-107, or as subsequently required by the director, an applicant shall pay a fee to be determined by the director based upon the estimated cost of investigating, reviewing, processing and serving notice of an application and holding a hearing in case of a request for waiver. The fee shall be credited to an account within the earmarked revenue fund and shall be used by the <<- office->> <<+division+>> as required to investigate, review, process and serve notice of the application and to hold a hearing in case of a request for waiver. Unused fees shall be refunded to the applicant. The maximum fee chargeable shall not exceed one-half of one percent (0.5%) of the estimated construction cost of the facility or one hundred thousand dollars (\$100,000.00), whichever is less.

<< WY ST § 35-12-110 >>

35-12-110. Service of notice of application; information and recommendations; application deficiencies; procedure; jurisdiction; hearing.

(b) The <<-office->> <<+division+>> shall obtain information and recommendations from the following state agencies relative to the impact of the proposed facility as it applies to each agency's area of expertise:

<< WY ST § 35-12-111 >>

35-12-111. Parties to permit proceeding; waiver by failure to participate.

(d) No state agency other than the <<-state office of->> industrial siting <<-administration->> <<+division+>> shall act as a party at the hearing. Members and employees of all other state agencies and departments may file written comments prior to adjournment of the hearing but may testify at the hearing only at the request of the council, the <<-state office of->> industrial siting <<-administration->> <<+division+>> or any party.

<< WY ST § 35-12-112 >>

35-12-112. Record of hearing; procedure. Any studies, investigations, reports or other documentary evidence, including those prepared by the <<- office->> <<+division+>>, which any party wishes the council to consider or which the council itself expects to utilize or rely upon, shall be made a part of the record. A complete record shall be made of the hearing and of all testimony taken. The contested case procedures of the Wyoming Administrative Procedure Act apply to the hearing under W.S. 35-12-110(f), but do not apply to the hearing under W.S. 35-12-107.

<< WY ST § 35-12-113 >>

35-12-113. Decision of council; findings necessary for permit conditions imposed;

service of decision on parties; waste management surcharge.

(e) A permit may be issued conditioned upon the applicant furnishing a bond to the <<-office->> <<+division+>> in an amount determined by the director from which local governments may recover expenditures in preparation for impact to be caused by a facility if the permit holder does not complete the facility proposed. The permit holder is not liable under the bond if the holder is prevented from completing the facility proposed by circumstances beyond his control.

(g) Each approved commercial waste incineration or disposal facility shall, on a quarterly basis, remit to the <<-office->> <<+division+>> a waste management surcharge to be deposited in the general fund. The surcharge amount is:

<< WY ST § 35-12-114 >>

35-12-114. Review of grant or denial of permit.

(a) Any party as defined in W.S. 35-12-111 aggrieved by the final decision of the council on an application for a permit may obtain judicial review by the filing of a petition in any state district court in which the major portion of the proposed facility is to be located within thirty (30) days after the issuance of a final decision. The petition for appeal by any party must include an express assumption of the cost of preparation of the complete written transcripts and record for the court. Upon receipt of a petition, the <<-office->> <<+division+>> shall deliver to the court a copy of the complete written transcript of the record of the proceeding before it and a copy of the council's decision and opinion entered therein which shall constitute the record on judicial review. At the same time the <<- office->> <<+division+>> shall deliver <<+to the petitioner+>> an itemized statement of the cost of preparing the complete written transcript and record for the court<<+.+>> <<-who->> <<+The petitioner+>> shall pay the <<-office->> <<+division+>> this cost within forty-five (45) days or forfeit the right <<-as a party->> <<+to appeal to district court+>>. A copy of the transcript, decision and opinion shall remain on file with the <<-office->> <<+division+>> and shall be available for public inspection.

<< WY ST § 35-12-117 >>

35-12-117. Monitoring of facilities.

(a) Except as provided in subsection (b) of this section, the council and the <<-office->> <<+division+>>, utilizing to the fullest extent possible the staff and resources of all state agencies, boards and commissions, has continuing authority and responsibility for:

<< WY ST § 35-12-118 >>

35-12-118. Penalties for violations; civil action by attorney general.

(d) In addition to any penalty provided in subsection (b) or (c) of this section, if the <<-office->> <<+director+>> determines that a person is violating this

section, <<-it->> <<+he+>> shall refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court in and for the county of Laramie for injunctive or other appropriate relief against the violation and to enforce this chapter or a permit issued under this chapter, and upon a proper showing a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

<< WY ST § 35-12-119 >>

35-12-119. Exemptions; information required.

