

FILED
1987 JAN -6 AM 10:04
SECRETARY OF STATE

NOTICE OF AGENCY ADOPTION

RULE TITLE: Procedural Rules Setting Forth Procedures in Appeals

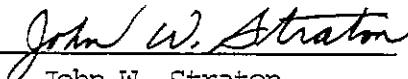
Reclamation Board of Review, Chapter 22, Article 4, Series 12

RULE TYPE: Procedural

The attached rule constitutes the official rule adopted by the West

Virginia Reclamation Board of Review

on January 6, 1987 and filed with the
Secretary of State.


John W. Straton
Chairman

STATE OF WEST VIRGINIA
RECLAMATION BOARD OF REVIEW
1615 East Washington Street
Charleston, West Virginia 25311

FILED

1987 JAN -6 AM 10:04

January 5, 1987

The Honorable Ken Hechler
Secretary of State
Capitol Building
Room 157-K
Charleston, West Virginia

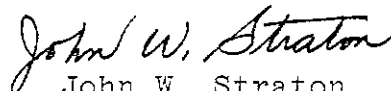
Dear Mr. Hechler:

Please find enclosed the agency adopted rule entitled Procedural Rules Setting Forth Procedures in Appeals Before the Board, Reclamation Board of Review, Chapter 22, Article 4, Series 12. Also included is the notice of agency adoption, the fiscal note, the public hearing record and the promulgation history and abstract. As indicated in Section 1 of the rule, the filing date is January 6, 1987 and the effective date is February 5, 1987.

These materials are respectfully submitted for recording and filing with your office.

Your cooperation in this matter is greatly appreciated.

Sincerely,


John W. Straton
Chairman

JWS/ba

Enclosures

FISCAL NOTE FOR PROPOSED RULES

Rule Title: WV Department of Energy, Reclamation Board of Review
Chapter 22, Article 4, Series 12

Type of Rule: ☐ Legislative ☐ Interpretive ☒ Procedural

Agency Reclamation Board of Review Address 1615 Washington Street, E.
Charleston, West Virginia 25311

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:

No costs are anticipated as a result of these regulations.

3. Objectives of these rules:

To establish administrative procedures for carrying out the duties of the Reclamation Board of Review and procedure for holding hearings and filing appeals to the Board.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date: January 6, 1987

Signature of Agency Head or Authorized Representative

John W. Straton
John W. Straton

STATE OF WEST VIRGINIA
RECLAMATION BOARD OF REVIEW
1615 East Washington Street
Charleston, West Virginia 25311

PUBLIC HEARING RECORD

PROCEDURAL RULES SETTING FORTH PROCEDURES
IN APPEALS BEFORE THE BOARD

RECLAMATION BOARD OF REVIEW

Chapter 22, Article 4, Series 12

December 15, 1986

A public hearing was held at 9:00 a.m. on December 15, 1986 at the West Virginia Department of Energy conference room, 1615 Washington Street, East, Charleston, West Virginia. The purpose of this hearing was to receive written and/or oral comments on the proposed procedural regulations entitled Reclamation Board of Review, Chapter 22, Article 4, Series 1. The hearing was conducted by and a record was taken by Mrs. Berma Amburgey, Secretary to the Board.

The record was opened by Mrs. Amburgey promptly at 9:00 a.m. No persons appeared to submit written or oral comments and the hearing record was closed at 10:00 a.m., December 15, 1986.

WEST VIRGINIA PROCEDURAL REGULATIONS
WEST VIRGINIA DEPARTMENT OF ENERGY
RECLAMATION BOARD OF REVIEW

CHAPTER 22-4

SERIES 12

WEST VIRGINIA PROCEDURAL REGULATIONS
WEST VIRGINIA DEPARTMENT OF ENERGY
RECLAMATION BOARD OF REVIEW

CHAPTER 22-4
SERIES 12

TITLE: **Procedural rules setting forth Procedures in Appeals
Before the Board

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Appendix "A" - Notice of Appeal
Notice of Hearing

File 224.12

File 49

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RULES OF PROCEDURE
WEST VIRGINIA DEPARTMENT OF ENERGY
RECLAMATION BOARD OF REVIEW

DEPARTMENT OF ENERGY
RECLAMATION BOARD

Chapter 22-4-1
Series 12 /

Title: Procedural Rules setting forth procedures in Appeals before the Reclamation Board of Review

Section 1.0 General.

1.1 Scope - The rules of procedure herein shall govern and apply to appeal hearings before the West Virginia Reclamation Board of Review. The purpose of these rules is to provide a fair and orderly ascertainment of the facts and to promote the ends of justice and fairness in the administration and effectuation of the statutory purpose of the appeal.

1.2 Authority and related Code Citations - These rules are promulgated pursuant to the authority of West Virginia Code ~~SS29A-3-3~~ and ~~22-4-2~~ and are promulgated to allow for appeals under the West Virginia Surface Mining Control and Reclamation Act, W. Va. Code ~~SS22A-3-1~~ et seq.

