



Ohio Revised Code

Section 1513.13 Appeal to reclamation commission.

Effective: April 6, 2007

Legislation: House Bill 443 - 126th General Assembly

(A)(1) Any person having an interest that is or may be adversely affected by a notice of violation, order, or decision of the chief of the division of mineral resources management, other than a show cause order or an order that adopts a rule, or by any modification, vacation, or termination of such a notice, order, or decision, may appeal by filing a notice of appeal with the reclamation commission for review of the notice, order, or decision within thirty days after the notice, order, or decision is served upon the person or within thirty days after its modification, vacation, or termination and by filing a copy of the notice of appeal with the chief within three days after filing the notice of appeal with the commission. The notice of appeal shall contain a copy of the notice of violation, order, or decision complained of and the grounds upon which the appeal is based. The commission has exclusive original jurisdiction to hear and decide such appeals. The filing of a notice of appeal under division (A)(1) of this section does not operate as a stay of any order, notice of violation, or decision of the chief.

(2) The permittee, the chief, and other interested persons shall be given written notice of the time and place of the hearing at least five days prior thereto. The hearing shall be of record.

(3) Any person authorized under this section to appeal to the commission may request an informal review by the chief or the chief's designee by filing a written request with the chief within thirty days after a notice, order, decision, modification, vacation, or termination is served upon the person. Filing of the written request shall toll the time for appeal before the commission, but shall not operate as a stay of any order, notice of violation, or decision of the chief. The chief's determination of an informal review is appealable to the commission under this section.

(B) The commission shall affirm the notice of violation, order, or decision of the chief unless the commission determines that it is arbitrary, capricious, or otherwise inconsistent with law; in that case the commission may modify the notice of violation, order, or decision or vacate it and remand it to the chief for further proceedings that the commission may direct.



The commission shall conduct hearings and render decisions in a timely fashion, except that all of the following apply:

(1) When the appeal concerns an order for the cessation of coal mining and reclamation operations issued pursuant to division (D)(1) or (2) of section 1513.02 of the Revised Code, the commission shall issue its written decision within thirty days after the receipt of the appeal unless temporary relief has been granted by the chairperson pursuant to division (C) of this section.

(2) When the appeal concerns an application for a permit under division (I) of section 1513.07 of the Revised Code, the commission shall hold a hearing within thirty days after receipt of the notice of appeal and issue its decision within thirty days after the hearing.

(3) When the appeal concerns a decision of the chief regarding release of a performance security under division (F) of section 1513.16 of the Revised Code, the commission shall hold a hearing within thirty days after receipt of the notice of appeal and issue its decision within sixty days after the hearing.

(4) When the appeal concerns a decision of the chief regarding the location of a well in a coal bearing township under section 1509.08 of the Revised Code, the commission shall hold a hearing and issue its decision within thirty days after receipt of the notice of appeal.

(C) The chairperson of the commission, under conditions the chairperson prescribes, may grant temporary relief the chairperson considers appropriate pending final determination of an appeal if all of the following conditions are met:

(1) All parties to the appeal have been notified and given an opportunity for a hearing to be held in the locality of the subject site on the request for temporary relief and the opportunity to be heard on the request.

(2) The person requesting relief shows that there is a substantial likelihood that the person will prevail on the merits.

(3) The relief will not adversely affect public health or safety or cause significant imminent



environmental harm to land, air, or water resources.

The chairperson shall issue a decision expeditiously, except that when the applicant requests relief from an order for the cessation of coal mining and reclamation operations issued pursuant to division (D)(1) or (2) of section 1513.02 of the Revised Code, the decision shall be issued within five days after its receipt.

Any party to an appeal filed with the commission who is aggrieved or adversely affected by a decision of the chairperson to grant or deny temporary relief under this section may appeal that decision to the commission. The commission may confine its review to the record developed at the hearing before the chairperson.

The appeal shall be filed with the commission within thirty days after the chairperson issues the decision on the request for temporary relief. The commission shall issue a decision as expeditiously as possible, except that when the appellant requests relief from an order for the cessation of coal mining and reclamation operations issued pursuant to division (D)(1) or (2) of section 1513.02 of the Revised Code, the decision of the commission shall be issued within five days after receipt of the notice of appeal.

The commission shall affirm the decision of the chairperson granting or denying temporary relief unless it determines that the decision is arbitrary, capricious, or otherwise inconsistent with law.

(D) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to division (D)(3) of section 1513.02 of the Revised Code, the chief or a representative of the chief shall hold a public adjudicatory hearing after giving written notice of the time, place, and date thereof. The hearing shall be of record.

Within sixty days following the public hearing, the chief shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the reasons therefor, concerning suspension or revocation of the permit. If the chief revokes the permit, the permittee immediately shall cease coal mining operations on the permit area and shall complete reclamation within a period specified by the chief, or the chief shall declare as forfeited the performance security for the operation.



(E)(1) Whenever an enforcement order or permit decision is appealed under this section or any action is filed under division (B) of section 1513.15 or 1513.39 of the Revised Code, at the request of a prevailing party, a sum equal to the aggregate amount of all costs and expenses, including attorney's fees, as determined to have been necessary and reasonably incurred by the prevailing party for or in connection with participation in the enforcement proceedings before the commission, the court under section 1513.15 of the Revised Code, or the chief under section 1513.39 of the Revised Code, may be awarded, as considered proper, in accordance with divisions (E)(1)(a) to (c) of this section. In no event shall attorney's fees awarded under this section exceed, for the kind and quality of services, the prevailing market rates at the time the services were furnished under division (A) of this section. A party may be entitled to costs and expenses related solely to the preparation, defense, and appeal of a petition for costs and expenses, provided that the costs and expenses are limited and proportionate to costs and expenses otherwise allowed under division (E) of this section.

(a) A party, other than the permittee or the division of mineral resources management, shall file a petition, if any, for an award of costs and expenses, including attorney's fees, with the chief, who shall review the petition. If the chief finds that the party, other than the permittee or the division, prevailed in whole or in part, made a substantial contribution to a full and fair determination of the issues, and made a contribution separate and distinct from the contribution made by any other party, the chief may award to that party the party's costs and expenses, including attorney's fees that were necessary and reasonably incurred by the petitioning party for, or in connection with, participation in the proceeding before the commission.

(b) If a permittee who made a request under division (E)(1) of this section demonstrates that a party other than a permittee who initiated an appeal under this section or participated in such an appeal initiated or participated in the appeal in bad faith and for the purpose of harassing or embarrassing the permittee, the permittee may file a petition with the chief. The chief may award to the permittee the costs and expenses reasonably incurred by the permittee in connection with participation in the appeal and assess those costs and expenses against the party who initiated the appeal.

(c) The division may file, with the commission, a request for an award to the division of the costs and expenses reasonably incurred by the division in connection with an appeal initiated under this section. The commission may assess those costs and expenses against the party who initiated the appeal if the division demonstrates that the party initiated or participated in the appeal in bad faith



and for the purpose of harassing or embarrassing the division.

(2) Whenever an order issued under this section or as a result of any administrative proceeding under this chapter is the subject of judicial review, at the request of any party, a sum equal to the aggregate amount of all costs and expenses, including attorney's fees, as determined by the court to have been necessary and reasonably incurred by the party for or in connection with participation in the proceedings, may be awarded to either party, in accordance with division (E)(1) of this section, as the court, on the basis of judicial review, considers proper.