(a) Nonmineral processing facilities to be constructed in existing industrial parks, as designated by local governments, are exempt from payment of fees and certification procedures but shall furnish the information required by W.S. 35-12-109(a)(iii), (iv) and (v) to the <<-office->> <<+division+>> if included in W.S. 35-12-102(a)(vii).

(b) State and local governmental units and agencies are exempt from the application and permit procedures of this chapter, but prior to commencing to construct any facility as provided in W.S. 35-12-102(a)(vii), those units and agencies shall furnish to the <<-office->> <<+division+>> information required by W.S. 35-12-109(a)(iii), (iv) and (v).

<< WY ST §§ 9-2-2009, 35-11-107, 35-12-102, 35-12-110 >>

Section 4. W.S. 9-2-2009(c)(v) and (vi), 35-11-107(b) through (d), 35-12-102(a)(ix) and 35-12-110(b)(xii) are repealed.

Section 5. Any other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act.

Section 6. This act is effective April 1, 1992.

Approved March 16, 1992.

WY LEGIS 1SS 60 (1992)

END OF DOCUMENT



# **EXHIBIT 5**

WYOMING 1992 SESSION LAWS  
1992 SPECIAL SESSION OF THE 51ST LEGISLATURE

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Additions are indicated by <<+ Text +>>; deletions by <<- Text ->>. Changes in tables are made but not highlighted. Vetoed provisions within tabular material are not displayed.

Ch. 70  
H.B. No. 33  
CLEAN AIR ACT--PERMIT PROGRAM

AN ACT to create W.S. 35-11-203 through 35-11-212; and to amend W.S. 35-11-103(b) by creating a new paragraph (iii), by renumbering (iii) as (iv) and by creating new paragraphs (v) and (vi) and 35-11-801(b) relating to the environment; establishing an operating permit program in compliance with the Clean Air Act; specifying sources requiring a permit; providing procedures; authorizing rulemaking to establish requirements for applications; providing permit requirements; requiring notification of permit applications and permits; providing for review of actions taken on applications; establishing a small business assistance program and advisory panel; providing for fee assessments to fund permitting programs; providing definitions; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 35-11-203 through 35-11-212 are created to read:

<< WY ST § 35-11-203 >>

<<+35-11-203. Sources subject to operating permit program.+>>

<<+(a) The following sources of air contaminants are subject to the provisions of W.S. 35-11-203 through 35-11-212:+>>

<<+(i) Any stationary source, or any group of stationary sources located within a contiguous area and under common control, that:+>>

<<+(A) Has the potential to emit one hundred (100) tons or more per year of any pollutant regulated under the Clean Air Act and is a major stationary source as defined in section 302 of the Clean Air Act;+>>

<<+(B) Has the potential to emit ten (10) tons per year of any single hazardous air pollutant or twenty-five (25) tons per year of any combination of hazardous air

pollutants as defined by section 112 of the Clean Air Act. Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or+>>

<<+(C) Is subject to the nonattainment area provisions of title I, part D, of the Clean Air Act.+>>

<<+(ii) Any other source of hazardous air pollutants, including an area source, which the environmental protection agency may designate pursuant to the provisions of section 112 of the Clean Air Act;+>>

<<+(iii) Any source subject to the new source performance standards promulgated by the environmental protection agency pursuant to section 111 of the Clean Air Act;+>>

<<+(iv) Any "affected source" subject to the acid rain provisions of title IV of the Clean Air Act as defined in section 501 of the Clean Air Act;+>>

<<+(v) Any source subject to preconstruction review permits pursuant to the prevention of significant deterioration regulations promulgated by the environmental protection agency pursuant to the Clean Air Act;+>>

<<+(vi) Any other stationary source that the environmental protection agency may designate by regulation pursuant to authority granted under the Clean Air Act.+>>

<<+(b) After the effective date of the operating permit program authorized under W.S. 35-11-203 through 35-11-212, it shall be unlawful for any person to violate any requirement of a permit issued under the operating permit program or to operate any source required to have a permit under this section, without having complied with the provisions of the operating permit program.+>>

