

CHAPTER 5

RULES OF PRACTICE AND PROCEDURE BEFORE THE WYOMING OIL AND GAS CONSERVATION COMMISSION

Section 1. Adoption of Rules.

(a) Sections 1 through 27 of this chapter shall be known and designated as the "Rules of Practice and Procedure" before the Wyoming Oil and Gas Conservation Commission (Commission) and shall apply in all proceedings before the Commission or its examiners relating to the conservation of oil and gas, and in the administration by the Commission of the Wyoming Conservation Act and the rules adopted by this Commission thereunder.

(b) The Commission hereby incorporates by reference the following, which can be found at:

https://www.courts.state.wy.us/wp-content/uploads/2017/05/WYOMING_RULES_OF_CIVIL_PROCEDURE.pdf

(i) Wyoming Rules of Civil Procedure, Rule 24 (Intervention), adopted by the Wyoming Supreme Court and in effect on March 1, 2017;

(ii) Wyoming Rules of Civil Procedure, Rule 45 (Subpoenas), adopted by the Wyoming Supreme Court and in effect on March 1, 2017;

(c) For these rules incorporated by reference:

(i) The Commission has determined that incorporation of the full text of these rules would be cumbersome or inefficient given the length or nature of the rules;

(ii) The incorporation by reference does not include any later amendments or editions of the incorporated matter beyond the applicable date identified in subsection (b) of this section; and

(iii) The incorporated rules are maintained at the Commission and are available for public inspection and copying at the same location.

Section 2. Commencement of Proceedings and Continuances.

(a) Proceedings are commenced by the filing of an electronic copy and an original of a verified and complete application as defined in Chapter 1, Section 2, or a protest, complete with a map or plat showing the area affected by the application, with the State Oil and Gas Supervisor, and the payment to the Secretary of the Commission of a filing fee of two hundred fifty dollars (\$250.00).

(i) Proceedings for aquifer exemptions and injection/disposal permits are commenced by filing an original and seven (7) copies of a verified and complete application as defined in Chapter 1, Section 2, and in Chapter 4, Sections 5, 7 and 12, complete with a map or plat showing the area affected by the application, with the State Oil and Gas Supervisor, and the payment to the Secretary of the Commission of a filing fee of two hundred fifty dollars (\$250.00).

(b) Continuances may be requested by notifying the Commission and affected parties of the continuance at least three (3) working days prior to the hearings. In the event the three-day notice is not given, the Commission may dismiss the application without prejudice. An application may be continued by the Supervisor two (2) times after the initial filing. Thereafter, a continuance requires Commission approval. If an application is continued at the request of any party, the requesting party shall be assessed one hundred twenty-five dollars (\$125.00) for each continuance.

Section 3. Docket and Copies.

When a proceeding is initiated, the Supervisor or designee shall assign a docket number and enter the proceeding, with the date of its filing, on a separate page of a docket provided for such purpose. Thereafter, all pleadings and filings in the same proceeding shall be filed and shall bear the docket number so assigned.

Section 4. Filing and Service of Papers.

(a) In all contested cases, the parties shall file all original documents, pleadings, and motions with the Commission, as applicable, with true and correct copies of the particular document, pleading, or motion properly served on all other parties accompanied by a certificate of service. The Commission shall maintain the complete original file, and all parties and the hearing officer shall be provided copies of all contested case documents, pleadings, and motions contained therein.

(b) Filing and service under this rule shall be made either by hand delivery or by U.S. mail transmittal to the last known address. Parties wishing to file by means other than those described in this Section shall obtain preapproval from the Commission.

Section 5. Notice of Complaints and Applications.

The manner and time for giving notice of complaints and applications and the time and place for hearings shall be in accordance with the provisions of the Wyoming Conservation Act and these rules. In addition to any other notice required by the statutes or these rules, the applicant shall notify those owners, as defined by the Wyoming Conservation Act, of the subject lands and other lands within one-half (1/2) mile of the boundaries of the subject lands or location where the operation is to be undertaken.

Section 6. Attorneys.

(a) A party, whether it be an individual, corporation, partnership, governmental organization, or other entity may appear through an attorney or representative. An individual may represent himself/herself. An individual or entity seeking to intervene in a contested case under Rule 24 of the Wyoming Rules of Civil Procedure (W.R.C.P.) may appear through an attorney or representative prior to a ruling on the motion to intervene.

