



STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

A. JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

I, David C. Callaghan, Chairman,
Title or Position

Reclamation Commission, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- () proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- (x) proposed rules and regulations superseding rules and regulations already on file;
- (x) notice of hearing;
- () findings and determinations;
- () rules and regulations; or
- (x) other - specify (cover letter, notice

This filing pertains to

Chapter 20
Article 6
Series VII 7X
Section 17
Page No. 1-10

- () proposed rules and regulations are required to go to Legislative Rule Making Committee;
- (x) proposed rules and regulations are excluded from Legislative Rule Making Committee;

8/3/81
Date Submitted

[Signature]
Signature of Person Authorizing
this Filing

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STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

DAVID C. CALLAGHAN
Director

July 27, 1981

MEMORANDUM TO: ALL INTERESTED PARTIES

FROM: David C. Callaghan, Director
Department of Natural Resources

SUBJECT: Proposed Reclamation Board of Review
Appeal Hearing Regulations

Attached to this letter you will find ten (10) pages of proposed new rules and regulations covering appeal hearings conducted before the Reclamation Board of Review. The relevant changes were necessitated by the fact that on January 19, 1981, the Governor, by proclamation, put into effect the amended West Virginia Surface Coal Mining and Reclamation Act, Chapter 20, Article 6, Section 1 et seq.

It is the opinion of the Reclamation Board of Review that the proposed regulations are consistent with State and Federal law. In order to make these rules and regulations reasonable and have the advantage of the collective expertise of all interested parties in our State and to be consistent with Chapter 29A, Article 3 of the West Virginia Code, the Department of Natural Resources would encourage receiving written comments by no later than September 3, 1981.

It would facilitate consideration of the comments if the following form would be observed.

- a) Refer to specific sections and articles.
- b) Strike through language to be changed.
- c) Insert the proposed language.
- d) No more than two or three paragraphs justifying the change.

DCC/ab

Attachments

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N O T I C E

Rules and regulations have been proposed by the Reclamation Board of Review, West Virginia Department of Natural Resources, which establish procedures and rules of practice to govern and apply to appeal hearings before that Board. Appeals to the Board of Review are established by Section 24, Article 6, Chapter 20, of the West Virginia Code, as amended. These regulations were filed in the Office of the Secretary of State on August 3, 1981.

Notice is hereby given that on September 3, 1981, from 1:00 p.m. until 5:00 p.m., in Room 674, at 1800 Washington Street, East, Charleston, West Virginia, a public hearing will be held so that all interested persons may submit oral and/or written comments addressing these rules and regulations.

From August 3, 1981, until the close of the public hearing on September 3, 1981, the Board will accept any data, objections, suggested amendments, etc., submitted by interested persons. No such comment will be considered if received after 5:00 p.m., September 3, 1981, at the address noted below or after the close of the hearing at the above noted Room 674.

Those wishing to obtain copies of these rules and regulations may call or write Sandy Humphreys, Room 322, Department of Natural Resources, State Capitol Complex, Charleston, West Virginia 25305; telephone (304) 348-3267.

REGULATIONS IMPLEMENTING CODE 29A-3-2

RULES OF PROCEDURE

RECLAMATION BOARD OF REVIEW

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WHEREAS, pursuant to the provisions of Section 2, Article 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 3rd day of August, 1981, and become effective on the 3rd day of September, 1981.

1.04. Filing Date

These rules were filed in the office of the Secretary of State on the 3rd day of August, 1981.

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, East, 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, postage prepaid.

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; Intervention.

a. Any appeal to the Board under these rules shall be by written petition [which] and shall set forth the [final order] action of the director complained of and the specific grounds upon which the appeal is based. Within thirty days after the appellant is notified of the notice, order or final determination of the director or the Reclamation Commission, 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 Reclamation Commission or the director within three days after the appeal is filed with the Board.

[b.] A notice of the filing of an appeal shall be filed with the Reclamation Commission or the director [by the person or persons bringing the appeal,] within three days after the appeal is filed with the [secretary of the] Board.

[e.] b. [Within seven] No later than five days [after receipt of such notice of] prior to the time fixed for the hearing on the appeal, the Reclamation Commission or the director shall prepare and certify to the Board a complete record of the [surface mine permit application] proceedings of the Reclamation Commission or the director 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.] c. 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] 30 days after the notice of appeal is filed and shall give the appellant, [or appellants and the appellee] the Commission or the director at least [ten] twenty 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.

[e.] d. The filing of an appeal shall not stay the execution of the Order appealed from. Pending completion of the investigation and hearing required by this section, the applicant may file with the director a written request that the director grant temporary relief from any notice or order issued under section sixteen or seventeen of this article, together with a detailed statement giving reasons for granting such relief. The director shall issue an order or decision granting or denying such relief expeditiously: Provided, That where the applicant 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 hours of its receipt. The director may grant such relief, under such conditions as he may prescribe, if:

- 1) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;
- 2) 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;
- 3) Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources; and
- 4) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the director.

e. Any person may intervene in any appeal provided that:

- 1) The person has an interest which is or may be adversely affected by the action appealed to the Board;
- 2) A written motion to intervene is filed with the Board and served on all parties, such motion being filed no later than five days prior to the date of the hearing by the Board. Such motion shall state specifically the grounds on which intervention is sought and shall state why the person seeking intervention believes his interests are not adequately represented by the existing parties;
- 3) Within five days after receipt of the motion the Board shall rule on the motion. Intervention shall be granted if the interest sought to be protected is not adequately represented by the existing parties, and if allowing intervention will not significantly prejudice the rights of existing parties;
- 4) This section shall be liberally construed;
- 5) Upon being granted intervention, a person has the same rights and duties as any other party to the appeal.

1.08. Hearing to be de novo; Presentation.

a. The Board shall hear the appeal de novo, [with] and any party to the appeal may submit evidence. The appellant(s) will open[ing] the hearing and present[ing] 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] by any party to the proceeding.

b. All [appeal] hearings shall be [conducted in accordance with Article 1] subject to the requirements 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.

f. 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.

g. 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.

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