1.3 Filing Date - January 6, 1987.

1.4 Effective Date - February 5, 1987.

1.5 Repeal of Former Rule - These procedural rules repeal West Virginia Administrative Regulations, Department of Natural Resources, Chapter 20, Series VIII-6, filed December 30, 1982.

1.6 Forms.

- a. Petition for Appeal.
- b. Notice of Hearing.
- c. Motions will generally follow the format used in civil cases in the Circuit Courts of West Virginia.

Copies of forms prescribed by the Board are contained in Appendix "A" to these Rules of Procedure. The use of these forms is suggested by the Board but not mandatory.

Section 2.0 Secretary Appointed; Duties.

2.1 The Board may designate an employee of the Department of Energy to act as its secretary.

2.2 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.

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

2.4 The secretary shall keep a formal docket in which shall be entered each appeal under these rules with a file number to be set at the time the appeal is received by the Board's secretary.

Section 3.0 Hearing Examiner Appointed; Duties.

3.1 The Board may designate any person it deems qualified to serve as hearing examiner to act on its behalf. The hearing examiner will be compensated for time and expenses as approved by the Board.

3.2 The hearing examiner may be authorized to conduct hearings in lieu of the Board and to have the full authority and discretion to control the procedure of the hearing, to admit or exclude testimony or other evidence and to rule upon all motions and objections except the hearing examiner may not rule on motions which would be determinative of the Board's jurisdiction.

3.3 Not later than fifteen (15) days of the close of any said hearing the hearing examiner shall make a recommended decision with proposed findings of fact and conclusions of law. The Board shall review the hearing examiner's recommended decision and approve, modify or reject that decision. In no event shall the hearing examiner's decision become final without Board action.

3.4 The hearing examiner may sit with the Board as a whole to aid in conducting any hearings.

Section 4.0 Filing and Service of Documents and Orders.

4.1 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, Department of Energy, 1615 Washington Street, East, Charleston, West Virginia 25311.

4.2 How to File. All filing may be accomplished by personal delivery or first class mail and shall be in seven (7) copies.

4.3 When filing effective. Filing is effective upon delivery or upon mailing as determined by postmark.

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

4.5 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.

4.6 When service effective. In the case of personal delivery, service is effective upon delivery. In the case of mailing, service is effective upon mailing, postage prepaid.

4.7 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.

Section 5.0 Petitions; Notice of filing; When hearing held; Intervention.

5.1 Any appeal to the Board under these rules shall be by written petition, preferably according to the form at Appendix A and shall set forth the action of the Commissioner complained of and the specific grounds upon which the appeal is based. Within

thirty (30) days after the date of the notice, order or final determination of the Commissioner, the appellant or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final determination, notice or order complained of. The petition as well as all subsequent pleadings, documents, motions and requests shall be filed with the secretary of the Board. A notice of the filing of an appeal shall be filed with the Commissioner within three (3) days after the appeal is filed with the Board.

5.2 No later than five (5) days prior to the time fixed for the hearing on the appeal, the Commissioner shall prepare and certify to the Board a complete record of the proceedings of the Commissioner out of which the appeal arises including all documents and correspondence relating to the matter.

5.3 Upon the filing of such petition for appeal, the Board shall fix the time and place at which the hearing or appeal will be held within thirty (30) days after the petition of appeal is filed and shall give the appellant, and the Commissioner at least twenty (20) days written notice thereof by certified mail. The Board may postpone or continue any hearing upon its own motion or motion of the parties to the appeal.

5.4 The filing of an appeal shall not stay the execution of the order appealed from. Pending completion of the investigation and hearing required by West Virginia Code §§22A-3-17, the appellant may file with the Commissioner a written request that the Commissioner grant temporary relief from any notice or order issued under West Virginia Code §§22A-3-16 or 17, together with a detailed statement giving reasons for granting such relief. The Commissioner shall issue an order or decision granting or denying such relief expeditiously: Provided, That where the appellant requests relief from an order for cessation of surface mining and reclamation operations, the decision on such a request shall be issued within forty-eight (48) hours of its receipt. The Commissioner may grant such relief, under such conditions as he may prescribe, if:

- (a) All parties to the proceedings and the mining company have been notified and given an opportunity to be heard on a request for temporary relief;

(b) The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceedings;

(c) Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources; and

(d) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the Commissioner.

5.5 Any person, may intervene in any appeal at any stage in the proceeding provided that:

(a) The person has an interest which is or may be adversely affected by the action appealed to the Board;

(b) A written motion to intervene is filed with the Board and served on all parties. Such motion shall state specifically the grounds on which intervention is sought and where required, a showing of why his interest is or may be adversely affected;

(c) Within five (5) days after receipt of the motion the Board shall rule on the motion. In addition to a case where the person seeking intervention has an interest which is or may be adversely affected by the action of the Board, intervention shall be granted where the person seeking intervention had a statutory right to initiate the proceeding in which he wishes to intervene;

(d) If paragraph 5.5(c) of this section does not apply, the Board shall consider the following in determining whether intervention is appropriate:

1. The nature of the issues;
2. The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

3. The ability of the petitioner to present relevant evidence and argument; and

4. The effect of intervention on the agency's implementation of its statutory mandate.

(e) This section shall be liberally construed.

