

TITLE 460: OKLAHOMA DEPARTMENT OF MINES  
CHAPTER 2: RULES OF PRACTICE AND PROCEDURE  
FOR THE COAL RECLAMATION ACT OF 1979

Effective January 2017



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## CHAPTER 2. RULE OF PRACTICE AND PROCEDURE FOR THE COAL RECLAMATION ACT OF 1979

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[Authority: 45 O.S., §§ 1.5 et seq. and 789; 75 O.S., §§ 250 et seq.]  
 [Source: Codified 12-31-91]

### SUBCHAPTER 1. GENERAL PROVISIONS

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#### 460:2-1-1. Purpose and construction

The purpose and construction of this Chapter is to achieve the just, timely, and inexpensive determination of all proceedings consistent with adequate consideration of the issues involved.

#### 460:2-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Act**" means the Coal Reclamation Act of 1979, 45 O.S. 1981, Section 742.1 et seq.

"**Attorney**" means the legal counsel for the Department of Mines.

"**Director**" means the Chief Mine Inspector, State of Oklahoma.

"**Director of OHA**" means the Administrative Officer, Department of Mines.

"**DOM**" means the Department of Mines.

"**Hearing Examiner**" means a hearing examiner appointed by the Chief Mine Inspector.

"**OHA**" means the Office of Hearings and Appeals, Department of Mines.

**460:2-1-3. Jurisdiction of the Director**

(a) The jurisdiction of the Director includes the authority to exercise the final decision making power under the act pertaining to:

- (1) Applications for review of decisions by DOM regarding determinations concerning permits for surface coal mining operations pursuant to Sections 745.14 and 745.15 of the act;
- (2) Petitions for review of proposed assessments of civil penalties issued by DOM pursuant to Section 769 of the act;
- (3) Applications for review of notices of violation and orders of cessation or modifications, vacations, or terminations thereof, issued pursuant to Sections 776 or 777 of the act;
- (4) Proceedings for suspension or revocation of permits pursuant to Section 779 of the act;
- (5) [Reserved];
- (6) Applications for temporary relief;
- (7) Petitions for awards of costs and expenses under Section 786 of the act;
- (8) Appeals from orders or decisions of hearing examiners; and
- (9) All other appeals and review procedures under the act which are permitted by the regulations of this Chapter.

(b) In performing his functions under (a) of this section, the Director is authorized to:

- (1) Order hearings; and
- (2) Issue orders to secure the just and prompt determination of all proceedings.

**460:2-1-4. Eligibility to practice**

(a) A hearing examiner or the Director may determine the eligibility of persons to practice before the OHA in any proceeding under the act.

(b) If a hearing examiner or the Director determines that any person is not qualified to practice before the OHA, the hearing examiner or the Director shall disqualify the person and report the disqualification to the Director of OHA.

(c) Upon receipt of a report under (b) of this section, the Director of the OHA may request the legal counsel for DOM initiate a disciplinary proceeding.

**460:2-1-5. Requests for declaratory rulings**

(a) Any person may request the Director to interpret the applicability of any rule or order of Department by requesting a declaratory ruling. The purpose of a declaratory ruling is to explain, or clarify, a rule or an order of the Director in relation to a particular situation. A request for a declaratory ruling must be in writing, and it must include the following information.

- (1) The name, address and telephone number of the person making the request;
- (2) The name, address and telephone number of the organization the person represents, if applicable;
- (3) The date of the request;
- (4) A description of the problem or issue which is in the reason for the request; and

(5) The numbers and headings used to identify the rule or order on which the ruling is sought.

(b) The Director may deny the request if it is repetitive, concerns a matter that in the Director's judgment is inappropriate for a declaratory ruling, or concerns a matter beyond the Director's authority.

(c) The Director may provide others with written notice of the request for a declaratory ruling and give them an opportunity to respond in writing within 15 days.

(d) The Director shall issue a declaratory ruling within a reasonable time after the request is received by Department.

(e) A declaratory ruling or refusal to issue such ruling shall be subject to judicial review in the same manner as provided by Department rules.

