



Reclamation Advisory Memorandum

Department for Surface Mining
Reclamation and Enforcement

From: C. Thomas Bennett

Date: December 22, 1988

Subject: Regulation Change--Hearings

RAM#97

Several of this Department's permanent program regulations were amended on December 13, 1988. The 32 amended regulations will be distributed as soon as possible to everyone on our mailing list for regulation updates. I want to call your attention to one regulation in particular - 405 KAR 7:090 - which contains the procedures for preliminary and formal hearings. Most of the provisions in 7:090 have not been revised, but some critical changes have been made to the procedures for scheduling preliminary hearings. These new hearing procedures will be implemented beginning on January 16, 1989.

For most violations, preliminary hearings will no longer be scheduled automatically. Preliminary hearings will be scheduled automatically for enforcement actions that require cessation of mining. For all other notices and orders, a hearing will not be automatic and must be requested.

The following dates apply. If a proposed penalty assessment is mailed before January 16, 1989, a preliminary hearing will be scheduled automatically. If a proposed penalty assessment is mailed on or after January 16, 1989, the right to request a hearing will be explained in the new forms included with the proposed penalty assessment, and the permittee should read these forms carefully to determine if a hearing request is necessary. If the noncompliance or cessation order requires the cessation of mining, a preliminary hearing will be scheduled automatically. If the noncompliance or cessation order does not require the cessation of mining, a preliminary hearing will not be scheduled unless requested. If a preliminary hearing is requested, a hearing date will be established for sometime within the next 40 calendar days.

Permittees desiring a hearing on notices and orders that do not require cessation of mining, or who want to challenge the resulting penalty assessments, must request a preliminary or formal hearing within 30 calendar days of receipt of the proposed penalty assessment. If a hearing request is not received, a final order will be entered stating that the fact of the violation has been deemed admitted and that the proposed penalty assessment is due and payable within 30 days.

Requests for preliminary hearings must be in writing, and should be sent to:

Department for Surface Mining Reclamation and Enforcement
Division of Field Services
Assessment and Records Section
2 Hudson Hollow
Frankfort, KY 40601

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RAM # 97
December 22, 1988
Page two

Requests for formal hearings must be in writing, and should be sent to:

Natural Resources and Environmental Protection Cabinet
Division of Hearings
Fourth Floor, Capital Plaza Tower
Frankfort, KY 40601

Please note that the prepayment provisions of 7:090 have not been changed. The Department will still require prepayment of penalties prior to formal hearings, but will not require that penalties be paid prior to preliminary hearings.

Officers, directors or agents of a corporation who willfully and knowingly authorized, ordered, or carried out a violation still will be pre-assessed individual civil penalties pursuant to KRS 350.990(9). However, the Department will no longer automatically pre-assess individual civil penalties against these persons. Beginning on January 16, 1989, the Division of Field Services will make case-by-case determinations as to whether pre-assessment of individual civil penalties is appropriate.