

# **OHIO RECLAMATION COMMISSION**

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## **RULES OF PROCEDURE**

**O.A.C. 1513-3-01 THROUGH 22**

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EFFECTIVE **10/11/2013**

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### RECLAMATION COMMISSION



### RULES OF PROCEDURE

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# RECLAMATION COMMISSION RULES OF PROCEDURE

## 1513-3-01 Definitions.

- (A) "Adjudication hearing" means a trial-type proceeding at which the parties may introduce evidence relevant to the resolution of a disputed issue of fact.
- (B) "Appellant" means any person filing an appeal with the reclamation commission for review of an action of the division chief.
- (C) "Appellee" means the division of mineral resources management.
- (D) "Burden of persuasion" means proof by a preponderance of the evidence.
- (E) "Chief" means the chief of the division of mineral resources management.
- (F) "Commission" means the reclamation commission, as established by section 1513.05 of the Revised Code.
- (G) "Division" means the division of mineral resources management.
- (H) "Discovery" means the ascertainment of information made pursuant to rule 1513-3-10 of the Administrative Code.
- (I) "Final order" means a written decision of the commission, which resolves the matters presented in an appeal, which is issued in accordance with rule 1513-3-19 of the Administrative Code, and which is appealable to the courts pursuant to section 1513.14 or section 1514.09 of the Revised Code.
- (J) "Full party" means the appellant, the appellee and any intervenor participating in an appeal pursuant to paragraph (C) of rule 1513-3-07 of the Administrative Code.
- (K) "Hearing officer" means a person designated by the reclamation commission pursuant to section 1513.05 of the Revised Code to conduct hearings or perform other duties as directed by the commission.
- (L) "Interested persons in an appeal pending before the commission" are the appellant, the appellee, any intervenors and any other persons who have notified the commission of an interest in a pending appeal and have requested to be notified of hearings in said pending appeal.
- (M) "Intervenor" means any person granted the right to intervene pursuant to rule 1513-3-07 of the Administrative Code.
- (N) "Person" means any individual, partnership, limited liability company, corporation, association, or other legal entity, or any political subdivision, instrumentality, or agency of this state or the United States.
- (O) "Proffer" means to offer or tender testimony or documents or other tangible objects into evidence.
- (P) "Regular business hours" for the reclamation commission means ten a.m. to six p.m., Monday through Friday, except for state holidays or other days in which offices of the government of the state of Ohio are permitted to close due to weather, safety or other unforeseeable events which present a risk to the public or to the commission employees. In the event of the absence of the office staff, contact information for the chairperson and vice-chairperson of the commission will be prominently posted at the commission offices.
- (Q) "Rules of the reclamation commission" means rules 1513-3-01 to 1513-3-22 of the Administrative Code and shall apply to appeals filed under both Chapters 1513. and 1514. of the Revised Code, unless specifically provided otherwise.

## 1513-3-02 Internal regulations.

- (A) This chapter governs the practices and procedures before the reclamation commission.
- (B) Quorum.
  - (1) Four members constitute a quorum, and no action of the commission shall be valid unless it has the concurrence of at least four members.
  - (2) An inability to reach a concurrence of four members shall be deemed to have occurred when a majority of the participating members conclude that a concurrence of four members cannot be reached.

- (3) In rendering a decision, if the members of the commission who attended a hearing fail to reach a concurrence of at least four commission members, the existing record of proceedings shall be submitted to all members who did not attend any portion of the hearing, which members shall inform the commission of their decision to participate in the appeal. If any such member decides to participate, that member shall review the record of the proceedings before the commission, and then shall participate in the rendering of a decision in the matter under consideration.
  - (4) In the event that a concurrence of four members cannot be reached, a decision shall be issued reflecting that four members of the commission could not reach agreement regarding whether the chief's action under appeal was, or was not, arbitrary, capricious or otherwise inconsistent with law. In such case, the commission's decision shall include the necessary order, affirming the chief's action under appeal pursuant to division (B) of section 1513.13 of the Revised Code.
- (C) If a commission member has attended a hearing, but was absent from a portion of that hearing, the absent commission member shall review that portion of the record from which he was absent before participating in the rendering of a decision in the matter under consideration.
- (D) Pursuant to section 1513.05 of the Revised Code, the reclamation commission shall elect a secretary, who shall perform such duties as the commission prescribes, including:
- (1) Promptly recording minutes of all meetings of the commission which shall be open to public inspection during regular business hours at the office of the commission.
  - (2) Serving as custodian of the records and papers of the commission and preserving copies of briefs and other filings.
  - (3) Assembling, transmitting and certifying the complete record of proceedings before the commission out of which appeals made pursuant to section 1513.14 or section 1514.09 of the Revised Code arise.
  - (4) Providing notice of all public meetings of the commission in accordance with the following:
    - (a) Any person may ascertain the time and place of regularly-scheduled public meetings by contacting the office of the commission during regular business hours;
    - (b) Upon request, any person may obtain advance notice of all regularly-scheduled public meetings by supplying the office of the commission with stamped, self-addressed envelopes. The office will mail to such person a notice of the time and place of meetings at least four calendar days before the scheduled meeting;
    - (c) The time and location for commission meetings shall be announced in the "Hannah Report" published by Rotunda, Inc.
  - (5) Establishing and maintaining records for the funds held in a penalty fund mandated by division (E)(3) of section 1513.02 of the Revised Code.
  - (6) Remitting, in appropriate amounts, funds from a penalty fund as mandated in division (E)(3) of section 1513.02 of the Revised Code.
  - (7) The secretary of the commission shall have the authority to delegate to any staff member of the commission, those duties assigned to the secretary pursuant to this rule.
- (E) Documents and files of the commission, or parts thereof, shall not be removed from the custody of the commission without the consent of the commission.
- (F) The documents and files of the commission shall be available for inspection and examination at the office of the commission during regular business hours, as defined by paragraph (O) of rule 1513-3-01 of the Administrative Code.
- (G) All hearings before the commission shall be recorded by audio-electronic devices, which recording shall constitute the official record of the hearing. However, the commission may allow other means for the creation of the official record of the hearing at the commission's discretion or upon motion of a party, or joint motion of parties, and if such motion is granted, the requesting party or parties shall bear the expense of the creation of such record, which record shall then be filed with the commission.
- (H) Any transcript of a proceeding before the commission, if filed with the commission, shall be made available for reproduction upon application to the commission and payment of reproduction costs.