[Source: Added at 17 Ok Reg 3168, eff 7-28-00]

**460:2-1-6. Parties**

(a) All persons indicated in the act as parties to administrative proceedings under the act shall be considered statutory parties. Such statutory parties include:

- (1) In a civil penalty proceeding under 460:2-7-1, as represented by its legal counsel, and any person against whom a proposed assessment is made who files a petition;
- (2) In a review proceeding under 460:2-9-1 et seq. or 460:2- 11-1 et seq., DOM, as represented by its legal counsel, and:

(A) If a permittee files an application for review, the permittee; and

(B) If any other person having an interest which is or may be adversely affect files an application for review, the permittee and the person filing such application;

- (3) In a proceeding to suspend or revoke a permit under 460:2-13-1 et seq. DOM, as represented by its legal counsel, and the permittee who is ordered to show cause why the permit should not be suspended or revoked.

(4) [RESERVED]

(b) Any other person claiming a right to participate as a party may seek leave to intervene in a proceeding by filing a petition to do so pursuant to 460:2-1-11.

(c) If any person has a right to participate as a full party in a proceeding under the act and fails to exercise that right by participating in each stage of the proceeding, that person may become a participant with the rights of a party by order of the hearing examiner or the Director.

**460:2-1-7. Hearing sites**

Unless the act requires otherwise, hearings shall be held in a location established by the hearing examiner; however, the hearing examiner shall give due regard to the convenience of the parties or their representatives and witnesses.

**460:2-1-8. Filing of documents**

(a) Any initial pleadings in a proceeding to be conducted or being conducted by a hearing officer under the rules of this Chapter shall be filed, by hand or by mail, with the OHA, Department of Mines.

- (b) Where a proceeding has been assigned to a hearing examiner, the parties will be notified by the DOM of the name and address of the hearing examiner assigned to the case and thereafter all further documents shall be filed with the hearing examiner, at the address designated in the notice.
- (c) Any notice of appeal or documents in a proceeding to be conducted or being conducted by the Director shall be filed, by hand or by mail, with the Director.
- (d) Any person filing initial pleadings with the OHA or a notice of appeal with the Director shall furnish an original and one copy. Any person filing other documents with the OHA shall furnish only an original.
- (e) Any person who has initiated a proceeding under the rules of this Chapter before the OHA or filed a notice of appeal with the Director shall file proof of service with the same in the form of a return receipt where service is by registered or certified mail, or an acknowledgement by the party served or a verified return where service is made personally. A certificate of service shall accompany all other documents filed by a party in any proceeding.
- (f) The effective filing date for documents initiating proceedings shall be the date the document is received by the DOM.
- (g) The effective filing date for all other documents shall be the date the document is received by the hearing examiner, or, in a proceeding before the Director, the date the document is received by the Director.

**460:2-1-9. Form of documents**

- (a) Any document filed with the OHA in any proceeding brought under the act shall be captioned with:
  - (1) The names of the parties;
  - (2) The name of the mine to which the document relates; and
  - (3) If the review is being sought under Section 786 of the act, identification by number of any notice or order sought to be reviewed.
- (b) After a docket number has been assigned to the proceeding by the OHA, the caption shall contain such docket number.
- (c) The caption should include other information appropriate for identification of the proceeding, including the permit number, if known.
- (d) Each document shall contain a title that identifies the contents of the document following the caption.
- (e) The original of any document filed with the OHA shall be signed by the person submitting the document or by that person's attorney.
- (f) The address and telephone number of the person filing the document or that person's attorney shall appear beneath the signature.
- (g) All petitions or motions requesting hearings or other affirmative or administrative action of the Department shall be in the following form:

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BEFORE THE OKLAHOMA DEPARTMENT

OF MINES

IN RE: (nature of proceeding))No. \_\_\_\_\_  
 )(Initials of Case#-)year - to be completed  
 )by staff if not known  
 )or previously  
 )designated)

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**460:2-1-10. Service**

- (a) Any party initiating a proceeding in the OHA under the Act shall serve copies of the initiating documents to the Director or the Department Legal Counsel, Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106 (telephone 405/427-3859). Any party or other person shall serve any other documents being filed subsequently with the OHA on all other parties and all other persons participating in the proceeding.
- (b) Copies of documents by which any proceeding is initiated shall be served on all statutory parties personally or by registered or certified mail, return receipt requested. All subsequent documents shall be served personally or by first class mail.
- (c) Service of copies of documents initiating a proceeding is complete at the time of personal service or, if service is made by mail, upon receipt. Service of all subsequent documents is complete at the time of personal service or, if service is by mail, upon mailing.
- (d) Whenever an attorney has entered an appearance for a party in a proceeding before a hearing examiner or the Director, service thereafter shall be made upon the attorney.

