

ALABAMA SURFACE MINING COMMISSION
ADMINISTRATIVE CODE

CHAPTER 880-X-5A
SPECIAL RULES FOR HEARINGS AND APPEALS SPECIAL RULES APPLICABLE TO
SURFACE COAL MINING HEARINGS AND APPEALS

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880-X-5A-.36 **Procedure**

880-X-5A-.01 **Definitions.**

As used in the regulation in this Rule, the term --

(a) "Act" means the Alabama Surface Mining Control and Reclamation Act of 1981, Act 81-435, et seq.

(b) "ASMC" means the Office of the Alabama Surface Mining Commission.

(c) "Commission" means the Alabama Surface Mining Commission and within the meaning of this Rule is separate and apart from the DHA.

(d) "DHA" means the Division of Hearings and Appeals created under Section 8 of the Act.

(e) "Regulatory Authority" means the Alabama Surface Mining Commission acting by and through its Director or his designee.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.02 **Jurisdiction Of DHA.**

(1) The jurisdiction of DHA as set forth in Section 8 of the Act includes the authority to exercise appellate review under the Act pertaining to --

(a) Formal requests and subsequent appeals for review of decisions by the Regulatory Authority regarding determinations concerning permits for surface coal mining operation pursuant to Section 20 of the Act.

(b) Appeals for review of assessments of civil penalties issued by the Regulatory Authority pursuant to Section 26 of the Act.

(c) Appeals for review of notices of violation and orders of cessation or modifications, vacations, or terminations thereof pursuant to Section 25 of the Act.

(d) Proceedings for suspension or revocation of permits or a demonstrated pattern of willful violations pursuant to Section 25 of the Act.

(e) Applications for temporary relief under any appropriate Section of the Act.

(f) Demands for hearings for review of proposed leases under Section 33 of the Act.

(g) Requests for hearings on bond release when written objections are filed pursuant to Section 21.

(h) All other appeals and review procedures permitted under the Act.

(i) Hearings relating to any aspect or matter in the administration or enforcement of surface coal mining and reclamation activities which occurred under the Alabama Surface Mining Act of 1969 and the Alabama Surface Mining Reclamation Act of 1975.

(2) In performing its functions under Paragraph (1) of this Rule, the DHA is authorized to --

(a) Order hearings; and

(b) Issue orders to secure the just and prompt determination of all proceedings.

Author:

Statutory Authority: Code of Ala. 1975 §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.03 Construction.

These rules shall be construed to achieve the just, timely, and inexpensive determination of all proceedings consistent with adequate consideration of the issues involved.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.04 Eligibility To Practice.

(1) To be eligible to practice under any of the provisions of this Act, a person must be admitted to the practice of law in the State of Alabama, or

(2) Be specially admitted by a hearing officer for these proceedings pursuant to the following:

(a) Such person must be an officer, director, partner, owner, an employee in a supervisory capacity or any other persons as an agent with authority to enter into binding contracts; or

(b) An attorney admitted to the practice of law in any jurisdiction other than the State of Alabama.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.05 Parties.

All persons indicated in the Act as parties to administrative review proceedings under the Act shall be considered statutory parties. Such statutory parties include:

(a) In a civil penalty proceeding under Sections 25 and 26 of the Act, the Regulatory Authority and any person against whom a proposed assessment is made who files a petition.

(b) In a review proceeding pursuant to Section 20 of the Act, the Regulatory Authority; and

1. An applicant or permittee who files an application for review; and

2. If any other person having an interest which is or may be adversely affected files an application for review, the applicant or permittee and the person filing such application.

(c) In a proceeding to suspend or revoke a permit under Section 25 of the Act, the Regulatory Authority and the permittee who is ordered to show cause why the permit should not be suspended or revoked.

(d) In a Cessation Order proceeding under Section 25 of the Act, the Regulatory Authority and any person against whom the Cessation Order is issued and who files a petition.

(e) In a proceeding to release a bond under Section 21 of the Act, the Regulatory Authority; and

1. The permittee who files an application for review; and

2. If any other person having an interest which is or may be adversely affected files an application for review, the permittee and the person filing such application.

(f) In a review proceeding pursuant to Section 33 of the Act, the Regulatory Authority and the proposed lessee.

(g) Any other person claiming a right to participate as a party may seek leave to intervene in a proceeding by filing a petition pursuant to Rule 880-X-5A-.09 of these Rules and Regulations.