- (I) Issuance of subpoenas.
  - (1) Upon request of a party, or at the initiative of the commission, the commission shall issue subpoenas *ad testificandum* or *duces tecum*.
  - (2) The party requesting a subpoena shall comply with all requirements of rule 45 of the Ohio Rules of Civil Procedure.
  - (3) Except for good cause shown, a request for issuance of a subpoena shall be made at least ten days before a scheduled hearing.
  - (4) Subpoenas shall be served in compliance with rule 45 of the Ohio Rules of Civil Procedure.
  - (5) A subpoena ordering the appearance of an employee of the Columbus office of the division of mineral resources management may be personally served by the commission.
  - (6) The commission may issue a subpoena signed by the commission, but otherwise in blank, to a party or counsel requesting a subpoena, which party or counsel shall complete the subpoena form before service in compliance with rule 45 of the Ohio Rules of Civil Procedure.
  - (7) If the witness being subpoenaed resides outside the county in which a hearing will be held, the fees for one day's attendance and mileage shall be tendered to the witness without demand. The attendance fee and mileage reimbursement shall be as set forth in section 119.094 of the Revised Code. The responsibility to tender such fees to the witness being subpoenaed shall be borne by the party requesting the issuance of the subpoena.
  - (8) The cost of serving a subpoena shall be borne by the party requesting the issuance of the subpoena.
- (J) Notice of public hearing to adopt, amend, or rescind rules.
  - (1) Public notice of hearings on the adoption, amendment, or rescission of rules, to be conducted by the commission, shall be advertised one time in five newspapers published in different counties and of general circulation in the state.
  - (2) The public notice shall be given at least thirty days, but not more than fifty days, prior to the hearing.
  - (3) The notice shall:
    - (a) State the commission's intention to consider adopting, amending, or rescinding rules;
    - (b) Include a synopsis or full text of the proposed rules, amendments, or rules to be rescinded, or a general statement of the subject matter to which such proposed rules relate;
    - (c) State the reason or purpose for adopting, amending, or rescinding the rules;
    - (d) Enumerate the date, time and place of the hearing on the proposed actions, which shall not be earlier than thirty days after the proposed rules, amendments, or rescissions are filed; and
    - (e) State the place from which copies of the proposed rules, amendments, or rules to be rescinded may be obtained.
  - (4) The office of the commission shall provide the public notice to anyone who requests it and pays a reasonable fee, not to exceed the cost of copying and mailing.
- (K) In the event that the rules of the commission are amended, all proceedings in actions brought after the amendment and also all further proceedings in actions then pending shall be governed by the amended rules.
- (L) The commission may appoint hearing officers to conduct hearings on issues of fact and law arising in an appeal or to perform any other duties as directed by the commission or its secretary. The hearing officer shall have the same powers and authority in conducting hearings as granted to the reclamation commission.

**1513-3-03 Appearance and practice before the commission.**

- (A) Except as prohibited by section 4705.01 of the Revised Code, any party may appear on his own behalf or may be represented by an attorney at law admitted to practice before the supreme court of Ohio, or by an attorney admitted to practice by the commission pursuant to a motion to appear *pro hac vice*.

- (B) Any attorney at law admitted to practice before the courts of the state of Ohio may practice before the commission. Practice shall include commencing, conducting or defending any matter before the commission. Attorneys admitted to practice in Ohio shall provide their attorney registration number on filings made with the commission.
- (C) Attorneys not admitted to practice before the courts of the state of Ohio may petition the commission for admission *pro hac vice*. Attorneys appearing *pro hac vice* shall comply with rule XII of the Rules for the Government of the Bar of Ohio, and shall present to the commission a copy of a certificate of *pro hac vice* registration with the Ohio supreme court.
- (D) All persons appearing before the commission shall conform to the standards of ethical conduct required in appearances in the courts of the state of Ohio. The commission shall have the authority, for good cause stated in the record, to bar from participation in a particular proceeding any person, including an attorney, who shall refuse to comply with the commission's directions, or who engages in disorderly conduct, dilatory tactics, or contemptuous language in the course of such proceedings.
- (E) The commission may, for cause, deny or suspend the right of any person to appear before the commission.
- (F) Notice of any change of attorney of record shall be given promptly to the commission and to all other parties.
- (G) *Ex parte* contacts or communications concerning substantive issues of a pending case between parties or representatives of the parties appearing before the commission and the commission is prohibited.