[Source: Amended at 31 Ok Reg 2083, eff 9-12-14]

**460:2-1-11. Intervention**

- (a) Any person, other state agencies, or the Office of Surface Mining may petition for leave to intervene at any stage of a proceeding in the OHA under the act.
- (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 his interest is or may be adversely affected.
- (c) The hearing examiner or the Director shall grant intervention where the petitioner:
  - (1) Has a statutory right to initiate the proceeding in which he wishes to intervene; or
  - (2) Has an interest which is or may be adversely affected by the outcome of the proceeding.
- (d) If neither (c) (1) or (c) (2) of this section apply, the hearing examiner or the Director shall consider the following in determining whether the intervention is appropriate:
  - (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;

- (3) The ability of the petitioner to present relevant evidence and argument; and
- (4) The effect of intervention on the agency's implementation of its statutory mandate.
- (e) Any person, including other state agencies, or OSM granted leave to intervene in a capacity less than that of a full party. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be in the discretion of the hearing examiner or the Director.

#### **460:2-1-12. Voluntary dismissal**

Any party who initiated a proceeding before the OHA may seek to withdraw by moving to dismiss at any stage of a proceeding and the hearing examiner or the Director may grant such a motion.

#### **460:2-1-13. Motions**

- (a) Except for oral motions made in proceedings on the record, or where the hearing examiner otherwise directs, each motion shall:
- (1) Be in writing; and
  - (2) Contain a concise statement of supporting grounds.
- (b) Unless the hearing examiner or the Director orders otherwise, any party to a proceeding in which a motion is filed under (a) of this section shall have 15 days from service of the motion to file a statement in response.
- (c) Failure to make a timely motion or to file a statement in response may be construed as a waiver of objection.
- (d) A hearing examiner or the Director shall rule on all motions as expeditiously as possible.

#### **460:2-1-14. Consolidation of proceedings**

When proceedings involving a common question of law or fact are pending before a hearing examiner or the Director, such proceedings are subject to a consolidation pursuant to a motion by a party or at the initiation of the hearing examiner or Director.

#### **460:2-1-15. Advancement of proceedings**

- (a) Except in expedited review proceedings under 460:2-11-1, or in temporary relief proceedings under 460:2-17-7, at any time after commencement of a proceeding, any party may move to advance the scheduling of a proceeding.
- (b) Except as otherwise directed by the hearing examiner or the Director, any party filing a motion under this section shall:
- (1) Make the motion in writing;
  - (2) Describe the exigent circumstances justifying the advancement;
  - (3) Describe the irreparable harm that would result if the motion is not granted;
  - (4) Incorporate in the motion affidavits to support any representations of fact.
- (c) Service of a motion under this section shall be accomplished by personal delivery or by telephonic or telegraphic communication followed by mail. Service is completed upon mailing.

(d) Unless otherwise directed by the hearing examiner or the Director, all parties to the proceedings in which the motion is filed shall have 10 days from the date of service of the motion to file a statement in response to the motion.

(e) Following the timely receipt by the hearing examiner of statements in response to the motion, the hearing examiner may schedule a hearing regarding the motion. If the motion is granted, the hearing examiner may advance pleading schedules, prehearing conferences, and the hearing, as deemed appropriate; provided, a hearing on the merits shall not be scheduled with less than five working days notice to the parties consent to an earlier hearing.

(f) If the motion is granted, the Director may, if he deems such action to be appropriate, advance the appeal on its calendar and order such other advancement as may be appropriate, including an abbreviated schedule for briefing or oral argument.

#### **460:2-1-16. Waiver of right to hearing**

Any person entitled to a hearing before a hearing examiner under the act may waive such right in writing. Where parties are directed by any rule in the regulations in this Chapter to file a responsive pleading on or before a specified time, any party who fails to file such responsive pleading by the time specified, may be deemed to have waived his right to a hearing. Unless all parties to a proceeding who are entitled to a hearing waive, or are deemed to have waived such right, a hearing will be held.

#### **460:2-1-17. Status of notice of violation and orders of cessation pending review by OHA**

Except where temporary relief is granted pursuant to Section 786(c) or Section 787 of the act, notices of violation and orders of cessation issued under the act shall remain in effect during the pendency of review before a hearing examiner or the Director.