<<+(c) The department shall exempt any source or source category from the obligation to obtain a permit under this section that the environmental protection agency may designate as exempt from the obligation to obtain an operating permit in regulations promulgated pursuant to title V of the Clean Air Act.+>>

<< WY ST § 35-11-204 >>

<<+35-11-204. Department to establish requirements for applications; certification.+>>

<<+(a) The department shall promulgate rules for permit applications, including standard application forms to be submitted pursuant to the operating permit program. The rules shall:+>>

<<+(i) Establish specific criteria for defining a complete permit application, including information which identifies a source, its applicable air pollution

control requirements, current compliance status, intended operating regime and emissions levels;+>>

<<+(ii) Provide for adequate, streamlined and reasonable procedures for determining when an application is complete and for processing an application; and+>>

<<+(iii) Provide for public notice of the application, and opportunity for public comment and public hearings.+>>

<<+(b) The application, including any information required to be submitted with the application pursuant to this section shall be signed by a responsible official who shall certify the accuracy of the information.+>>

<<+(c) Operating permit applications are not required until after the date that the environmental protection agency has issued approval of the state's permit program, or by November 15, 1995, whichever comes first.+>>

<< WY ST § 35-11-205 >>

<<+35-11-205. Application procedures.+>>

<<+(a) Any source required to have a permit under W.S. 35-11-203 shall, not later than twelve (12) months after the date on which the source becomes subject to the requirements of the operating permit program or such earlier date as the department may establish, submit to the department a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted. The department shall approve or disapprove a completed application, consistent with the procedures established under W.S. 35-11-204 for consideration of such applications, and shall issue or deny the permit, within eighteen (18) months after the date of receipt thereof, except that the department shall establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of the operating permit program, or a partial or interim program. Any such schedule shall assure that at least one-third ( 1/3 ) of the permits will be acted on by the department annually over a period of not to exceed three (3) years after the effective date. The department shall establish reasonable procedures to prioritize approval or disapproval actions in the case of applications for construction or modification under the applicable requirements of the Clean Air Act and this article.+>>

<<+(b) Any source submitting a permit application shall submit with the application a compliance plan describing how the source will comply with all applicable requirements under this article and the Clean Air Act. The compliance plan shall include a schedule of compliance, and a schedule under which the permittee will submit progress reports to the department no less frequently than every six (6) months.+>>

<<+(c) Except for sources required to have a permit before construction or modification under the applicable requirements of this article or the Clean Air Act, if an applicant has submitted a timely and complete application for a permit or a renewal of a permit required by the operating permit program, but final action

has not been taken on the application, the source's failure to have a permit shall not be a violation of W.S. 35-11-203, unless the delay in final action was due to the failure of the applicant to timely submit information required or requested to process the application. No source required to have a permit under the operating permit program shall be in violation of W.S. 35-11-203 before the date on which the source is required to submit an application under subsection (a) of this section.+>>

<<+(d) A copy of each permit application, compliance plan, schedule of compliance, emissions or compliance monitoring report, certification, and each permit issued under the operating permit program, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under section 114(c) of the Clean Air Act, W.S. 35-11-1101(a) or 16-4-203(d)(v), the applicant or permittee may submit the information separately. The requirements of section 114(c), W.S. 35-11-1101(a) and 16-4-203(d)(v) shall apply to the information. The contents of a permit shall not be entitled to protection under section 114(c), W.S. 35- 11-1101(a) or 16-4-203(d)(v).+>>

<< WY ST § 35-11-206 >>

<<+35-11-206. Operating permit requirements and conditions.+>>

<<+(a) Every permit issued under the operating permit program shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the department no less often than every six (6) months, the results of any required monitoring, and other conditions as are necessary to assure compliance with applicable requirements established pursuant to this article and the Clean Air Act.+>>

<<+(b) The department may by rule prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under the Clean Air Act and this article, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. Nothing in this subsection shall be construed to affect any continuous emissions monitoring requirement of title IV of the Clean Air Act, or where required elsewhere in the Clean Air Act.+>>

<<+(c) Every permit issued under the operating permit program shall set forth inspection, entry, monitoring, compliance certification and reporting requirements to assure compliance with the permit terms and conditions. Monitoring and reporting requirements shall conform to any applicable regulation under subsection (b) of this section. Any report required to be submitted by a permit issued to a corporation under the operating permit program shall be signed by a responsible corporate official, who shall certify its accuracy.+>>