**1513-3-04 Appeals to the reclamation commission.**

- (A) Any person exercising their right to appeal to the reclamation commission under section 1513.13 of the Revised Code shall file such appeal to the commission pursuant to this rule.
- (B) A notice of appeal shall:
  - (1) Be in writing and may be in the form of a letter or a legal pleading;
  - (2) Identify the name, address, telephone number and email address, if available, of the appellant;
  - (3) Identify the name, address, telephone number and email address, if available, of appellant's counsel, if appellant is represented by counsel;
  - (4) Identify the notice, order or decision of the chief of the division of mineral resources management to be reviewed, and include a copy of the written notice, order or decision to be reviewed;
  - (5) Pursuant to section 1513.13 of the Revised Code, identify the grounds upon which review is being sought, the manner in which appellant is aggrieved or adversely affected by the action of the chief of the division of mineral resources management and the relief sought on appeal;
  - (6) Be signed by the appellant or by an attorney admitted to practice before the supreme court of Ohio, or an attorney admitted to practice by the commission pursuant to a motion to appear *pro hac vice*; and
  - (7) Where review of the assessment of a civil penalty is sought, the appellant shall comply with the requirements of section 1513.02 of the Revised Code and shall include and forward to the commission the amount of the penalty for placement in a penalty fund.
- (C) A notice of appeal may:
  - (1) Identify the area to which the notice, order or decision relates;
  - (2) State whether or not the appellant requests that the commission view the site in question;
  - (3) State whether or not the appellant waives its right to have a hearing held within the time requirements set forth under division (B) of section 1513.13 of the Revised Code.
- (D) Failure to comply with the provisions of section 1513.13 of the Revised Code governing the filing of appeals with the commission shall be sufficient basis for dismissing the appeal. The effect of such a dismissal shall be to leave in effect the action of the chief of the division of mineral resources management from which the dismissed appeal has been made and shall not constitute an affirmation of said action by the commission.

- (E) Filing of the notice of appeal.
  - (1) The notice of appeal shall be filed within thirty days after service of the notice, order or decision by the chief of the division of mineral resources management and shall be filed in accordance with paragraph (B) of rule 1513-3-05 of the Administrative Code.
  - (2) Where review of the approval or disapproval of a permit application is sought, the appellant shall comply with the requirements of section 1513.07 of the Revised Code and shall file such notice within thirty days of notification of the final decision of the chief of the division of mineral resources management on the permit application.
  - (3) The original and one copy of the notice of appeal shall be filed with the reclamation commission.
  - (4) A notice of appeal shall be deemed filed when a complete notice in compliance with the rules of this chapter is determined to be filed with the commission under the provisions of paragraph (B) of rule 1513-3-05 of the Administrative Code.
  - (5) A copy of the notice of appeal shall be filed with the chief of the division of mineral resources management within three days of the filing of such notice with the commission.
- (F) A notice of appeal may be amended without leave of the commission during the time allowed for original filing or a notice of appeal may be amended by leave of the commission at any time after the time allowed for original filing. Amendment of a notice of appeal may not be employed to cure jurisdictional defects in the filing, unless the amendment is filed within the time allowed for original filing of the notice of appeal.

**1513-3-05 Filing and service of papers.**

- (A) Documents required or permitted to be filed with the commission may be filed personally, by mail addressed to the reclamation commission or by facsimile transmission followed by hard copy.
- (B) The filing of a notice of appeal is controlled by section 1513.13 of the Revised Code. A notice of appeal shall be deemed filed with the commission when received by the commission, or if the notice of appeal is sent to the commission by certified mail, registered mail or express mail, the notice of appeal shall be deemed filed with the commission on the postmark date placed upon the sender's receipt by the postal service.
- (C) The copy of the notice of appeal required by section 1513.13 of the Revised Code to be filed with the chief of the division of mineral resources management shall be deemed filed with the chief when received by the chief, or if the copy of the notice of appeal is sent to the chief by certified mail, registered mail or express mail, the copy of the notice of appeal shall be deemed filed with the chief on the postmark date placed upon the sender's receipt by the postal service.
- (D) A document requesting temporary relief shall be deemed filed with the commission only when received by the commission.
- (E) All filings other than a notice of appeal or request for temporary relief, that are not sent to the commission by certified mail, registered mail or express mail, shall be deemed filed with the commission on the day on which the filings are received by the commission. Filings made by certified mail, registered mail or express mail, shall be deemed filed on the postmark date placed upon the sender's receipt by the postal service.
- (F) Parties shall file an original and one copy of any papers required or permitted to be filed with the commission.
- (G) Copies of all documents filed with the commission by any party to an appeal shall be served upon all other parties to the appeal. Service on a party represented by counsel shall be made on counsel.
- (H) Service by mail is complete upon mailing.
- (I) All documents required or permitted to be filed with the commission must contain:
  - (1) The name of the case;
  - (2) The case number;
  - (3) The title of the document; and
  - (4) Proof of service in the form of a statement of the date and manner of service and of the names of the persons served.