[Source: Added at 17 Ok Reg 3168, eff 7-28-00]

## **SUBCHAPTER 3. EVIDENTIARY HEARINGS**

### **Section**

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[Source: Codified 7-28-00]

**460:2-3-1. Presiding officers**

A hearing examiner shall preside over any hearing required by the act.

[Source: Added at 17 Ok Reg 3168, eff 7-28-00]

**460:2-3-2. Powers of hearing examiners**

(a) Under the regulations in this Chapter, a hearing examiner may:

- (1) Administer oaths and affirmations;
- (2) Issue subpoenas;
- (3) Issue appropriate orders relating to discovery;
- (4) Rule on procedural requests or similar matters;
- (5) Hold conferences for settlement or simplification of the issues;
- (6) Regulate the course of the hearing;
- (7) Rule on offers of proof and receive relevant evidence;
- (8) Take other actions authorized by the regulations in this Chapter and the act; and
- (9) Make or recommend decisions.

(b) A hearing examiner may order a prehearing conference:

- (1) To simplify and clarify issues;
- (2) To receive stipulations and admissions;
- (3) To explore the possibility of agreement disposing of any or all of the issues in dispute; and
- (4) For such other purposes as may be appropriate.

(c) Except as otherwise provided in the regulations of this Chapter, the jurisdiction of the hearing examiner shall terminate upon:

- (1) The filing of a notice of appeal from an initial decision or other order dispositive of the proceeding;
- (2) The issuance of an order of the Director granting a petition for review;
- (3) The expiration of the time period within which a petition for review or an appeal to the Director may be filed.

[Source: Added at 17 Ok Reg 3168, eff 7-28-00]

**460:2-3-3. Conduct of hearing examiners**

Hearing examiners shall adhere to the "Code of Judicial Conduct."

[Source: Added at 17 Ok Reg 3168, eff 7-28-00]

**460:2-3-4. Notice of hearing**

(a) A hearing examiner shall give notice to the parties of the time, place and nature of any hearing.

(b) Except for expedited review proceedings and temporary relief proceedings where time is of the essence, notice given under this section shall be in writing.

(c) In an expedited proceeding when there is only opportunity to give oral notice, the hearing examiner shall enter that fact contemporaneously on the record by a signed and dated memorandum describing the notice given.

[Source: Added at 17 Ok Reg 3168, eff 7-28-00]

**460:2-3-5. Certification of interlocutory ruling**

Upon motion or upon the initiative of the hearing examiner, the examiner may certify to the Director a ruling which does not finally dispose of the case if the ruling presents a controlling question of law and an immediate appeal would materially advance the ultimate disposition by the examiner.

[Source: Added at 17 Ok Reg 3168, eff 7-28-00; Added at 17 Ok Reg 3168, eff 7-28-00]

**460:2-3-6. Summary decisions**

(a) At any time after a proceeding has begun, a party may move for summary decision of the whole or part of the case.

(b) The moving party under this section shall verify any allegations of fact with supporting affidavits, unless the moving party is relying upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.

(c) A hearing examiner may grant a motion under this section if the record, including the pleadings, depositions, answers to interrogatories, admissions and affidavits shows that:

- (1) There is no disputed issue as to any material fact; and
- (2) The moving party is entitled to summary decision as a matter of law.

(d) If a motion for summary decision is not granted for the entire case or for all the relief requested and an evidentiary hearing is necessary, the hearing examiner shall, if practicable and upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith at controversy. The examiner shall thereupon, issue an order specifying the facts that appear without substantial controversy and direct such further proceedings as deemed appropriate.

[Source: Added at 17 Ok Reg 3168, eff 7-28-00]

**460:2-3-7. Proposed findings of fact and conclusions of law**

The Hearing examiner shall allow the parties to a proceeding the opportunity to submit proposed findings of fact and conclusions of law together with a supporting brief at the time designated by the hearing examiner unless a Summary Decision has been granted disposing of the entire case pursuant to OAC 460:20-3-6.

[Source: Added at 17 Ok Reg 3168, eff 7-28-00; Amended at 22 Ok Reg 2783, eff 9-11-05]

**460:2-3-8. Initial orders and decisions**

An initial order or decision disposing of a case shall incorporate:

- (1) Findings of fact and conclusions of law and the basis and reasons therefore on all the material issues of fact, law, and discretion presented on the record; and
- (2) An order granting or denying relief.

**460:2-3-9. Effect of initial order or decision**

An initial order or decision shall become final if that order or decision is not timely appealed to the Director under 460:2-19-1 or 460:2-19-2.