(h) In any other proceeding under the Act not herein specifically addressed, the Regulatory Authority and the applicant, permittee and any other person having an interest which is or may be adversely affected.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.06 Filing Of Documents.

(1) All pleadings and notices of actions in a proceeding to be conducted through DHA shall be filed by hand or by first class mail with the Division of Hearings and Appeals, Alabama Surface Mining Commission, 1802 4th Avenue, Post Office Box 2390, Jasper, Alabama 35502.

(2) Any person filing pleadings and notices of action shall file an original and one copy with DHA accompanied by the necessary fees.

(3) A proceeding under these rules before DHA or a notice of appeal with the DHA shall be served by --

(a) Registered or certified mail with return receipt, or

(b) In person and acknowledged by the party served, or

(c) In person by an official Process Server with proper return, or

(d) Publication where appropriate, if no other method of service has been successful or is deemed likely to be successful as stated in the required affidavit.

(4) A certificate of service shall accompany all subsequent documents filed by any party in any proceeding.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.07 Form Of Documents.

(1) Any document filed with DHA in any proceeding brought under the Act shall be captioned with --

(a) The name of the parties;

(b) The name and permit number of the mine to which the document relates; and

(c) If applicable, identification by number of any notice or order sought to be reviewed and, if assigned to a proceeding, the docket number.

(d) The caption may include other information appropriate for identification of the proceeding.

(e) The original of any document filed with DHA shall be signed by the person submitting the document or by that person's legal representative.

(f) Each document shall contain a Title that identifies the contents of the document following the caption.

(2) The address and telephone number of the person filing the document or that person's attorney shall appear beneath the signature.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:**880-X-5A-.08 Service.**

(1) Any party initiating a proceeding shall serve copies of all documents on all statutory parties personally or by registered or certified mail return receipt requested.

(2) Any party or other person shall serve any other documents being filed subsequently with DHA on all other parties and all other persons participating in the proceeding. These documents shall be served personally or by first class mail.

(3) Service of copies of documents initiating a proceeding is complete at the time of personal service or, if service is made by mail, upon receipt. Service of all subsequent documents is complete at the time of personal service or, if service is by mail, upon mailing.

(4) Whenever an attorney has entered an appearance for a party in a proceeding before a hearing officer or the Commission, service thereafter shall be made upon the attorney.

(5) Service by publication.

(a) This rule applies where the identity or the residence of a party is unknown, where a resident party has been absent from his residence for more than thirty (30) days since the filing of the action, appeal or petition for review and where a party avoids service or it is believed that the party would avoid service should his whereabouts be known.

(b) Procedure for publication in actions governed by this rule.

1. Before service by publication can be made in an action an affidavit of a party or his counsel shall be filed with the DHA averring that the party avoids service or it is believed that the party would avoid or attempt to avoid service should his whereabouts be known, averring facts of such avoidance or belief of such avoidance or attempt to avoid, and

(i) Service of notice of the action, appeal or petition for review cannot be made because either the residence is unknown to the affiant and cannot with reasonable diligence be determined, or

(ii) The identity of the party is unknown, or

(iii) The resident party has been absent for more than thirty (30) days since the filing of the action, appeal or petition for review.

2. Upon filing of the affidavit the DHA shall direct that service of notice be made by publication in a newspaper of general circulation in the county where the event giving rise to the action, appeal or petition for review took place. If no newspaper of general circulation is published in that county, then publication shall be in a newspaper of general circulation in an adjoining county.

3. The publication shall:

(i) Contain a summary statement of the object of the action, appeal or petition for review and the demand for relief;

(ii) Notify the person to be served that he is required to answer within thirty (30) days after the last publication on or before a date certain specified in the notice which said date shall be

thirty (30) days after the date of last publication;
and

(iii) Be published at least once a week for four (4) successive weeks.

(iv) Service shall be complete at the date of the last publication.

(v) After last publication, the publisher or his agent shall file with DHA an affidavit showing the fact of publication together with a copy of the notice of publication. The affidavit and copy of the notice shall constitute proof of service.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.09 Intervention.

(1) Any person, including a state, county, or municipal authority, may petition for leave to intervene at any stage of a proceeding under the Act.

(2) A petitioner for leave to intervene shall assert that he has a statutory right to intervene. The hearing officer may consider other relevant circumstances in determining whether intervention is appropriate. Such circumstances shall include:

(a) The nature of the issues;

(b) The adequacy of representation of petitioners' 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 Regulatory Authority's implementation of its statutory mandate.