- (J) If documents filed with the commission cite case law as authority in support of argument, the filing must include a copy of the case law cited and must refer to the page number or paragraph on which the relevant language is found.
- (K) Once an appeal is initiated, the commission may, through order, establish a filing and service protocol, which may, among other provisions, include the electronic transmission of documents.

### **1513-3-06 Computation and extension of time.**

- (A) In computing any period of time prescribed or allowed by Chapter 1513. or Chapter 1514. of the Revised Code or by the rules of this chapter of the Administrative Code:
  - (1) The day of the act or event from which the designated period of time begins to run shall not be included.
  - (2) The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday.
  - (3) When the period of time stated or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.
- (B) Whenever a party is required or permitted to respond to a document, and that document was sent by mail, the time for response shall be extended by three days, unless otherwise ordered by the commission.
- (C) The commission may lengthen or reduce the time period allowed for any response of filing but the commission shall not lengthen or reduce the time for:
  - (1) Filing a notice of appeal or request for temporary relief;
  - (2) Filing a petition for an award of costs and expenses including attorneys' fees;
  - (3) Giving public notice of hearings on the adoption, amendment, or rescission of rules; or
  - (4) Taking any other action where a time period is stated by statute, unless agreed to by the parties and approved by the commission.
- (D) Any request for an extension of time for filing a document must be made within the time originally allowed for the filing of said document with the commission.

### **1513-3-07 Intervention.**

- (A) Any person may petition for leave to intervene in an appeal before the commission, which appeal has been initiated by another party. A petition for leave to intervene must be filed at least ten days prior to the beginning of an evidentiary hearing on the merits of an appeal, unless waived by the commission for extraordinary cause.
- (B) A petitioner for leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and, where required, a showing of why the petitioner's interest is or may be adversely affected.
- (C) Subject to compliance with paragraph (A) of this rule, the commission shall grant intervention where the petitioner:
  - (1) Had a statutory right to initiate an appeal in which he wishes to intervene; or
  - (2) Has an interest which is or may be adversely affected by the chief's action under appeal.
- (D) If neither paragraph (C)(1) nor (C)(2) of this rule applies, the commission may consider the following in determining whether intervention will be permitted:
  - (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; and
  - (3) The ability of the petitioner to present relevant evidence and argument.
- (E) Any person granted leave to intervene in a proceeding may participate in such proceeding as a full party or, if desired by the intervenor or if so determined by the commission, in a capacity less than that of a full party. If an intervenor is to participate in a limited capacity, the extent and the terms of the participation shall be at the discretion of the commission.

- (F) The commission may allow the filing of *amicus* briefs and may permit oral argument at hearing by *amicus curiae*. Any person wishing to participate in an appeal as an *amicus curiae* shall move the commission for leave to so participate. *Amicus* participation is discretionary and will be permitted only upon the terms and conditions imposed by the commission.

#### **1513-3-08 Temporary relief.**

- (A) The chairperson of the reclamation commission may, under conditions he prescribes, grant temporary relief he considers appropriate pending final determination of an appeal in accordance with the provisions of division (C) of section 1513.13 of the Revised Code.
- (B) A request for temporary relief must meet the requirements for a notice of appeal set forth in paragraph (B) of rule 1513-3-04 of the Administrative Code and must also contain:
  - (1) A detailed written statement setting forth the reasons why relief should be granted; and
  - (2) Where a right to a decision in five days exists pursuant to division (C) of section 1513.13 of the Revised Code a clear statement of whether or not that right is waived.
- (C) The appellant may waive the requirement that the hearing for temporary relief be held in the locality of the permit area.
- (D) The chairperson may terminate the temporary relief hearing whenever, in the chairperson's judgment, further argument or evidence is unnecessary.
- (E) If at any time after the initiation of the temporary relief procedure, the appellant acts in a manner so as to frustrate the expeditious nature of this proceeding, such action shall constitute a waiver of the right to temporary relief.
- (F) The decision of the chairperson of the commission to grant or deny temporary relief may be appealed to the commission, including the chairperson who decided temporary relief, within thirty days after the chairperson's issuance of the decision in accordance with the provisions of section 1513.13 of the Revised Code. The commission may confine its review to the record developed at the temporary relief hearing conducted by the chairperson. The commission shall affirm the decision of the chairperson, unless it determines that the chairperson's decision is arbitrary, capricious, or otherwise inconsistent with law.
- (G) Temporary relief shall not be granted when the relief sought is the issuance of a permit when a permit has been denied, in whole or in part, by the chief.

#### **1513-3-09 Responsive pleadings.**

- (A) The reclamation commission may order a party to file a response to any request, allegation, averment, or argument made by another party in a notice of appeal or other document filed with the commission. The response ordered may be either a counter-argument or an admission or denial of averments, or other response.
- (B) Unless the commission orders otherwise, the party ordered to file a response pursuant to this rule shall have ten days from the issuance of the commission's order to make such filing.
- (C) Failure to respond as ordered may be treated as a failure to appear at hearing.

#### **1513-3-10 Discovery.**

- (A) Parties to an appeal may obtain discovery in preparing their case in accordance with the provisions of rules 26 through 36 of the Ohio Rules of Civil Procedures.
- (B) Discovery may be obtained from all parties, including intervenors. Discovery from non-parties may be obtained pursuant to rule 45 of the Ohio Rules of Civil Procedures.
- (C) If a party fails to obey an order to compel or permit discovery issued by the commission, the commission may make such orders in regard to the failure as are just, including, but not limited to, taking actions limiting the disobedient party's right to present evidence or terminating the proceedings and rendering a judgment by default against the disobedient party.