**460:2-3-10. Certification of record**

Except in expedited review proceedings under 460:2-11-1, within 5 days after an initial decision has been rendered, the hearing examiner shall certify the official record of the proceedings, including all exhibits, and transmit the official record for filing in the Department of Mines.

**SUBCHAPTER 5. DISCOVERY****Section**

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**460:2-5-1. Discovery methods**

Parties may obtain discovery by one or more of the following methods:

- (1) Depositions upon oral examination or upon written interrogatories;
- (2) Written interrogatories;
- (3) Production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and
- (4) Requests for admission.

**460:2-5-2. Time for discovery**

Following the initiation of a proceeding, the parties may initiate discovery at any time so long as it does not interfere with the conduct of the hearing.

**460:2-5-3. Scope of discovery**

(a) Unless otherwise limited by order of the hearing examiner in accordance with the rules in this Chapter, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

(b) It is not grounds for objection that information sought will not be admissible at the hearing if the information sought

appears reasonably calculated to lead to the discovery of admissible evidence.

(c) A party may obtain discovery of documents and tangible things otherwise discoverable under (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without due hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the hearing examiner shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

(d) Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the hearing examiner may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) The discovery not be had;
- (2) The discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters;
- (5) Discovery be conducted with no one present except persons designated by the hearing examiner; or
- (6) A trade secret or other confidential research, development or commercial information may not be disclosed or be disclosed only in a designated way.

**460:2-5-4. Sequence and timing of discovery**

Unless the hearing examiner upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

**460:2-5-5. Supplementation of responses**

A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

- (1) A party is under a duty to supplement timely his response with respect to any question directly addressed to:
  - (A) The identity and location of persons having knowledge of discoverable matters; and
  - (B) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify and the substance of his testimony.

(2) A party is under a duty to amend timely a prior response if he later obtains information upon the basis of which:

(A) He knows the response was incorrect when made, or;

(B) He knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the hearing examiner or agreement of the parties.

#### **460:2-5-6. Motion to compel discovery**

(a) If a deponent fails to answer a question propounded, or a party upon whom a request is made pursuant to 460:2-5-11, or a party upon whom answers to interrogatories are served fails to adequately respond or objects to the request, or any party thereof, or fails to permit inspection as requested, the discovering party may move the hearing examiner for an order compelling a response or inspection in accordance with the request.

(b) The motion shall set forth:

- (1) The nature of the questions or request;
- (2) The response or objection of the party upon whom the request was served; and
- (3) Arguments in support of the motion.

(c) For purposes of this section, an evasive answer or incomplete answer or response shall be treated as a failure to answer or respond.

(d) In ruling on a motion made pursuant to this section, the hearing examiner may make such a protective order as he is authorized to make on a motion pursuant to 460:2-5-3(d).

#### **460:2-5-7. Failure to comply with orders compelling discovery**

If a party or an officer, director, or other agent of a party fails to obey an order to provide or permit discovery, the hearing examiner before whom the action is pending may make such orders in regard to the failure as are just, including but not limited to the following:

(1) An order that the matters sought to be discovered or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters into evidence; or

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

#### **460:2-5-8. Depositions upon oral examination or upon written**

(a) Any party desiring to take the testimony of any other party or other persons by deposition upon oral examination or written questions shall, without leave of the hearing examiner, give reasonable notice in writing to every other party, to the person to be examined and to the hearing examiner of:

(1) The proposed time and place of taking the deposition;

(2) The name and address of each person to be examined, if known, or if the name is not known, a general description sufficient to identify him or the particular group or class to which he belongs;

(3) The matter upon which each person will be examined; and

(4) The name or descriptive title and address of the officer before whom the deposition is to be taken.

(b) A deposition may be taken before any officer authorized by the laws of the State of Oklahoma.

(c) The actual taking of the deposition shall proceed as follows:

(1) The deposition shall be on the record;

(2) The officer before whom the deposition is to be taken shall put the witness on oath or affirmation;

(3) Examination and cross-examination shall proceed as at a hearing;

(4) All objections made at the time of the examination shall be noted by the officer upon the deposition;

(5) The officer shall not rule on objections to the evidence, but evidence objected to shall be taken subject to the objections.

(d) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature, unless examination and signature is waived by the deponent. The officer shall certify the deposition, or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign.