<<+(d) The department may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to permits under title V of the Clean Air Act and the operating permit program. No source covered by a general permit shall thereby be relieved from the obligation to file an application under W.S. 35-11-205.+>>

<<+(e) The department may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of the operating permit program and the Clean Air Act at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under part C of title I of the Clean Air Act. Any such permit shall in addition require the owner or operator to notify the department in advance of each change in location. The department may require a separate permit fee for operations at each location.+>>

<<+(f) Every permit issued pursuant to the operating permit program shall:+>>

<<+(i) Be issued for a fixed term of five (5) years unless the department makes a finding, after public comment and hearing, and based on substantial evidence in the record, that an operating permit term of less than five (5) years is necessary to protect the public health and the environment except that operating permits to any affected source as defined in section 501 of the Clean Air Act shall be issued for no less and no more than five (5) years;+>>

<<+(ii) Be subject to termination, modification, revocation or reissuance for cause;+>>

<<+(iii) Allow for operational flexibility at the permitted facility without revising the permit; and+>>

<<+(iv) Be subject to revision by the department to incorporate applicable requirements under the Clean Air Act and this article which are promulgated after the permit is issued if the remaining term of the permit is for a term of three (3) or more years. Any revision required by this paragraph shall be acted on by the department within the time limits provided in W.S. 35-11- 205(a).+>>

<< WY ST § 35-11-207 >>

<<+35-11-207. Notification to the environmental protection agency and contiguous states.+>>

<<+(a) The department shall transmit to the environmental protection agency:+>>

<<+(i) A copy of each permit application and any application for a permit modification or renewal or any portion thereof including any compliance plan, as the environmental protection agency may require to effectively review the application and otherwise carry out its responsibilities under the Clean Air Act; and+>>

<<+(ii) A copy of each permit proposed to be issued and issued as a final permit.+>>

<<+(b) The department shall provide notice of each permit application or proposed permit forwarded to the environmental protection agency under this section, to all

states:+>>

<<+(i) Whose air quality may be affected and that are contiguous to this state;  
or+>>

<<+(ii) That are within fifty (50) miles of the source.+>>

<<+(c) The department shall provide an opportunity for states notified pursuant to subsection (b) of this section to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations are not accepted by the department it shall notify the state submitting the recommendations and the environmental protection agency in writing of its failure to accept those recommendations and the reasons therefor.+>>

<<+(d) Upon receipt of timely objection by the environmental protection agency under title V of the Clean Air Act the department shall not issue any permit under the operating permit program unless it is revised and issued in accordance with section 505(c) of the Clean Air Act. Any permit issued under the operating permit program shall be subject to revocation or revision by the department throughout the period of time that EPA may object under title V of the Clean Air Act.+>>

<< WY ST § 35-11-208 >>

<<+35-11-208. Review of actions on applications.+>>

<<+(a) An applicant may seek relief pursuant to W.S. 35-11-802 on any final action taken on a permit including the director's refusal to grant a permit under the operating permit program or failure to act on a completed application within eighteen (18) months.+>>

<<+(b) Any person who participated in the public comment process on a permit application and who is aggrieved by any final action taken by the director on a permit application may seek relief pursuant to W.S. 35-11-1001.+>>

<< WY ST § 35-11-209 >>

<<+35-11-209. Small business stationary source technical and environmental compliance assistance program.+>>

<<+(a) The department shall act as ombudsman for small business stationary sources in connection with implementation of the operating permit program and the Clean Air Act.+>>

<<+(b) As ombudsman the department shall, in accordance with section 507 of the Clean Air Act, submit to the environmental protection agency plans for establishing a small business stationary source technical and environmental compliance assistance program.+>>

<<+(c) The program shall be implemented by rules adopted by the department and shall contain:+>>

<<+(i) Adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Clean Air Act;+>>

<<+(ii) Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution;+>>

<<+(iii) A compliance assistance program for small business stationary sources which assists small business stationary sources in determining applicable requirements and in receiving permits under the operating permit program and the Clean Air Act in a timely and efficient manner;+>>

<<+(iv) Adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Clean Air Act in a manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under the operating permit program or the Clean Air Act;+>>

<<+(v) Adequate mechanisms for informing small business stationary sources of their obligations under the operating permit program and the Clean Air Act, including mechanisms for referring such sources to qualified auditors or, at the option of the state, for providing audits of the operations of such sources to determine compliance with the Clean Air Act;+>>