### **1513-3-11 Motions.**

- (A) Except for oral motions which must be made at a hearing on the record, or where the commission otherwise directs, any motion made to the commission shall:
  - (1) Be in writing;
  - (2) State with particularity the grounds on which it is based;
  - (3) Set forth the relief sought;
  - (4) Be filed with the commission and served upon all parties to the appeal at least ten days in advance of the hearing, unless the movant demonstrates that unusual circumstances exist justifying an exception to this rule.
- (B) Motions for reconsideration of any decision of the commission shall be made in writing within five business days, calculated in accordance with paragraph (A)(3) of rule 1513-3-06 of the Administrative Code, after the issuance of the commission's decision. A motion for reconsideration shall state with particularity the grounds on which it is based. The filing of a motion for reconsideration does not extend the time for filing a notice of appeal in the appellate court.
- (C) A party may file a motion for the admission of additional evidence. Such motion shall include an affidavit averring that the evidence is newly discovered and could not have been ascertained with reasonable diligence prior to the proceeding before the commission.
- (D) In compliance with the requirements of paragraph (C) of rule 1513-3-13 of the Administrative Code, motions for continuance of a hearing must be filed with the commission and served upon all parties to an appeal at least fourteen days in advance of a hearing.
- (E) Unless the commission orders otherwise, any party to an appeal shall have ten days from service of the motion or until hearing, whichever is earlier, to file a response to a motion.
- (F) If a party fails to make a motion in compliance with the commission's scheduling orders, the commission may refuse to consider said motion. If a party fails to respond to a motion, or fails to respond within a time established by the commission, the commission may construe this failure as a waiver of objection.
- (G) Objections to jurisdiction are not waivable and may be raised at any point in an appeal. Motions to dismiss on jurisdictional grounds should be filed as expeditiously as practicable.

### **1513-3-12 Pre-hearing procedures.**

- (A) The commission, or its hearing officer, on its own initiative or at the request of any party, may schedule and hold pre-hearing conferences regarding issues on appeal.
- (B) Whenever a pre-hearing conference is held, the commission, or its hearing officer, may issue an order which recites the matters discussed, the agreements reached, and the rulings made at the pre-hearing conference.
- (C) The commission, or its hearing officer, may require the filing of a pre-hearing statement by the parties to an appeal. The commission may require the statement to:
  - (1) Inform the commission in detail of the factual and legal issues which the case presents;
  - (2) Include all exhibits which are to be introduced in evidence;
  - (3) Outline the expected testimony of witnesses on controverted factual issues;
  - (4) Set forth the party's position on legal issues, including any significant evidentiary questions, and the authorities in support thereof;
  - (5) Include copies of available opinions of all persons who may be called as expert witnesses.

### **1513-3-13 Notice of hearings and continuance of hearings.**

- (A) Written notice of the time, place and nature of any hearing shall be given by the commission to all parties to, and persons interested in, an appeal at least five days before the hearing is held.
- (B) Written notice of hearing shall be mailed to the parties by certified mail.
- (C) If temporary relief is requested, the commission may give oral or written notice of the hearing at any reasonable time prior to the scheduled temporary relief hearing.

- (D) Continuance of scheduled hearings.
- (1) The commission may continue any hearing upon its own motion or may continue any hearing upon motion of any party, and upon the party's showing of good cause and proper diligence.
  - (2) Motions for continuance of a hearing must be filed with the commission and served upon all parties to an appeal at least fourteen days in advance of a hearing.
  - (3) Motions for continuance made less than fourteen days before hearing or at hearing shall be granted only upon demonstration that an extraordinary situation exists which could not have been anticipated and which would justify the granting of a continuance.
  - (4) Motions for continuance must state the reasons why a continuance is necessary.
  - (5) A request for continuance by any party who has a right to a hearing or decision within a prescribed time period, shall be viewed as a waiver of that party's right to a hearing or decision within such prescribed period.
  - (6) Resumptions of a hearing may be ordered by the commission in situations where a hearing cannot be concluded in the time initially set.

### **1513-3-14 Site views and location of hearings.**

- (A) Site views.
- (1) After an action is commenced, or as part of a notice of appeal, any party may request that the commission view the site of mining or reclamation operations or other areas or features relevant to the appeal.
  - (2) Subject to any applicable safety requirements, the commission may, upon reasonable notice and at reasonable times, inspect any site or other premises when the commission is of the opinion that such a viewing would have a beneficial value in any matter pending before the commission.
  - (3) A quorum of commission members need not be present to conduct a site view.
  - (4) The commission shall control and direct the manner of conducting a site view.
  - (5) All parties shall have prior notice of a site view and shall have the right to be present.
  - (6) Where a site view is conducted on property subject to a mining and reclamation permit, parties shall be informed prior to the site view of any necessary personal protective equipment, including hard hat, safety glasses, hearing protection, safety-toed shoes or boots and additional equipment as may be required on mine property as determined by the mine operator.
  - (7) The commission may limit the number of persons who may accompany a party at a site view.
  - (8) No argument or independent oral statement of the parties shall be permitted at a site view.
  - (9) A site view shall not be considered as evidence.
- (B) Location of hearings. The location of hearings to be held under the rules of this chapter of the Administrative Code shall be established by the commission, giving due regard to the convenience of the parties and their witnesses, provided further that:
- (1) Where the hearing reviews an order or notice of violation requiring cessation of mining, the hearing shall be in reasonable proximity to the mining site so that any viewings can be conducted during the course of the hearing;
  - (2) Where the hearing is on a motion for temporary relief, and if requested, the hearing shall be in the locality of the permit area;
  - (3) In all other proceedings, the hearing shall be in Columbus, Ohio or at any other convenient public location selected by the commission.