(3) The intervenor may petition either to be a full party or, if desired, in a capacity less than that of a full party and, in this circumstance, the terms of participation shall be in the discretion of the hearing officer.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.10 Voluntary Dismissal.

Any party who initiated a proceeding before DHA may seek to withdraw by moving to dismiss at any stage of a proceeding and the hearing officer may grant such a motion.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.11 Motions.

(1) Except for oral motions made in a proceeding on the record, or where the hearing officer otherwise directs, each motion shall be in writing and contain a concise statement of supporting grounds. Failure to make a timely motion or to file a statement may be construed as a waiver of objection.

(2) All other parties will have fourteen (14) days to respond to a motion unless the hearing officer otherwise directs and failure during this time to respond will be deemed a waiver of objection.

(3) The hearing officer shall rule on all motions as expeditiously as possible.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.12 Consolidation Of Proceedings.

Upon motion by a party or at the initiative of the hearing officer, proceedings involving a common question of law or fact may be consolidated.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.13 Advancement Of Proceedings.

(1) Except in temporary relief proceedings or expedited review proceedings and after a commencement of a proceeding any party may move to advance the scheduling of a proceeding. The motion shall

be in writing and describe the exigent circumstances justifying an advancement and the irreparable harm that would result if the motion were not granted.

(2) The other parties shall have seven (7) days to respond to the motion unless otherwise directed by the hearing officer.

(3) Following timely receipt of statements in response to the motion, the hearing officer may schedule a hearing on the motion. If the motion is granted, the hearing officer may advance pleading schedules, prehearing conferences and the hearing at his discretion.

(4) The hearing officer may make the advancement as he deems appropriate but shall in no case have a hearing on the merits with less than five (5) days' notice to the parties.

(5) If the motion is granted, where appropriate, the DHA may advance the appeal on its calendar and order such other advancement as may be appropriate.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.14 Waiver Of Right To Hearing.

Any party entitled to a hearing before a hearing officer may waive such right in writing properly filed as any other pleading. Where parties are directed by any rule in the regulations to file a responsive pleading on or before a specified time, any party who fails to file such responsive pleading by the time specified may be deemed to have waived his right to a hearing. Unless all parties to the proceeding who are entitled to a hearing waive, or are deemed to have waived such right, a hearing will be held.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.15 Status Of Notice Of Violation And Orders Of Cessation Pending Review By DHA.

Except where temporary relief is granted, notices of violation and orders of cessation issued under the Act shall remain in effect during the pendency of review before a hearing officer or the Commission.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.16 Evidentiary Hearings.

At a hearing all testimony shall be given under oath and recorded; however, the record shall not be transcribed unless further appeal is made or the State Regulatory Authority so directs.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.17 Powers Of Hearing Officers.

(1) The hearing officer shall have the following powers:

- (a) Administer oaths and affirmations;
- (b) Certify to official Acts;
- (c) Take and cause to be taken depositions of witnesses;
- (d) Issue and serve subpoenas;
- (e) Compel attendance of witnesses and the production of papers, books, accounts, payrolls, documents, records and testimony;
- (f) Provide for site inspections or inspection of other operations;
- (g) Issue appropriate orders relating to discovery;
- (h) Rule on procedural requests or similar matters;
- (i) Regulate the course of the hearing;
- (j) Rule on offers of proof and receive relevant evidence;
- (k) Make or recommend decisions;
- (l) Order prehearing conferences for such purposes as may be appropriate; and
- (m) Grant such temporary relief as he deems appropriate pending final determination of the proceeding if --

1. A hearing has been held in the locality of the permit area on the application for temporary relief in which all parties were given an opportunity to be heard;
2. The applicant shows that there is substantial likelihood that the findings of the hearing officer will be favorable to him;
3. Such relief will not adversely affect the health or safety of the public 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 Regulatory Authority.

(n) Issue appropriate orders relating to Service of Process or any other service of the Regulatory Authority or the Division of Hearings and Appeals.

(2) In the event of failure of any person to comply with any subpoena lawfully issued or on the refusal of any witness to produce evidence or to testify as to any matter, obedience may be compelled by a contempt proceeding in any court of competent jurisdiction or before any judge thereof upon application for such by the hearing officer in the name of the Alabama Surface Mining Commission.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.18 Conduct Of Hearing Officers.

Exparte contracts between representatives of the parties and the hearing officer shall be prohibited.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.19 Notice Of Hearing.

(1) The hearing officer shall give notice to the parties of the time, place, and nature of any hearing. Notice shall be in writing except where time is of the essence in expedited review proceedings and temporary relief proceedings. Oral notices shall be entered on the records, signed and dated.