(e) Where the deposition is to be taken upon written questions, the party taking the deposition shall serve a copy of the questions, showing each question separately and consecutively numbered, on every other party with a notice stating the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be taken. Within 30 days after service, any other party may serve cross-questions. The questions, cross-questions, and answers shall be recorded and signed, and the deposition certified, as in the case of a deposition on oral examination.

(f) A deposition will not become a part of the record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party, any other party may introduce any other parts.

(g) A deponent whose deposition is taken and the officer taking a deposition shall be entitled to the same fees as are paid for like services in the district courts of the United States, to be paid by the party at whose instance the deposition is taken.

(h) The deponent may be accompanied, represented, and advised by legal counsel.



**460:2-5-9. Use of depositions**

At the hearing, any part or all of a deposition, so far as admissible, may be used against any party who was present or represented at the taking of the deposition, or who had reasonable notice thereof, in accordance with any of the following provisions:

- (1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness;
- (2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent or a person designating to testify on behalf of a public or private corporation, partnership, or association or governmental agency which is a party may be used by an adverse party for any purpose; or
- (3) The deposition of a witness, whether or not a party, may be used by a party for any purpose if the hearing examiner finds that:
  - (A) The witness is dead;
  - (B) The witness is at a distance greater than 100 miles from the place of hearing, or is outside the United States, unless it appears that the absence of the witness was procured by the party offering the deposition;
  - (C) The witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;
  - (D) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; or
  - (E) Such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the hearing, to allow the deposition to be used.

**460:2-5-10. Written interrogatories to parties**

- (a) Any party may serve upon any other party written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories, answers, and all related pleadings shall be served on the hearing examiner and upon all parties to the proceedings.
- (b) Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answer and objections shall be signed by the person making them. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties to the proceeding within 30 days after service of the interrogatories, or within such shorter time as the hearing examiner may allow.
- (c) Interrogatories may relate to any matters which can be inquired into under 460:2-5-3. An interrogatory otherwise proper is not necessarily objectionable merely because any answer to the interrogatory involves an opinion or contention that relates to fact or the application of the law to fact, but the

hearing examiner may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

**460:2-5-11. Production of documents and things and entry upon**

- (a) Any party may serve on any other party a request to:
  - (1) Produce and permit the party making the request, or a person acting on his behalf, to inspect and copy any designated documents, or the inspect and copy, test, or sample any tangible things within the scope of 460:2-5-3 and which are in the possession, custody, or control of the party upon whom the request is served; or
  - (2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property (including the air, water, and soil) or any designated object or operation thereon, within the scope of 460:2-5-3.
- (b) The request may be served on any party within leave of the hearing examiner.
- (c) The request shall:
  - (1) Set forth the items to be inspected either by individual item or by category;
  - (2) Describe each item or category with reasonable particularity; and
  - (3) Specify a reasonable time, place, and manner of making the inspection and performing the related acts.
- (d) The party upon whom the request is served shall serve on the party submitting the request a written response within 30 days after service of the request.
- (e) The response shall state, with respect to each item or category:
  - (1) That the inspection and related activities will be permitted as requested; or
  - (2) That objection is made in whole or in part, in which case the reasons for objection shall be stated.

**460:2-5-12. Admissions**

- (a) A party may serve upon any other party a written request for the admission, for purpose of the pending action only, of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified matter of fact.
- (b) Each matter of which an admission is requested is admitted unless, within 30 days after service of the request or such shorter or longer time as the hearing examiner may allow, the party to whom the request is directed serves on the requesting party:
  - (1) A sworn statement denying specifically the relevant matters of which an admission is requested;
  - (2) A sworn statement setting forth in detail the reasons why he can neither truthfully admit nor deny them; or
  - (3) Written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(c) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.

(d) The party who has requested that admissions may move to determine that sufficiency of the answers or objections. Unless the hearing examiner determines that an objection is justified, he shall order that an answer be served. If the hearing examiner determines that an answer does not comply with the requirements of this section, he determines that an answer does not comply with the requirements of this section, he may order either that the matter is admitted or that an amended answer be served. The hearing examiner may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to hearing.

(e) Any matter admitted under this section is conclusively established unless the hearing examiner on motion permits withdrawal or amendment of the admission.