### **1513-3-15 Consolidation of proceedings.**

When appeals involving a common question of law or fact are pending before the commission, such appeals are subject to consolidation pursuant to a motion by a party or at the initiative of the commission. The commission shall administer consolidated appeals in the manner it deems most appropriate.

### **1513-3-16 Conduct of evidentiary hearings.**

- (A) The reclamation commission shall conduct hearings and other proceedings in such a manner as to render a complete decision on all issues which are presented, and shall take any steps consistent with the impartial discharge of its duties which are reasonable and necessary to ascertain all relevant facts. The commission shall determine the conduct of the hearing and the order of presentation of evidence.
- (B) Burden of persuasion.
  - (1) In review of notices of violation and cessation orders, the division of mineral resources management shall have the ultimate burden of persuasion as to the validity of the notice of violation or cessation order.
  - (2) In review of civil penalty assessments, the division of mineral resources management shall have the ultimate burden of persuasion as to the fact of the underlying violation and as to the amount of the penalty.
  - (3) In review of any other orders or decisions of the chief of the division of mineral resources management, the ultimate burden of persuasion shall rest with the appellant.
- (C) Evidence.
  - (1) The reclamation commission shall not be bound by the Ohio Rules of Evidence as promulgated by the Ohio supreme court.
  - (2) Parties shall have the right to present evidence, cross-examine witnesses and object to evidence.
  - (3) The commission will rule upon the admissibility of evidence.
  - (4) If any parties object to the admission or rejection of any evidence or to other limitations of the scope of any examination or cross-examination, they shall state briefly the grounds for such objection, and the record may include argument thereon, as allowed by the commission.
  - (5) A continuing objection, once made, shall be sufficient to preserve objection to an area of evidence.
  - (6) If the commission refuses to admit evidence, the party offering the same may make a proffer thereof, and the proffer shall be made a part of the record of the hearing. Proffers may consist of testimony or documentary evidence. Proffers may be made in the following manner:
    - (a) A summary statement by counsel as to the content of the expected testimony;
    - (b) Questions propounded upon the witness and answered; or
    - (c) Submission of documentary evidence or tangible objects.
  - (7) Government documents relating to an appeal may be considered by the commission in adjudicating the case, but copies thereof may be substituted in the record of the proceedings. If certain government documents entered as part of the record are required by the chief for use by the division of mineral resources management pending the appeal, the chief may retain such documents subject to recall by the commission.
  - (8) The commission may, upon motion of any party, direct that a portion of a hearing be conducted *in camera* and that the corresponding portion of the record be sealed to prevent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information. The party requesting such protection shall have the burden of establishing that such protection is required.
  - (9) Parties to a commission hearing shall produce at hearing sufficient copies of any proposed exhibits, so that:
    - (a) The marked exhibit is kept with the commission's case file;
    - (b) Each attending commission member and the hearing officer is provided with a copy of any proposed exhibits; and
    - (c) All parties are provided with copies of any proposed exhibits.
  - (10) Where an exhibit is oversized, copies in a reduced format shall be provided where possible. If an exhibit is oversized, and cannot be readily reproduced in a reduced format, the offering party is not required to produce additional copies of the proposed exhibit at hearing in accordance with paragraph (C)(9) of this rule.