(f) Upon being granted intervention, a person has the right to participate in the hearing and file briefs but shall not be considered one of the two statutory parties to the appeal.

Section 6.0 Motions.

6.1 The Board may in its administrative discretion and in the interests of fairness and justice, rule on motions which tend to regulate the course of the hearing, simplify the issues and dispose of procedural requests or similar matters.

6.2 Such motions may include, but are not limited to, questions regarding jurisdiction, sufficiency of service of process, failure to state a claim upon which relief can be granted, summary judgment, for a more definite statement, change of hearing location, amendment of appeal, dismissal of action or particular items on appeal. Any application to the Board, following the initial appeal, shall be by motion.

6.3 Unless made during the hearing all motions shall be in writing, stating with particularity the grounds thereof and stating the relief or order sought. The motion may be accompanied by a memorandum or affidavit. The proponent of the motion shall serve it on the Board and all parties to the appeal.

6.4 A party shall respond within ten (10) days to a motion unless the parties and the Board agree to an extension.

Section 7.0 Hearing to be de novo; Presentation.

7.1 The Board or the hearing examiner shall hear the appeal de novo, and any party to the appeal may submit evidence. The appellant(s) will open the hearing and present their testimony and exhibits offered in support of the petition. 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 by any party to the proceeding.

7.2 All hearings shall be subject to the requirements of Article 5, Chapter 29A of the West Virginia Code.

7.3 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.

7.4 Any item to be presented as an exhibit shall be in a sufficient number of legible, complete copies to provide one copy to the other party as well as one copy to the Board and one for the record. All copies shall be distributed upon or prior to request for admission. It is recommended that large maps used for visual presentation be reduced to approximately one-half scale and similarly colored or coded for distribution in lieu of the larger map which shall be for the record. If any map or other document is marked upon or otherwise changed during presentation and testimony, the party submitting the evidence shall correspondingly mark or change each other copy within 24 hours of the presentation.

7.5 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 West Virginia Code §29A-5-2.

7.6 Appeal hearings shall be open to the public.

7.7 The Board may visit the site of the activity or proposed activity which is the subject of the hearing and take such evidence as it deems necessary provided that all parties and intervenors be given notice of the visit and are given an opportunity to accompany the Board.

7.8 On all appeals to the Board, the Board shall issue a final decision thirty (30) days after the hearing or within thirty (30) days after the testimony presented at the hearing has been transcribed and checked for accuracy or within thirty (30) days after all briefs have been received by the Board, whichever comes later.

Section 8.0 Continuance of Hearings.

After date for hearings 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 ask 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.

Section 9.0 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.

Section 10.0 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. If a brief is filed, a copy will be served on all parties to the appeal.

Section 11.0 Time for Filing Briefs.

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 seven (7) copies of its brief with the Board and to serve a copy thereof on each of the other parties to the case. The

Dept. of Energy
Pro. Rule, 22-4
Series 12, Sec. 11

appellee shall have ten (10) days after receiving said briefs within which to file seven (7) copies of its brief with the Board and serve a copy thereof on each of the other parties to the proceeding. The appellant shall have ten (10) days after receiving said briefs within which to file seven (7) copies of its reply brief with the Board and serve a copy thereof on each of the other parties to the proceeding.

Adopted this 5th day of February, 1987,
by the West Virginia Commissioner of Energy on behalf of the
West Virginia Reclamation Board of Review.

PROMULGATION HISTORY

PROCEDURAL RULES SETTING FORTH PROCEDURES
IN APPEALS BEFORE THE BOARD

RECLAMATION BOARD OF REVIEW

Chapter 22, Article 4, Series 12

January 6, 1987

The original procedural regulations were filed in the Office of Secretary of State on August 3, 1981 and refiled December 30, 1982, to become effective January 1, 1983. These new procedural regulations are being filed to update the regulations and to reflect recent legislative changes creating the Department of Energy.

ABSTRACT

- Section 1.0 General
- 2.0 Secretary Appointed, Duties
 - 3.0 Hearing Examiner Appointed, Duties
 - 4.0 Filing and Service of Documents and Orders
 - 5.0 Petitions; Notice of Filing; When Hearing Held; Intervention
 - 6.0 Motions
 - 7.0 Hearing To Be De Novo; Presentation
 - 8.0 Continuation of Hearings
 - 9.0 Conduct at Hearings
 - 10.0 Briefs, Oral Argument
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Appendix "A" - Notice of Appeal
Notice of Hearing