(2) The appellant and any other interested person shall be given written notice of the time and place of the hearing at least fourteen (14) working days prior thereto, except in the case of an application for temporary relief and an application for expedited review of a cessation order, which notice shall be within one (1) day.

(3) The hearing officer shall commence the hearing on a review of a permit application or a coal exploration application within thirty (30) days of the receipt of the petition for review.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.20 Summary Decisions.

(1) At any time after a proceeding has begun a party may move for summary decision of the whole or part of a case.

(2) The moving party under this section shall verify any allegations of fact with supporting affidavits, unless the moving party is relying upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.

(3) The hearing officer may grant a motion under this Rule if the record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows that --

(a) There is no disputed issue as to any material fact; and

(b) The moving party is entitled to summary decision as a matter of law.

(4) If a motion for summary decision is not granted for the entire case or for all the relief requested and an evidentiary hearing is necessary, the hearing officer shall, if practicable, and upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith controverted. He shall thereupon, issue an order specifying the facts that appear without substantial controversy and direct such further proceedings as deemed appropriate.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.21 Proposed Findings Of Fact And Conclusions Of Law.

The hearing officer shall allow the parties to a proceeding an opportunity to submit proposed findings of fact and conclusions of law together with a supporting brief at a time designated by the hearing officer.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:**880-X-5A-.22 Orders And Decisions.**

(1)(a) Within 30 days after the close of any hearing, the hearing officer shall either affirm, modify or set aside the determination appealed from in a written decision incorporating specific findings of fact and conclusions of law on which the decision is based.

(b) The DHA shall promptly provide copies of all orders of the hearing officer to all parties. Parties other than the regulatory authority shall be provided notice of all orders and decisions by first class mail.

(2) Any party may petition the Commission for an expedited review of any pending appeal in the event the hearing officer fails to render a decision on the merits within the time specified in paragraph (1)(a) of this rule.

Author: Randell C. Johnson

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History: Repealed and Replaced: Filed March 25, 1997; effective April 29, 1997. **Amended:** Filed October 17, 1997; effective November 21, 1997.

880-X-5A-.23 Discovery.

Unless otherwise notified by a hearing officer, discovery under DHA will be generally governed by the discovery rules of the Alabama Rules of Civil Procedure. Exception may be taken to them, however, by a hearing officer considering the nature of the case, burden on the parties, the need for expeditious review of cases, as well as the just determination of all issues.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:**880-X-5A-.24 Who May File An Appeal To DHA.**

Any person having an interest which may be adversely affected by the Regulatory Authority's determination may file for appeal with DHA.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:**880-X-5A-.25 Time For Appeals To DHA.**

(1) Notice of determination by the Regulatory Authority will be effective upon the mailing of that notice to the parties at their last known address. From this date a person who may be adversely affected must file a petition for review or appeal with DHA within thirty (30) days.

(2) Decisions by the hearing officer will become final ten (10) days after notice of such decision has been mailed to the parties at their last known addresses.

(3) Within thirty (30) days after the decision has become final any party to the proceeding may secure an administrative review by filing a petition with the Commission.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:**880-X-5A-.26 Contents Of Petition To Division Of Hearings And Appeals.**

(1) The petition shall include:

(a) A concise statement indicating why a penalty, fact of violation, or other ruling by the Regulatory Authority is being contested;

(b) If applicable, an identification by number of all violations being contested and a copy of any notice or order or violation sought to be reviewed;

(c) If applicable, a request for specific relief.

(d) A statement as to whether the person requests or waives the opportunity for an evidentiary hearing; and

(e) Any other necessary and relevant information.

(2) In any appeal or review of proposed assessments of civil penalties the petition shall be accompanied by:

(a) Full payment of the proposed assessment in the form of a certificate of deposit payable to the "Alabama Surface Mining Commission" to be held in escrow pending final determination of the assessment; and

(b) On the face of the payment an identification by number of the violation(s) for which payment is being tendered.

(c) Failure to make timely payment of the proposed assessment in full as required shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.27 Answer.

(1) Where an appeal is filed, the Regulatory Authority, or any adverse party shall file an answer:

(a) Within one (1) day in the case of an application for temporary relief and an application for expeditious review of a cessation order; or

(b) Within twenty-eight (28) days in all other actions.

(2) The answer shall incorporate:

(a) A statement specifically admitting or denying the alleged facts stated by the appellant;

(b) A statement of any other relevant facts;

(c) A statement as to whether an evidentiary hearing is requested or waived; and

(d) Any other necessary and relevant information.