- (D) A stipulation concerning issues of fact or authenticity of documents before the commission must have the concurrence of all full parties to an appeal. A stipulation may be oral or written, and if written, shall be signed by all full parties and filed with the commission prior to hearing. Such a stipulation is binding upon the commission. A stipulation shall be a conclusive determination of the facts stipulated to.
- (E) Written testimony.
- (1) Affidavits may be admitted only if the evidence is otherwise admissible and all full parties agree that affidavits may be used in lieu of oral testimony by a witness. A party desiring to use an affidavit in lieu of oral testimony must serve all full parties with a copy of the affidavit at least fifteen days prior to a hearing. If all full parties to the appeal agree upon the use of the affidavit in lieu of oral testimony, the affidavit shall be filed with the commission at least five days prior to the hearing.
  - (2) In the case of an unavailable declarant, testimony may be offered in compliance with rule 804 of the Ohio Rules of Evidence.
  - (3) The use of a deposition in lieu of the deponent's oral testimony at hearing shall be allowed under the same provisions as are articulated in rule 32 of the Ohio Rules of Civil Procedure. A party desiring to use a deposition or any designated part thereof at hearing, shall file the complete deposition with the commission and serve written notice to every other party at least ten days prior to hearing.
  - (4) Objections to deposition testimony shall be resolved in accordance with rule 32 of the Ohio Rules of Civil Procedure.
  - (5) Where a party is attempting to use written testimony, and such written testimony has been filed with the commission and served upon the parties in accordance with these rules, any full party shall present to the commission a schedule of objections to the written testimony prior to the commencement of hearing.
  - (6) When another action involves the same subject matter and has been brought between the same parties or their representatives or successors in interest, all affidavits, depositions or testimonies lawfully taken in a commission proceeding may be used in another commission proceeding as if originally taken therefor. In the second commission proceeding the admissibility of the written testimony shall again be determined.
- (F) Witnesses.
- (1) The commission may limit the number of witnesses upon any issue and may require any party to present addition evidence on any issue.
  - (2) The commission may require that a witness be called only once at hearing, and that the parties conduct all examination at the time when that witness is called to testify.
  - (3) The commission may require each party in an appeal to identify prior to the commencement of a hearing each person who will be called as a witness in an appeal.
  - (4) Upon motion of a party or in the commission's discretion, the commission may order the separation of witnesses at hearing, provided that the commission shall not exclude:
    - (a) A party; or
    - (b) An officer or employee of a party who is designated as its representative by its attorney; or
    - (c) A person whose presence is shown by a party to be essential to the presentation of his cause.
  - (5) A witness at any hearing shall testify under oath or affirmation, which may be administered by any member of the commission, by a hearing officer or by an Ohio notary.
  - (6) At a hearing where witnesses are called, only one attorney for each party may examine or cross-examine a witness unless otherwise permitted by the commission.
  - (7) The commission may examine on the record the interested parties or witnesses.
- (G) If the appellant fails to appear personally or by counsel or other authorized representative at a hearing scheduled after being duly notified of the hearing, and if good cause for such failure to appear is not shown, the commission may dismiss the appeal.
- (H) By agreement of the parties, a case may be submitted for decision on stipulated facts and briefs; however, the reclamation commission may direct that the case be heard in an evidentiary hearing or argued before the commission.
- (I) The reclamation commission may order the parties to a proceeding to submit briefs at a time designated by the commission, on issues raised in an appeal or on any issues as the commission in its discretion shall determine.

- (J) The commission may order the parties to submit written closing arguments, post-hearing briefs or proposed findings of fact and conclusions of law.
- (K) During the course of a hearing, the commission may order oral argument upon any issue.
- (L) At any time after hearing, but prior to the issuance of a decision, the commission may at its discretion or upon motion of a party, reopen an appeal for further proceedings.

**1513-3-17 Voluntary dismissal and settlement.**

- (A) An appeal before the commission may be closed by the appellant's filing of a notice of withdrawal of appeal at any time prior to the commission's rendering of a final decision.
- (B) If all full parties agree, settlement may be allowed at any stage of the proceedings prior to a final decision. In all cases where a proceeding is sought to be terminated by any of the parties as a result of a settlement agreement, the terms of such settlement shall be submitted to the commission for final action.
- (C) If an appeal is settled during the course of a hearing, the parties shall enter into the record a statement acknowledging that they have reached an agreement, that all issues have been resolved, and that a withdrawal of the appeal will be filed.

**1513-3-18 Reports and recommendations of the hearing officer.**

- (A) Unless otherwise directed by the commission, where a hearing officer has conducted an adjudicatory hearing, the hearing officer shall submit a report and recommendation to the commission in accordance with the provisions of section 1513.131 of the Revised Code.
- (B) After an action is commenced, or as part of a notice of appeal, any full party to an appeal may make a written motion requesting that its hearing be conducted before the commission, rather than before a hearing officer.
- (C) The hearing officer shall submit reports and recommendations to the commission on any interlocutory rulings which fully adjudicate the issues of the appeal.
- (D) Reports and recommendations of hearing officers shall be submitted to the commission within a time reasonably sufficient to allow the commission to issue its orders within any time limits imposed by law. However, in the event that a decision must be rendered within a specified time period, the appeal will be heard by the commission rather than by a hearing officer, unless there has been a waiver of the right to an expedited hearing.
- (E) Reports and recommendations of the hearing officers shall be sent to the parties by certified mail.
- (F) A party may, within fourteen days after receipt of a report and recommendation of the hearing officer, serve and file written objections to the hearing officer's report, which objections may include a motion for admission of additional evidence. Objections shall be specific and state with particularity the grounds therefor.
- (G) Any party may within fourteen days after receipt of objections to the report and recommendation of the hearing officer, file a response.
- (H) The commission may order oral argument upon objections to a report and recommendation of the hearing officer.

**1513-3-19 Decisions of the commission.**

- (A) All final decisions of the commission shall set forth:
  - (1) Findings of fact;
  - (2) Conclusions of law; and
  - (3) An order affirming, modifying, or vacating and remanding, the matter upon appeal.