(b) Prior to withdrawing from a contested case, an attorney shall file a motion to withdraw. The motion for an attorney's withdrawal shall include a statement indicating the manner in which notification was given to the client and setting forth the client's last known address and telephone number. The hearing officer or Commission shall not grant the motion to withdraw unless the attorney has made reasonable efforts to give actual notice to the client that:

(i) the attorney wishes to withdraw;

(ii) the client has the burden of keeping the hearing officer or Commission informed of the address where notices, pleadings, or other papers may be served;

(iii) the client has the obligation to prepare, or to hire another attorney or representative to prepare, for the contested case and the dates of proceedings;

(iv) the client may suffer an adverse determination in the contested case if the client fails or refuses to meet these burdens;

(v) the pleadings and papers in the case shall be served upon the client at the client's last known address; and

(vi) the client has the right to object within 15 days of the date of notice.

Section 7. Subpoenas.

Any party may request the hearing officer or Commission to issue a subpoena to compel the attendance of a witness or for the production of documents. Requests for the issuance of a subpoena shall be accompanied by a completed subpoena, which shall conform to Rule 45 of the W.R.C.P.

Section 8. Discovery.

(a) The taking of depositions and discovery shall be in accordance with WYO. STAT. ANN. § 16-3-107(g).

(b) Unless the hearing officer or adjudicative agency orders otherwise, parties shall not file discovery requests, answers, and deposition notices with the hearing officer or adjudicative agency.

Section 9. Repealed.

Section 10. Appointment of Examiners.

The Commission may appoint one or more examiners, pursuant to WYO. STAT. ANN. § 30-5-105, to conduct hearings in accordance therewith.

Section 11. Hearings before the Commission.

(a) Hearings in the following matters and proceedings shall be heard by the Commission as provided by WYO. STAT. ANN. § 30-5-106 and these rules. The Commission shall designate one of its members as a hearing officer to conduct the hearing.

(b) Matters or proceedings in which an interested party who may be affected by an order of the Commission in the matter or proceeding files a written objection to a matter being heard before an examiner at least three (3) days prior to the date set for the hearing on the matter or proceeding. The applicant shall be entitled to a continuance in the event a protest is filed less than ten (10) days prior to a scheduled hearing. No action shall be taken on an objection or protest that is not timely filed. The written protest must state the grounds of the protest and include information and evidence to demonstrate that:

(i) The protestant is a party entitled to notice or relief under WYO. STAT. ANN. §§ 30-5-101 through 30-5-128, and WYO. STAT. ANN. §§ 30-5-401 through 30-5-410.

(ii) The protestant seeks a remedy that is within the jurisdiction and authority of the Commission.

(c) Any decision by the Supervisor may be appealed to the Commission.

Section 12. Hearings before an Examiner.

(a) Pursuant to WYO. STAT. ANN. § 30-5-105, all matters and proceedings for which a hearing is required shall be set for public hearing before an examiner.

(b) Hearings before examiners shall be conducted informally. Oral statements may be made, and questions may be asked by any interested party, or by the examiner. The record of such a hearing shall consist solely of the appearances of interested parties, the verified application, and any exhibits, pleadings, written statements, or other

documentary evidence submitted by the interested parties. Transcripts shall be made of hearings on aquifer exemption matters only.

(c) After the conclusion of any hearing conducted before an examiner, the examiner shall submit a recommendation for the disposition of the proceeding to the Commission. The Commission shall consider the report and recommendations by the examiner(s), and the record of the hearing, and shall ratify or deny the recommendation of the examiner(s). A written order shall be issued.

Section 13. Repealed.

Section 14. Rehearing before the Commission.

Any interested party may, within thirty (30) days from the date the matter was heard by the Commission or an examiner, file a written request for a rehearing. A rehearing may also be ordered if recommended by an examiner, or if the Commission is of the opinion that an order should not be entered as recommended by the examiner. A rehearing shall be conducted as a de novo proceeding in the same manner as other hearings before the Commission.

Section 15. Operations Which May be Approved Administratively; Notice.

(a) In cases in which the applicant requests approval of an operation, which under the statutes or the rules of the Commission may be approved by the Supervisor as an administrative matter (including but not limited to horizontal well applications, exception location applications, or surface commingling applications), the applicant shall file one (1) copy of the application with the Commission. Injection well permit applications require an original and seven (7) copies of the application. Applications shall set forth all material facts involved including any specific information required by the rule or statute authorizing administrative approval of the operation.

