

1974

## Wyoming Environmental Quality Act of 1973 - Introduction

Editor

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### Recommended Citation

Editor (1974) "Wyoming Environmental Quality Act of 1973 - Introduction," *Land & Water Law Review*: Vol. 9 : Iss. 1 , pp. 65 - 67.

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## COMMENTS

### WYOMING ENVIRONMENTAL QUALITY ACT OF 1973

#### INTRODUCTION

The Wyoming Legislature recently approved the Environmental Quality Act of 1973.<sup>1</sup> The Act recognizes that degradation of air, water and land resources is an important and pressing concern to the state. The statutory and administrative environmental protection systems were re-organized and updated to enable the state to "prevent, reduce and eliminate pollution."<sup>2</sup>

The legislature sought to retain state control of environmental protection efforts by setting standards comparable to minimum federal standards, and by providing flexible regulatory procedures capable of adjusting to changes in those minimum federal standards. The Act provides for elimination of present pollution and for planning to prevent future pollution.<sup>3</sup>

Two features of the Act are worthy of note. First is the disparity between the provisions of the land quality section, Article Four, and those of the other sections which deal with air, water, and solid waste management.<sup>4</sup> The Land Quality article contains fairly specific standards against which the performance of the administrators may be judged.<sup>5</sup> These standards also provide guidance for the formulation of new rules and regulations. The other three sections of the Act, however, establish an administrative structure without statutory guidelines. The emphasis which the legislature placed on land quality is doubtless a reflection of its concern about the magnitude of impending surface mining activities. The legislature did not deal directly with air and water quality

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1. WYO. STAT. §§ 35-502.1 to .56 (Supp. 1973).

2. WYO. STAT. § 35-502.2 (Supp. 1973).

3. WYO. STAT. § 35-502.2 (Supp. 1973); 42 U.S.C. § 1857(b)(1) (1970). The Wyoming Act parrots language from the federal Clean Air Act.

4. Air Quality provisions are found in Article 2 of the Act, WYO. STAT. § 35-502.16 to .17 (Supp. 1973). Water Quality provisions are listed in Article 3, WYO. STAT. §§ 35-502.18 to .19 (Supp. 1973). Solid Waste management provisions are in Article 5, WYO. STAT. § 35-502.42 to .44 (Supp. 1973).

5. See WYO. STAT. §§ 35-502.21 and .25 (Supp. 1973).

standards because these areas are covered extensively under federal law.

Second, the Act completely reorganizes the state agencies which deal with environmental protection by transferring the powers and duties of pre-existing governmental entities to the new Department of Environmental Quality.<sup>6</sup> The department is headed by a director who is appointed by the governor. It is composed of an independent Environmental Quality Council, separate administrative divisions for land, air and water quality, and advisory boards for each of the three divisions. Each board will include a representative of industry, agriculture and political subdivisions and two members representing the public interest.<sup>7</sup> Their purpose is to assist the administrators of the divisions in formulating rules and regulation and to act as general consultants to the administrator. Members of the Council, the advisory boards and the director are all appointed by the governor.

The Act superimposes the seven-member Environmental Quality Council on the regular administrative structure.<sup>8</sup> The Council has both quasi-legislative and quasi-judicial authority. It is responsible for promulgating rules and regulations that have been recommended by the division administrators and their advisory boards. It also acts as a hearing examiner for cases arising under these rules and regulations and must approve cease and desist orders issued by the director. The Council may also prohibit surface mining in certain areas by designating them unique historical, archeological or scenic sites.<sup>9</sup>

The day-to-day administration of the Act is handled by the division administrators who are appointed by the director. They will issue all permits, and licenses, set bonds, determine specific pollution standards, conduct inspections and monitoring activities and recommend rules and regulations for promulgation by the Council.<sup>10</sup> The advisory board in each division will work in conjunction with the administrator in recom-

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6. WYO. STAT. § 35-502.6.

7. WYO. STAT. §§ 35-502.13.

8. WYO. STAT. §§ 35-502.11 and .12.

9. WYO. STAT. §§ 35-502.12(a)(v) and .24(g)(iv).

10. WYO. STAT. § 35-502.10.

mending the rules and regulations, preparing yearly reports to the governor and encouraging coordination with other departments and governmental agencies.

The director has the authority to carry out the general policies of the Act, conduct inspections and investigative activities, commission research projects, administer grants, issue emergency cease and desist orders, and perform all acts necessary to the enforcement of the Act and its pursuant regulations.<sup>11</sup>

This department structure grants the Council broad latitude to determine the quality of Wyoming's air, water and land. Implementing the spirit as well as the specific statutory provisions of the Act will require appointment to the Council and advisory boards of individuals who are environmentally concerned, knowledgeable, reasonable and who are willing to enforce it. This ultimately places a heavy responsibility on the governor for implementing the Act.

The following four comments contain an explanation of the practical workings of the Act and an analysis of its potential strengths and weaknesses. Section I of the comment concerns the air quality provisions of the Act and was written by Marilyn S. Kite. The water quality provisions are covered in Section II, which was written by Ted Orf. The provisions concerning land quality are discussed in Section III; this was written by Robert E. Brown. Section IV on solid waste management, Section V on granting of variances under the Act, Section VI on permits and Section VII on enforcement were written by J. Michael Morgan.

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11. WYO. STAT. § 35-502.9.