<<+(vi) Procedures for consideration of requests from a small business stationary source for modification of:+>>

<<+(A) Any work practice or technological method of compliance; or+>>

<<+(B) The schedule of milestones for implementing a work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of the small business stationary source. No modification may be granted unless it is in compliance with the applicable requirements established pursuant to this article, the Clean Air Act, and the requirements of the operating permit program.+>>

<<+(d) Except as provided in subsection (e) of this section, for purposes of this section, "small business stationary source" means a stationary source that:+>>

<<+(i) Is owned or operated by a person that employs one hundred (100) or fewer individuals;+>>

<<+(ii) Is a small business concern as defined in the Small Business Act;+>>

<<+(iii) Is not a major stationary source as defined in W.S. 35-11-203(a)(i)(A);+>>



<<+(iv) Does not emit fifty (50) tons or more per year of any regulated pollutant; and+>>

<<+(v) Emits less than seventy-five (75) tons per year of all regulated pollutants.+>>

<<+(e) Upon petition by a source, the department may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this section any stationary source which does not meet the criteria of paragraphs (d)(iii), (iv) or (v) of this section but which does not emit more than one hundred (100) tons per year of all regulated pollutants.+>>

<<+(f) The department, in consultation with the environmental protection agency and the administrator of the small business administration and after providing notice and opportunity for public hearing, may exclude from the small business stationary source definition under this section any category or subcategory of sources that the department determines to have sufficient technical and financial capabilities to meet the requirements of the Clean Air Act without the application of this section.+>>

<< WY ST § 35-11-210 >>

<<+35-11-210. Small business assistance program advisory panel.+>>

<<+(a) There is created a compliance advisory panel consisting of the following nine (9) members:+>>

<<+(i) Two (2) members, who are not owners, or representatives of owners, of small business stationary sources, shall be appointed by the governor to represent the general public;+>>

<<+(ii) Four (4) members shall be appointed by the legislature who are owners, or who represent owners of small business stationary sources. One (1) member each shall be appointed by the majority and minority leadership of the house of representatives and one (1) member each shall be appointed by the majority and minority leadership of the senate;+>>

<<+(iii) One (1) member shall be selected by the director of the department to represent the department;+>>

<<+(iv) Two (2) members who represent major source operators in the state of Wyoming, shall be appointed by the governor.+>>

<<+(b) The panel shall:+>>

<<+(i) Render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement;+>>

<<+(ii) Make periodic reports to the environmental protection agency required under title V of the Clean Air Act;+>>

<<+(iii) Review information for small business stationary sources to assure such information is understandable by the layperson; and+>>

<<+(iv) Have the small business stationary source technical and environmental compliance assistance program serve as the secretariat for the development and dissemination of such reports and advisory opinions.+>>

<<+(c) Except for the initial members the panel members shall serve four (4) year terms and may be reappointed. The legislative members appointed from the house of representatives shall initially serve two (2) year terms. One (1) member appointed by the governor shall initially serve a three (3) year term. A vacancy occurs if a member ceases to meet the qualifications specified in subsection (a) of this section. A vacancy shall be filled in the same manner as the original appointment. The panel shall select from its members a chairman. The panel shall hold at least four (4) regularly scheduled meetings each year, and may hold special meetings as called by the chairman. Five (5) members shall constitute a quorum for the purposes of conducting business, but all decisions must be approved by a majority of the total membership of the panel. Each member, except the department representative, shall be reimbursed for per diem, mileage and expenses for attending panel meetings in the same manner and amount as state employees. The department representative shall suffer no loss of wages for the time devoted to the duties of the panel.+>>

<<+(d) The panel shall be in addition to and operate separate from the advisory boards created pursuant to W.S. 35-11-103.+>>

<< WY ST § 35-11-211 >>

<<+35-11-211. Fees.+>>

<<+(a) The department shall implement a permit fee system and schedule of fees adequate to cover all reasonable direct and indirect costs of reviewing and acting upon any construction and modification permits under this article and developing, implementing and administering the operating permit program including the small business technical assistance program.+>>