(b) In addition to any other notice required by the statute or these rules, the applicant shall notify those owners within one-half (1/2) mile from the well or wells in which such operation is to be undertaken. The applicant requesting an exception to the well location requirements give notice as required by WYO. STAT ANN. § 30-5-109(c)(ii). The notice to be given by applicant shall be by mail (which mailing shall be by registered or certified mail where so required by statute or these rules) and shall set forth the nature of the application and the lands thereby affected. Proof of the mailing of such notice shall be by affidavit, which shall contain a list of names and addresses of all parties given notice by the applicant, and such affidavit must be filed with the Supervisor before any action is taken on the application.

(c) The operation proposed in the application shall be approved by the Supervisor administratively and without hearing unless:

(i) The applicant requests a hearing; or

(ii) A written objection to the application by an interested person entitled under these rules or by statute to receive notice by mail of the filing of the application, is filed with the Supervisor within fifteen (15) days after the required mailing is shown to have been made. Provided, that if there are filed with the Supervisor written consents to the application from all such persons otherwise entitled to notice by mail of the filing thereof, said Supervisor may immediately approve the application without awaiting the expiration of said fifteen (15) day period; or

(iii) The Supervisor in his discretion is of the opinion that a hearing is necessary or desirable; or

(iv) The Supervisor determines that the application should not be approved. If the application is not approved, the Supervisor shall promptly advise the applicant and state the reasons therefore.

(d) If any such written objections to such application are properly filed, as provided above, or if the Supervisor determines that a hearing is necessary or desirable or, if the applicant requests a hearing, the application shall be set for hearing and notice of the time, place and purpose of the hearing shall be given by the applicant to all owners to whom the applicant gave notice of the filing of the application at least ten (10) days before the date of such hearing. Such notice shall be by registered or certified mail with return receipt requested.

Section 16. Conservation Tax Disputes.

(a) An oil or gas producer may apply to the staff of the Wyoming Oil and Gas Conservation Commission or to the Commission for a refund or adjustment of the mill levy conservation tax he has paid. Except as otherwise provided in this rule, said application must be made within one (1) year of the date the tax was due or paid, must be in writing, and state the grounds for the refund and the amount. The Commission and the staff may disregard any application for refund or grounds for refund not complying with this. If the staff does not consent to a refund, it shall so notify the producer. The producer shall have thirty (30) days from the date such notice is mailed to file a petition for review by the Commission. If he does so, the Commission shall set the matter for hearing and make a determination.

(b) If the producer and the staff do not agree on the amount of the tax due, the producer may pay the amount claimed by the staff under protest. Such protest shall be in writing and state the amount of the tax that is being protested and the grounds. The Commission may disregard any protest of taxes or grounds of protest not complying with this; otherwise, the Commission will set the matter for hearing and make a decision.

(c) In the case of unitized operations, an application for a refund or adjustment of the mill levy conservation tax must be made within one (1) year of the determination of the adjustment resulting under the applicable unitization agreement.

(d) Notwithstanding any provision in this rule, any refund claim filed after one (1) year of the date the tax was due or paid and approved by the Commission may be allowed as a credit on the producer's current year's or subsequent year's mill levy conservation tax obligation.

(e) If the Commission agrees with a protest or a request for a refund, it shall refund the amount overpaid by the producer without interest. The Commission may refuse to make a refund in an amount less than ten dollars (\$10.00).

(f) Natural Gas which is vented or flared under authority of the Wyoming Oil and Gas Conservation Commission and natural gas which is reinjected or consumed prior to sale for the purpose of maintaining, stimulating, treating, transporting, or producing crude oil or natural gas on the same lease or unit from which it was produced is exempt from the mill levy conservation tax of WYO. STAT. ANN. § 30-5-116.

Section 17. Removal of Abandoned Oil Field Equipment.

(a) When oil field equipment has been abandoned, as defined in Chapter 1, Section 2, the Commission may, after notice and a hearing, deem the equipment abandoned and dispose of the equipment by public sale or by transferring title to the contractor who performs the plugging and reclamation for the Commission. In doing so, the Commission shall proceed as follows:

(i) Provide notice to the Owner of the well, as identified on Form 7 (Change of Owner), the Operator as identified on Form 6 (Designation of Operator), and to lien holders as reflected by the lien filing records of the Wyoming Secretary of State and the County Clerk of the county in which the equipment is located;

(ii) Check the lien filings with the Secretary of State and County Clerk within thirty (30) days prior to giving this notice:

(A) Notice shall be sent by certified mail to the Owner's and Operator's address of record with the Commission, or the Wyoming Secretary of State's corporation record, and to the lien holder's address of record as reflected by the lien document.

(B) The notice shall advise the parties of the general description and location of the equipment and that, if the equipment is not removed within thirty (30) days of the mailing of notice, the Commission will deem it abandoned, and transfer possession and ownership of the equipment to the Commission or to the person who plugs the well, reclaims the drill site, or who will remove the equipment.