(3) A copy of such answer shall be served on all parties to the action pursuant to Rule 880-X-5A-.08 of these rules and regulations.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.28 Amendments Of Pleading.

(1) An appeal may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer, upon proper motion.

(2) Upon receipt of an amended application for review or subsequent to granting leave to amend, the hearing officer shall issue an order setting a time for filing an amended answer if the hearing officer determines that such an answer is appropriate.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.29 Failure To State A Claim.

Upon proper motion or after the issuance of an order to show cause by the hearing officer, the hearing officer may dismiss at any time an appeal which fails to state a claim upon which relief may be granted.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.30 Evidentiary Requirements.

(1) As noted in Rule 880-X-5A-.16 et seq., the hearing officer shall regulate the course of the hearing.

(2) Unless otherwise indicated by the hearing officer, the general rules of evidence in the courts of the State of Alabama will be applicable to all DHA proceedings. Exceptions may be taken, however, by the hearing officer considering the nature of the case, burden on the parties, the need for expeditious review of cases, as well as the just determination of all issues.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.31 Jurisdiction Of The Commission Within The Appellate Process.

(1) The jurisdiction of the Commission as set forth in Section 10 of the Act includes the authority to:

(a) Review all decisions of the DHA and this review shall be based on the administrative record;

(b) Hear appeals from the Regulatory Authority with regard to blasting under Section 22(f) and areas unsuitable for surface coal mining under Section 28. These appeals shall afford the parties a reasonable opportunity for a fair hearing.

(2) In performing its functions under Paragraph (1) of this Rule the Commission is authorized as follows:

(a) In decisions under review from the DHA:

1. Affirm or reverse the hearing officer's decision in whole or in part; or

2. Reverse the hearing officer's decision and refer the case to the DHA with instructions for further specific inquiry.

(b) In appeals under Section 22(f) of the Act or under Section 28 of the Act the Commission shall have all the powers set forth in Rule 880-X-5A-.17 of these Rules and Regulations.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:**880-X-5A-.32 Commission Procedure For Appeals And Petitions For Review.**

(1) All petitions for review of DHA decisions:

(a) Shall be made according to the same procedural requirements as set forth in Rules 880-X-5A-.05, 880-X-5A-.06, 880-X-5A-.07, 880-X-5A-.08, 880-X-5A-.09, 880-X-5A-.10, 880-X-5A-.12, 880-X-5A-.13, and 880-X-5A-.19 of these Rules and Regulations for appeals or petitions for review from the Regulatory Authority to DHA. These requirements shall not abrogate in any way the fact that the review by the Commission shall be based solely on a review of the administrative record.

(b) Shall include a brief and concise statement as to the reason for the petition and shall not contain any new or additional evidence as to the substance of the dispute.

(c) May include a supporting brief stating findings of fact and conclusions of law provided said brief accompanies the petition for review.

1. A reply brief stating findings of fact and conclusion of law may be filed by an adverse party in interest within seven (7) days.

(d) The Commission may grant or deny the petition for review, and if --

1. The Commission takes no action on the petition within 30 days of its receipt, automatic denial shall result;

2. It grants a petition for review but fails to act within 90 days of the granting, automatic affirmance shall result.

(2) All appeals from decisions of the Regulatory Authority under Sections 22(f) and 28 of the Act:

(a) Shall be governed by the same procedural requirements of these Rules and Regulations that apply to appeals from the Regulatory Authority to the DHA; and

(b) The contents of such an appeal to the Commission shall be the same as required for an appeal or a petition for review to the DHA.

(3) The Commission shall construe these procedural Rules and Regulations to achieve the just, timely, and inexpensive determination of all proceedings consistent with adequate consideration of the issues involved.

(4) No Commission member shall participate in the appeal if he has an interest in the outcome or if he has participated in any informal conferences prior to the State Regulatory Authority's determination of the matter which resulted in the appeal before the Commission.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.33 Issuance Of Orders And Decisions By The Commission.

(1) Orders or decisions disposing of a case shall be in writing and incorporate:

(a) Findings of fact and conclusion of law and the basis and reasons thereof on all the material issues of fact and law; and

(b) If applicable an order granting or denying relief.

(c) The decision of the Commission shall become final 10 days after notice of it has been sent by mail, postage prepaid to the parties to the appeal of its decision.