<<+(b) Permit fees shall be assessed against operators of sources applying for any permit under this article and annually thereafter for the duration of the permit. The fee for operating sources shall be based on the emissions of each regulated pollutant, as defined in section 502(b)(3)(B)(ii) of the Clean Air Act. The department shall exclude any amount of regulated pollutant emitted by any source in excess of four thousand (4,000) tons per year in determining the amount of fee required for any operating source. A fee shall be assessed upon applicants for construction and modification permits based on costs to the department in reviewing and acting upon those permit applications. The department shall develop a fee structure which equitably assesses the fees based on emissions for operating sources and projected costs of reviewing and acting upon construction and modification permits sufficient to recover the amount reviewed by the joint

appropriations committee and appropriated by the legislature for implementing the operating permit program. The fee structure and appropriation shall be based upon measurable goals and approved by the joint appropriations committee prior to implementation. The department shall prepare a biennium report for review by the joint minerals, business and economic development committee by October 31 of the year prior to the Wyoming legislative budget session. Permit fees shall cover all reasonable direct and indirect costs including the costs of:++>>

<<+(i) Reviewing and acting upon any permit application including construction and modification permit applications;+>>

<<+(ii) Implementing and enforcing permits;+>>

<<+(iii) Emissions and ambient monitoring;+>>

<<+(iv) Preparing regulations and guidance;+>>

<<+(v) Modeling analyses and demonstrations;+>>

<<+(vi) Preparing emission and source inventories and tracking emissions;+>>

<<+(vii) Permit-related functions performed by the department;+>>

<<+(viii) Development and administration of the state small business assistance program; and+>>

<<+(ix) Information management activities.+>>

<<+(c) The fees collected by the department pursuant to this section shall be deposited in a separate account within the earmarked revenue fund, and shall be subject to appropriation by the legislature to the department solely for permitting construction and modification and for the development and administration of the construction, modification and operating permit programs.+>>

<<+(d) The department shall give written notice of the amount of the fee to be assessed and the basis for the assessment to the operator of the source. The operator may appeal the assessment to the council within twenty (20) days after receipt of the written notice. The appeal shall be based only upon the allegation that the particular assessment is erroneous or excessive and may not be based upon the entire fee schedule adopted to fund the permitting programs. The contested case procedures of the Wyoming Administrative Procedure Act shall apply to any appeal under this subsection.+>>

<<+(e) If any part of the assessment is not appealed it shall be paid to the department upon receipt of the written notice.+>>

<<+(f) The department may reduce any fee required under the operating permit program to take into account the financial resources of small business stationary sources.+>>

<<+(g) There shall be no double counting of the regulated emissions for the purpose of fee determination.+>>

<< WY ST § 35-11-212 >>

<<+35-11-212. Operating permit program not to affect acid rain allowances.+>>

<<+(a) Nothing in W.S. 35-11-203 through 35-11-212 shall be construed as affecting allowances under the allowance program and phase II compliance schedule under the acid rain provisions of title IV of the federal Clean Air Act.+>>

<<+(b) Nothing in W.S. 35-11-203 through 35-11-212 shall be construed as affecting the department's permitting or other regulation of the construction or modification of sources pursuant to W.S. 35-11-202 including rules in effect as of April 1, 1992 or subsequently promulgated under W.S. 35-11-202.+>>

Section 2. W.S. 35-11-103(b) by creating a new paragraph (iii), by renumbering (iii) as (iv) and by creating new paragraphs (v) and (vi) and 35- 11-801(b) are amended to read:

<< WY ST § 35-11-103 >>

35-11-103. Definitions.

(b) Specific definitions applying to air quality:

<<+(iii) "Clean Air Act" means the Federal Clean Air Act of 1977, as amended by P.L. 101-549;+>>

<<-(iii)->><<+(iv)+>> "Emission" means a release into the outdoor atmosphere of air contaminants<<+;+>><<-.>>

<<+(v) "Operating permit program" means the permitting program authorized by W.S. 35-11-203 through 35-11-212 implementing a state plan pursuant to the 1990 amendments to the Clean Air Act;+>>

<<+(vi) "Stationary source" means any building, structure, facility or installation which emits or may emit any air contaminant.+>>

<< WY ST § 35-11-801 >>

35-11-801. Issuance of permits.

(b) <<+Except as otherwise provided in this act+>> the director shall take final action on any application for permit or extension thereof within sixty (60) days after receipt of same unless public notice or hearing is required by state or federal statute.

Section 3. This act is effective immediately upon completion of all acts necessary

for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

Approved March 17, 1992.

WY LEGIS 1SS 70 (1992)

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