(b) If the equipment is not removed within the thirty (30) days, the Commission may set the matter for hearing. Notice of the hearing shall be mailed by certified mail to the Owner/Operator and lien holders, as determined above, at least ten (10) days prior to the hearing. Notice to remove the equipment and notice of hearing before the Commission may be combined.

(c) After a hearing, and upon proof of compliance with the above procedures, the Commission may find the equipment has been abandoned and issue an order which transfers ownership of the equipment, free and clear, to the Commission or to the person who reclaims the drill site, plugs the well, or removes the equipment.

Section 18. Repealed.

Section 19. Commission Meetings.

(a) The Wyoming Oil and Gas Conservation Commission shall meet the second Tuesday of each month, unless otherwise approved by the Commission, at the Commission's Conference Room at 9:00 a.m.

(b) The Commission shall meet at such other times as necessary at the time and place designated by the Commission Chairman.

Section 20. Commission Office.

The Commission office shall be located at 2211 King Boulevard, Casper, Wyoming.

Section 21. Burden of Proof.

The hearing officer or Commission shall assign the burden of proof in accordance with applicable law.

Section 22. Evidence.

(a) The hearing officer or Commission shall rule on the admissibility of evidence in accordance with the following:

(i) evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(ii) evidence may be offered through witness testimony or in documentary form;

(iii) testimony shall be given under oath administered by the hearing officer. Deposition testimony and other prefiled testimony may be submitted as evidence, provided the testimony is given under oath administered by an appropriate authority, and is subject to cross-examination by all parties;

(iv) the rules of privilege recognized by Wyoming law shall be given effect; and

(v) a hearing officer or Commission may take administrative notice of judicially cognizable facts, provided the parties are properly notified of any material facts noticed.

(b) Each party shall have the opportunity to cross-examine witnesses. The hearing officer or Commission may allow cross-examination on matters not covered on direct examination.

(c) The hearing officer, the hearing panel, agency staff, or other persons delegated to do so by the hearing officer or hearing panel, when applicable, may ask questions of any party or witness.

Section 23. Default.

Unless otherwise provided by law, the Commission or hearing officer may enter an order of default for a party's failure to appear at a lawfully noticed hearing.

Section 24. Settlements.

Parties shall promptly notify the Commission or hearing officer of all settlements, stipulations, agency orders, or any other action eliminating the need for a hearing. When the contested case has settled, the Commission may enter an order, on its own motion, dismissing the case.

Section 25. Ex Parte Communications.

Except as authorized by law, a party or a party's attorney or representative shall not communicate with the hearing officer or Commission member in connection with any issue of fact or law concerning any pending contested case, except upon notice and opportunity for all parties to participate. Should ex parte communication occur, the hearing officer or hearing panel member shall advise all parties of the communication as soon as possible thereafter and, if requested, shall allow any party an opportunity to respond prior to ruling on the issue.

Section 26. Computation of Time.

(a) In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statutes, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. As used in this rule, “legal holiday” includes any day officially recognized as a legal holiday in this state by designation of the legislature, appointment as a holiday by the governor or the chief justice of the Wyoming Supreme Court, or any day designated as such by local officials.

(b) Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party, and the notice or paper is served upon the party by mail or by delivery to the agency for service, three days shall be added to the prescribed period.

Section 27. Referral for Contested Case Hearing.

(a) After notice to the parties and opportunity to be heard regarding the nature and complexity of the case, the Commission may, at its discretion, or if so requested by a party to the proceeding, refer, assign, or designate one or more hearing officers to preside over any unusually complex cases, unless otherwise provided by law.

(b) To the extent a specific section has not been amended in these rules, contested cases referred under this section shall be conducted pursuant to the Office of Administrative Hearings (OAH) Uniform Rules for Contested Case Practice and Procedure, Chapter 2, adopted by the Office of Administrative Hearing and in effect on July 20, 2017, and found at: <https://rules.wyo.gov>.

(c) The Commission has determined that the incorporation of the full text in the Office of Administrative Hearings Uniform Rules for Contested Case Practice and Procedure would be cumbersome or inefficient given the length and nature of the rule.

(d) The following sections of OAH Chapter 2 have been adopted, as amended, by the Commission as part of Chapter 5, and shall have precedence over the corresponding OAH Chapter 2 sections:

<u>WOGCC</u>	<u>OAH</u>	
<u>Chapter 5, Section</u>	<u>Chapter 2, Section</u>	
2	16	Continuances
26	12	Computation of Time