(d) Within 30 days after the decision of the Commission becomes final or from the time a petition for review is deemed denied, any party to the proceedings may secure judicial review of it by filing a notice of appeal to the circuit court pursuant to Rule 880-X-5A-.34 of Chapter 880-X-5.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:**880-X-5A-.34 Judicial Review.**

(1) Any party as defined in Rule 880-X-5A-.05 of Chapter 880-X-5 and who has participated in the administrative proceedings as an objector (appellant) shall have the right to appeal as approved in Paragraph (2) of this Rule, if --

(a) The applicant is aggrieved by the decision of the Commission in an administrative review proceeding conducted pursuant to Rule 880-X-5A-.31 of these rules and regulations.

(b) Either the State Regulatory Authority, DHA or the Commission fails to act within time limits specified in the Act or these regulations, whichever applies.

(2) Judicial review may be had by any party of the proceedings filing notice of appeal in the circuit court; provided said court shall not permit the appeal unless all administrative remedies have been exhausted by the appellant; provided further, where an appeal is taken from a cessation order issued pursuant to Section 25 of the Act and the hearing officer or Commission fails or refuses to stay the order pending a final determination on the

merits, the appellant may apply to the circuit court for relief pursuant to Rule 65 of the Alabama Rules of Civil Procedures.

(3) Parties. All parties to the Administrative procedures shall be named parties in such appeal, and such appeal shall include the Director of the Alabama Surface Mining Commission as one of these parties.

(4) Notice. Notice of appeal to the circuit court shall be verified and shall state the grounds upon which relief is sought.

(5) Service. Service shall be made pursuant to the Alabama Rules of Civil Procedures.

(6) Record. The following applies to the record on appeal:

(a) Transmission of record. The State Regulatory Authority shall transmit within 30 days or such additional time as the court may allow to the circuit court the entire administrative record of the proceedings under review, including finding of fact and the decisions of the hearing officer or the Commission.

(b) Stipulations. Stipulations by the parties are allowed to shorten the proceedings. If any party unreasonably refuses to stipulate to limit the record, he may be assessed by the court for such additional costs as occasioned by the refusal. The court may require or permit subsequent corrections or addition to the record where needed.

(7) Determination by court. The cause shall be tried de-novo in the circuit court and shall be a preference case on the docket thereof. The court shall have jurisdiction to determine the reasonableness and lawfulness of the order of the State Regulatory Authority. Upon a finding by the court that the order is not reasonable or lawful, or not supported by the clear preponderance of the evidence, the cause shall be remanded to the State Regulatory Authority for further proceedings in accordance with the Act and these rules and regulations.

(8)(a) Supersedes bond. Upon application to the circuit court from an order of the Commission, the appellant may supersede any order of it by filing with the court it supersedes bond in the amount determined by the court to be proper and necessary to avoid the likelihood of material damage.

(b) The bond shall be made payable to the respondent appellee.

(c) Such bond shall continue in force during an appeal to the Alabama Supreme Court and until final judgment as long as all the conditions of the bond have been complied with.

(d) No other supersedes bond shall be given by the appellant unless the court hearing the appeal shall find that the amount of such supersedes bond is either excessive or inadequate and shall order such bond reduced or increased accordingly.

(9) Further appeal. An appeal from the decision of the circuit court may be taken by the same procedure used in the civil cases pursuant to the Alabama Rules of Appellant Procedure.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History:

880-X-5A-.35 Assessment Of Costs.

Whenever any order shall be issued under Section 10 or as a result of any administrative proceedings under the Act, at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) as determined by the Commission or, if no further appeal was taken, as determined by the DHA, to have been reasonably incurred by such person for or in connection with his participation in such proceedings, including any judicial review of the Commission's actions, may be assessed against any party as the final appellate body deems proper, provided costs and expenses may be assessed against any person in favor of the permittee or the regulatory authority only upon demonstration that the person initiated or participated in such proceeding in bad faith for the purpose of harassing or embarrassing the permittee or the State Regulatory Authority.

Author: Johnathan E. Hall

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 77, 78, 79, 88, 89, 93, 94, 96.

History: Amended: Filed March 31, 2016; effective May 15, 2015; operative _____.

Ed. Note: The operative date of this rule is subject to review and approval from the U.S. Secretary of the Interior.

880-X-5A-.36 Procedure.

The Division of Hearings and Appeals shall be subject to the Alabama Rules of Civil Procedure except as said Rules shall be in conflict with these Rules and Regulations as contained in Section 880-X-5A, et seq., (Section 10, et seq.).

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-77, 78, 79.

History: