



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

JOHN D. ROCKEFELLER IV
Governor

December 30, 1982

DAVID C. CALLAGHAN
Director
WILLIS H. HERTIG, JR.
Deputy Director

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

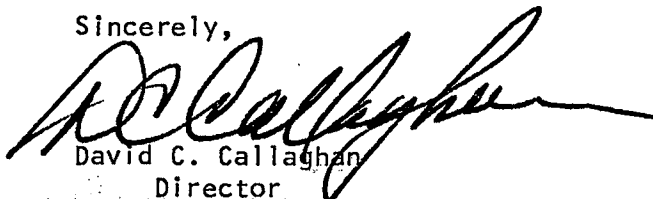
THIS DATE 1/3/83
Administrative Law Division

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

Dear Mr. Secretary:

In accordance with the provisions of Chapter 29A, Article 2, Section 5, of the Code of West Virginia, I am transmitting herewith Department of Natural Resources rules and regulations that have been previously filed, to be refiled in the State Register, to be effective January 1, 1983, and to remain in effect unless otherwise amended or new regulations are issued.

Sincerely,


David C. Callaghan
Director

DCC/cia

Enclosures

*Obsolete
valid Jan 1, 1983
to Feb 4, 1987*

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Department of Natural Resources
Chapter 20-6
Series VII-C
Rules of Procedure - Reclamation Board of Review
1981

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Separate Board

*Title 49
Procedure / Rules*

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Department of Natural Resources
Chapter 20-6
Series VII-C Series 1
1981

Reclamation Board of Review

Subject: Rules of Procedure - ~~Reclamation Board of Review~~

Section 1. General.

1.01. Scope. Procedural regulations to establish procedures and rules of practice to govern and apply to appeal hearings before the West Virginia Reclamation Board of Review.

1.02. Authority. Code of West Virginia §20-6.

1.03. Filing Date. These regulations were filed August 3, 1981, and refiled December 30, 1982, to become effective January 1, 1983, and shall remain in effect unless otherwise amended or new regulations are issued by the Director.

Section 2. General Regulations.

2.01. 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.

2.02. 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

Department of Energy, 1514 Washington St E
~~Board of Review, Division of Reclamation, Department of Natural Resources, State~~
~~Capitol, 1800 Washington Street, East, Charleston, West Virginia 25305~~ 25311

(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.

2.03. Petitions; Notice of filing; When hearing held; Intervention.

(a) Any appeal to the Board under these rules shall be by written petition and shall set forth the 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 sub-

sequent 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. 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) No later than five days 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 proceedings of the Reclamation Commission or the director out of which the appeal arises including all documents and correspondence relating to the matter.

(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 30 days after the notice of appeal is filed and shall give the appellant, and the Commission, or the director at least 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.

(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, including the regulatory authority, may intervene in any appeal at any stage in the proceeding 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 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;
3. Within five 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;
4. If paragraph (e)3. of this section does not apply, the Board shall consider the following in determining whether intervention is appropriate:

- a. The nature of the issues;

- b. The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;
- c. The ability of the petitioner to present relevant evidence and argument; and
- d. The effect of intervention on the agency's implementation of its statutory mandate.

5. This section shall be liberally construed.

6. Upon being granted intervention, a person has the same rights and duties as any other party to the appeal.

2.04. Hearing to be de novo; Presentation.

(a) The Board 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.

(b) All hearings shall be subject to the requirements of Chapter 29A of the West Virginia Code.

(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.

2.05. 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.

2.06. 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.

2.07. 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.

2.08. 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.