

**49-407. Permit to engage in surface mining; approval, modification or denial; determination and order of secretary, contents; applicant to file schedule listing notices of violation; prime farmland area, effect; informal conference; notice and hearing on final determination; conduct of hearing.** (a) Upon the basis of a complete application or an amendment or renewal thereof, as required by this act and the national surface mining control and reclamation act of 1977 (public law 95-87), and public notification and opportunity for a public hearing as required by the national act, the secretary shall grant, require modification of, or deny the application within 60 days and notify the applicant in writing. The applicant shall have the burden of establishing compliance with law. Within 10 days after granting a permit, the secretary shall notify the board of county commissioners of the county in which the area of affected land is located and furnish a legal description of the permit area. No permit or revision shall be approved unless the application and any other evidence referred to in the secretary's findings affirmatively establishes, and the secretary determines, according to written findings in the secretary's order, the following:

- (1) The application is accurate, complete, and complies with all requirements of this act and the aforesaid national act; and
- (2) the applicant demonstrates reclamation required by this act and the aforesaid national act can be accomplished under the reclamation plan proposed; and
- (3) the assessment of probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in the aforesaid national act has been made by the department and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and
- (4) the area proposed to be mined is not included within an area designated unsuitable for mining or within an area under study for such designation, pursuant to this act or the national surface mining control and reclamation act of 1977 (public law 95-87); and
- (5) in cases involving mining of a severed mineral interest, the applicant has furnished written consent of the surface estate owner or a conveyance expressly granting or reserving the right to surface extraction of coal or the applicant otherwise establishes the right to extract coal by surface methods under the law of Kansas.

(b) The applicant shall file with the application a schedule listing all notices of violations of this act or the national surface mining control and reclamation act of 1977 (public law 95-87), or any law, rule or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection insured by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of the application. The schedule also shall indicate the final resolution of any such notice of violation. Where the schedule or other information available to the department indicates any surface coal mining operation owned or controlled by the applicant is currently in violation of this act or such other laws referred to herein, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the agency which has jurisdiction over such violation and no permit shall be issued to an applicant after a finding by the secretary, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this act of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this act.

(c) If the area proposed to be mined contains prime farmland, as determined pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87), the secretary, after consultation with the United States secretary of agriculture and pursuant to national regulations, shall grant a permit to mine on prime farmland if the secretary makes written findings that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards provided by the national act.

(d) (1) If an informal conference has been held, the secretary shall issue and furnish to parties to the proceedings written findings granting or denying the application, in whole or in part, and stating reasons therefor, within 30 days of the conference.

(2) If no informal conference is held, the secretary shall notify the operator whether the application has been approved or disapproved, in whole or in part.

(3) If the application is approved the permit shall be issued. If disapproved, specific reasons therefor must be set forth in the notification. Within 30 days after notification of the secretary's final decision, the operator or any party with an interest which may be adversely affected may request a hearing on the final determination. Such hearing shall be held within 30 days of such request, with notice being given by the secretary to all interested parties.

(4) The hearing shall be adjudicatory in nature, with a record made of all proceedings, and no person who presided at an informal conference shall preside at the hearing or participate in the decision thereon or in any administrative appeal therefrom. Within 30 days after such hearing, the secretary shall issue and furnish to parties to the proceeding written findings granting or denying the application, in whole or in part, and stating reasons therefor.

(5) Where a hearing is requested, the secretary, under conditions the secretary prescribes by rules and regulations, may grant appropriate temporary relief pending a final determination, if:

- (i) All parties have been given notice and an opportunity to be heard on the request for temporary relief;
- (ii) the applicant for temporary relief shows there is a substantial likelihood that the applicant will prevail on the merits of the final determination; and
- (iii) such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.

(6) In connection with any hearing, the secretary or hearing officer may administer oaths, subpoena witnesses, or written or printed materials, compel attendance of witnesses, or production of materials, and take evidence including but not limited to site inspections of the land to be affected and other surface coal mining operations carried on by the applicant. A verbatim record of each public hearing required by this act shall be made, and a transcript made available on the motion of any party or by order of the secretary.

**History:** L. 1968, ch. 395, § 7; L. 1978, ch. 208, § 6; L. 1979, ch. 169, § 5; L. 1988, ch. 192, § 15; July 1.