

49-416a. Review of notice or order; investigation and public hearing; order vacating, affirming, modifying or terminating notice or order; show cause order to suspend or revoke permit, hearing; assessment of costs. (a) An operator issued a notice or order by the secretary or any person having an interest which is or may be adversely affected by such notice or order or by any modification, vacation, or termination of such notice or order, may apply to the secretary for review of the notice or order within 30 days of receipt thereof or within 30 days of its modification, vacation, or termination. Upon receipt of such application, the secretary shall cause such investigation to be made as the secretary deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the applicant or the person having an interest which is or may be adversely affected, to enable the applicant or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation, or termination thereof. The filing of an application for review under this subsection shall not operate as a stay of any order or notice. The operator and other interested persons shall be given written notice of the time and place of the hearing at least five days prior thereto. Any such hearing shall be of record.

(b) Upon receiving the report of such investigation, the secretary shall make findings of fact, and shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the notice or order, or the modification, vacation, or termination of such notice or order complained of and incorporate its findings therein. Where the application for review concerns an order for cessation of surface coal mining and reclamation operations the secretary shall issue the written decision within 30 days of the receipt of the application for review, unless temporary relief has been granted.

(c) Pending completion of the investigation and hearing required by this section, the applicant may file with the secretary a written request that the secretary grant temporary relief from any notice or order issued together with a detailed statement giving reasons for granting such relief. The secretary shall issue an order or decision granting or denying such relief expeditiously. Where the applicant requests relief from an order for cessation of coal mining and reclamation operations, the order or decision on such a request shall be issued within five days of its receipt. The secretary may grant such relief, under such conditions as the secretary may prescribe, if:

(1) A hearing has been held in the locality of the permit area on the request 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 secretary will be favorable to the applicant; and

(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.

(d) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked the secretary or hearing officer shall hold a public hearing after giving written notice of the time, place, and date thereof. Any such hearing shall be of record. Within 60 days following the public hearing, the secretary shall issue and furnish to the operator and all other parties to the hearing a written decision, and the reasons therefor, concerning suspension or revocation of the permit. If the secretary revokes the permit, the operator immediately shall cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the secretary, or the secretary shall declare as forfeited the performance bonds for the operation.

(e) Whenever an order is issued under this section, or as a result of any administrative proceeding under this act, at the request of any person, a sum equal to the aggregate amount of all costs and expenses, including attorney fees, as determined by the secretary to have been reasonably incurred by such person for or in connection with such person's participation in such proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review or the secretary, resulting from administrative proceedings, deems proper.

History: L. 1979, ch. 169, § 18; L. 1988, ch. 192, § 22; July 1.