

REGULATIONS IMPLEMENTING CODE 29A-3-2

RULES OF PROCEDURE

RECLAMATION BOARD OF REVIEW

FILED IN THE OFFICE OF
SECRETARY OF STATE
THIS DATE 4-17-79

WHEREAS, pursuant to the provisions of Section 2, Article 3, Chapter 29A of the West Virginia Code, 1931, as amended, the Reclamation Board of Review is an agency required to promulgate regulations by which rules of procedure are established for appeals before the Board;

NOW THEREFORE, BE IT PROMULGATED by the Board:

1.01. Scope

The procedures and rules of practice herein shall govern and apply to appeal hearings before the West Virginia Reclamation Board of Review.

1.02. Authority

These rules are promulgated pursuant to the authority of Article 3, Chapter 29A of the West Virginia Code, 1931, as amended, and Article 6, Chapter 20 of said Code.

1.03. Effective Date

These rules were promulgated on the 17th day of April, 1979, and become effective on the 17th day of May, 1979.

1.04. Filing Date

These rules were filed in the office of the Secretary of State on the 17th day of April, 1979.

1.05. Secretary Appointed; Duties

a. The Board may designate an employee of the Reclamation Division of the Department of Natural Resources to act as its secretary.

b. The secretary of the Board, upon request of any party to an appeal, will make available from the files of the Board any information required for a full presentation of the facts material to any appeal brought under these rules.

c. The secretary shall keep an Order Book containing all orders entered by the Board under these rules.

d. The secretary shall keep a formal docket in which shall be entered each appeal under these rules with a file number corresponding to the SMA number issued by the Department of Natural Resources for a surface mine permit application.

1.06. Filing and Service of Documents and Orders

a. Where to file. All documents required to be filed in an appeal under these rules shall be filed with the secretary of the West Virginia Reclamation Board of Review, Division of Reclamation, Department of Natural Resources, State Capitol, 1800 Washington Street, E., Charleston, West Virginia 25305.

b. How to file. All filing may be accomplished by personal delivery or first class mail.

c. When filing effective. Filing is effective upon delivery.

d. Copies to be served. Copies of all documents filed in an appeal under these rules shall be served upon all other parties.

e. Method of service; service on attorney. Service of documents shall be accomplished by personal delivery or by registered or certified mail, return receipt requested, unless otherwise provided in these rules. Whenever a party is represented by an attorney who has signed any document filed on behalf of such party or otherwise entered an appearance on behalf of such party, service thereafter shall be made upon the attorney.

f. When service effective. In the case of personal delivery, service is effective upon delivery. In the case of mailing, service is effective upon mailing.

g. Proof of service. Unless otherwise provided in these rules, all documents required to be served shall be accompanied by proof of service in the form of a certificate of service. The certificate of service shall include a statement of how service was accomplished.

1.07. Petitions; Notice of filing; When hearing held.

a. Any appeal to the Board under these rules shall be by written petition which shall set forth the final order of the director complained of and the specific grounds upon which the appeal is based. The petition as well as all subsequent pleadings, documents, motions and requests shall be filed with the secretary of the Board.

b. Notice of the filing of an appeal shall be filed with the director by the person or persons bringing the appeal, within three days after the appeal is filed with the secretary of the Board.

c. Within seven days after receipt of such notice of appeal, the director shall prepare and certify to the Board a complete record of the surface mine permit application out of which the appeal arises including all documents and correspondence relating to the matter. The expense of preparing the record shall be taxed as part of the costs of the appeal.

d. Upon the filing of such petition for appeal, the Board shall fix the time and place at which the hearing on appeal will be held within 20 days after the notice of appeal is filed and shall give the appellant or appellants and the appellee at least ten days written notice thereof by certified mail.

e. The filing of an appeal shall not stay the execution of the Order appealed from.

1.08. Hearing to be de novo; Presentation.

a. The Board shall hear the appeal de novo, with appellant(s) opening the hearing and presenting their testimony and exhibits offered in support of the petition. Appellant's witnesses will be subject to cross-examination by the Board or any other party to the appeal. At the conclusion of appellant's case, the appellee shall then present testimony and exhibits offered in support of his final order. After both initial presentations have been made, both the

appellant and the appellee will be invited to present rebuttal evidence on the issues in the case, where such evidence is not cumulative or immaterial to the case. All witnesses shall be subject to cross-examination as previously set forth.

b. All appeal hearings shall be conducted in accordance with Article 5 of Chapter 29A of the West Virginia Code of 1931, as amended, as if the same were herein set out in full.

c. Written stipulations by the parties to some or all the facts may be filed with the secretary before the hearing of an appeal or may be read into the record at the time the hearing is held.

d. Closing statements and statements of position may be made by the parties to the appeal before the hearing is closed or at such time as designated by the Board. No Order shall be made which is not supported by competent legal evidence as defined by Code 29A-5-2.

e. Appeal hearings shall be open to the public.

1.09. Continuance of Hearings.

After date for hearing has been set, continuances will not be granted by the Board except for good and sufficient cause. A party who desires a continuance shall, immediately upon receipt of notice of the hearing, or as soon thereafter as facts requiring such continuance comes to his knowledge, file a written motion with the Board stating in detail the reasons why such continuance is necessary. Such motion shall be filed at least five (5) days prior to the date

of hearing. In cases of hardship or other good cause a party may by oral motion move for a continuance at the time the proceeding is called for hearing. The Board may grant such a continuance and may at any time order a continuance upon its own motion.

1.10. Conduct at Hearings.

All parties to hearings, their counsel, and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind at hearings shall not be permitted. The Board may, at its discretion, recess or continue any hearing in which the parties, attorneys, witnesses or spectators conduct themselves in a disrespectful, disorderly or contemptuous manner which interferes with or prevents the proper conduct of such hearing.

1.11. Briefs, Oral argument.

A party may file a brief before the Board. The Board may require the filing of briefs and reply briefs or the presentation of oral argument or both by the parties. Requests for the filing of briefs or oral arguments shall be made before or at the conclusion of the taking of evidence. It is the policy of the Board to encourage oral argument in lieu of filing of briefs. The requirements of this rule may be altered by agreement of the parties with the consent of the Board.

1.12. Time for filing.

Unless otherwise ordered by the Board or unless briefs are to be filed simultaneously, the appellant(s) shall have twenty (20) days after the receipt of a transcript of the evidence in which to file

six (6) copies of its brief with the Board and to serve a copy thereof on each of the other parties to the case. The appellee shall have ten (10) days after receiving said briefs within which to file six (6) copies of its brief with the Board and serve a copy thereof on each of the other parties to the proceeding.

Adopted this 17th day of April, 1979, by the Reclamation Board of Review.

Attest:

Paul May
Chairman

Carolyn S. Hill
Secretary

These regulations to become effective thirty (30) days after filing with the Secretary of State.

STATE OF WEST VIRGINIA
RECLAMATION BOARD OF REVIEW

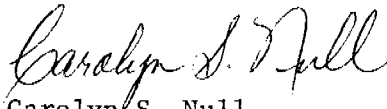
April 17, 1979

The Honorable A. James Manchin
Secretary of State
State Capitol
Charleston, West Virginia 25305

Dear Secretary Manchin:

The attached Regulations Implementing Code 29A-3-2, Rules of Procedure, Reclamation Board of Review, have been adopted by the members of the Reclamation Board of Review and are enclosed herewith for filing pursuant to the provisions of Section 2, Article 3, Chapter 29A of the West Virginia Code, 1931, as amended.

Sincerely,



Carolyn S. Null
Secretary
Reclamation Board of Review

CN
Attachment (3)

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Paul May
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