- (B) All decisions of the commission shall be signed by the chairperson of the commission or by any commission member designated by the chairperson.
- (C) When a decision is issued, the commission shall give notice thereof by certified mail to all parties to the proceeding.
- (D) Decisions of the commission shall be issued within a reasonable time after appeal and in accordance with division (B) of section 1513.13 of the Revised Code.
- (E) Clerical mistakes in decisions, orders or other parts of the record and errors therein from oversight or omission may be corrected by the commission at any time on its own initiative or on motion of any party. During the time period after a final decision has been issued by the commission, clerical mistakes in the final decision and errors therein from oversight or omission may be corrected before an appeal of the commission's final decision is filed. Thereafter, while an appeal is pending before an appellate court, a final decision may be so corrected with leave of the court. The correction of a clerical mistake or error in a final decision does not extend the time for filing a notice of appeal in the appellate court.
- (F) Remission of prepaid civil penalty assessments.
  - (1) If a review of a civil penalty assessment results in an order reducing or eliminating a civil penalty, the commission shall, thirty days after issuing a final decision, remit the funds to the appellant in accordance with division (E) of section 1513.02 of the Revised Code.
  - (2) If a review of a civil penalty assessment results in an order affirming the penalty, the commission shall, thirty days after issuing a final decision, transfer the funds to the chief of the division of mineral resources management.
  - (3) If a review of a civil penalty assessment results in an order increasing the penalty, the person to whom the order was issued shall pay the difference to the reclamation commission within thirty days after the order is received, and the commission shall transfer the funds plus the additional penalty amount to the chief of the division of mineral resources management.
  - (4) If any party requests judicial review of a final order of the commission which order relates to a civil penalty assessment, that party must so notify the commission office within thirty days after the order is issued, and the commission shall continue custody of the funds until the judicial review is completed. If the commission is not so notified, the funds shall be transferred to the proper party as set forth in this rule.

**1513-3-21 Award of costs and expenses.**

- (A) Pursuant to division (E)(1)(c) of section 1513.13 of the Revised Code, the division of mineral resources management may file a petition for an award of costs and expenses including attorneys' fees reasonably incurred in connection with any appeal before the reclamation commission which results in a final order being issued by the commission and where the division demonstrates that a party initiated or participated in the appeal in bad faith and for the purpose of harassing or embarrassing the division.
  - (1) A petition for an award of costs and expenses including attorneys' fees requested under division (E)(1)(c) of section 1513.13 of the Revised Code must be filed with the commission within sixty days of the petitioner's receipt of the final decision of the commission in the action in which the fees were incurred. Failure to make a timely filing of the petition shall constitute a waiver of the right to such an award.
  - (2) Contents of petition. A petition filed with the commission pursuant to division (E)(1)(c) of section 1513.13 of the Revised Code shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition:
    - (a) An affidavit setting forth in detail all costs and expenses, including attorneys' fees, reasonably incurred for, or in connection with, the division's participation in the proceeding;
    - (b) Receipts or other evidence of such costs and expenses; and
    - (c) Where attorneys' fees are requested, evidence that the hours expended and the fees requested, are reasonable for the appeal and for the locality.
  - (3) Any person served with a copy of a petition shall have thirty days from service of the petition within which to file an answer to such petition.

- (4) An award under this rule may include:
  - (a) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of the division's participation in a proceeding before the commission; and
  - (b) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award of costs.
- (B) A decision by the chief of the division of mineral resources management granting or denying, in whole or in part, a request for an award of costs and expenses including attorneys' fees made under division (E)(1)(a) or (E)(1)(b) of section 1513.13 of the Revised Code shall be appealable to the commission under division (A) of section 1513.13 of the Revised Code. Such appeal shall be filed in compliance with division (A) of section 1513.13 of the Revised Code and in compliance with rule 1513-3-04 of the Administrative Code.
- (C) Any person aggrieved by a decision concerning the award of costs and expenses in an administrative appeal before the reclamation commission may appeal such order of the commission in the manner prescribed in section 1513.14 of the Revised Code.
- (D) A party's participation in an appeal brought under Chapter 1514, of the Revised Code does not qualify for an award of costs and expenses including attorneys' fees.

### **1513-3-22 Appeals from commission decisions.**

- (A) Any party aggrieved or adversely affected by a decision of the reclamation commission:
  - (1) In actions involving coal mining and reclamation brought under Chapter 1513, of the Revised Code may seek review of a commission decision in the court of appeals for the county in which the activity addressed by the decision of the commission occurred, is occurring, or will occur, or
  - (2) In actions involving industrial minerals mining and reclamation and brought under Chapter 1514, of the Revised Code may seek review of a commission decision in the court of common pleas in the county where the operation addressed by the decision of the commission is located or in the Franklin county court of common pleas.
- (B) Appeals must be filed within thirty days of the issuance of the decision by the commission.
- (C) Appeals of commission decisions shall be filed in accordance with the provisions of the Ohio Rules of Appellate Procedure.
- (D) To perfect an appeal of a commission decision, the appealing party shall:
  - (1) File a notice of appeal with the office of the commission within the time allowed for appeal;
  - (2) Serve a copy of the notice of appeal to each party, or its counsel, at the last known address; and
  - (3) File a directive with the office of the commission requesting the transmission of the complete record of proceedings before the commission to the appropriate appellate court. The commission shall control the transcription and transmission of the record.
- (E) A notice of appeal from a commission decision shall:
  - (1) Identify the party appealing;
  - (2) Identify and attach the decision of the commission being appealed;
  - (3) Identify the case number assigned to the matter by the commission; and
  - (4) Identify the court to which the appeal is taken.
- (F) The expense of transcribing the record of a hearing before the commission shall be borne by the party appealing the decision of the commission.
- (G) All matters remanded to the commission shall be disposed of in accordance with the order of the reviewing court.