(f) Any admission made by a party under this section is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

## SUBCHAPTER 7. PETITIONS FOR REVIEW OF PROPOSED ASSESSMENTS OF CIVIL PENALTIES

### Section

460:2-7-1.	Who may file
460:2-7-2.	Time for filing
460:2-7-3.	Contents of petition; payment required
460:2-7-4.	Answer
460:2-7-5.	Review of waiver determination
460:2-7-6.	Burden of proof in civil penalty proceedings
460:2-7-7.	Summary disposition
460:2-7-8.	Determination by hearing examiner
460:2-7-9.	Appeals

### **460:2-7-1. Who may file**

Any person charged with a civil penalty may file a petition for review of a proposed assessment of that penalty with the Department.

### **460:2-7-2. Time for filing**

(a) A petition for review of a proposed assessment of a civil penalty must be filed within 30 days of receipt of the proposed assessment, or;

(b) If a timely request for a conference has been made pursuant to I DOM/RR Section 845.18, a petition for review must be filed with 15 days of service of the notice by the conference officer that the conference is deemed complete.

### **460:2-7-3. Contents of petition; payment required**

(a) A petition for review of a proposed assessment of a civil penalty shall include:

(1) A short and plain statement indicating the reasons why either the amount of the penalty or the fact of the violation is being contested;

(2) If the amount of penalty is being contested based upon a misapplication of the civil penalty formula, a statement indicating how the civil penalty formula contained in I DOM/RR Part 845 was misapplied, along, with a proposed civil penalty utilizing the civil penalty formula;

(3) Identification by number of all violations being contested;

(4) The identifying number of the cashier's check, certified check, bank draft, personal check, or bank money order accompanying the petition; and

(5) A request for a hearing site.

(b) The petition shall be accompanied by:

(1) Full payment of the proposed assessment in the form of a cashier's check, certified check, bank draft, personal check or bank money order made payable to Assessment Office, Department of Mines, to be placed in an escrow account pending final determination of the assessment; and

(2) On the face of the payment an identification by number of the violations for which payment is being tendered.

(c) As required by Section 769C of the act, failure to make timely payment of the proposed assessment in full shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

### **460:2-7-4. Answer**

DOM shall have 30 days from receipt of a copy of a petition for review of a proposed assessment of a civil proceeding within which to file an answer to the petition.

### **460:2-7-5. Review of waiver determination**

(a) Within 10 days of the filing of a petition for review of a proposed assessment of a civil proceeding, the petitioner may move the hearing examiner to review the granting or denial of a waiver of the civil penalty formula pursuant to I DOM/RR Section 845.16.

(b) The motion shall contain a statement indicating all alleged facts relevant to the granting or denial of the waiver.

(c) Review shall be limited to the written determination of the Director granting or denying the waiver, the motion and the responses to the motion. The standard of review shall be abuse of discretion.

(d) If the hearing examiner finds that the Director abused his discretion in granting or denying the waiver, the hearing examiner shall hold the hearing on the petition for review of the proposed assessment required by Section 769B of the act and make a determination pursuant to 460:2-7-8.

**460:2-7-6. Burden of proof in civil penalty proceedings**

- (a) In civil penalty proceedings, DOM shall have the burden of going forward to establish a prima facie case and as to the amount of the penalty.
- (b) The ultimate burden of persuasion as to the fact of the violation rests with the applicant.

[Source: Amended at 14 Ok Reg 3479, eff 8-11-97]

**460:2-7-7. Summary disposition**

(a) In a civil penalty proceeding where the person against whom the proposed civil penalty is assessed fails to comply on time with any prehearing order of a hearing examiner, the hearing examiner shall issue an order to show cause why:

- (1) That person should not be deemed to have waived his right to a hearing; and
- (2) The proceedings should not be dismissed and referred to the assessment officer.

(b) If the order to show cause is not satisfied as required, the hearing examiner shall order the proceedings summarily dismissed and shall refer the case to the assessment officer who shall enter the assessment as the final order of the Department.

(c) Where the person against whom the proposed civil penalty is assessed fails to appear at a hearing, that person will be deemed to have waived his right to a hearing and the hearing examiner may assume for purposes of the assessment:

- (1) That each violation listed in the notice of violation or order occurred; and
- (2) The truth of any facts alleged in such notice or order.

(d) In order to issue an initial decision assessing the appropriate penalty when the person against whom the proposed civil penalty is assessed fails to appear at the hearing, the hearing examiner shall either conduct an ex parte hearing or require DOM to furnish proposed findings of fact and conclusions of law.

(e) Nothing in this section shall be construed to deprive the person against whom the penalty is assessed to have DOM prove the violations charged in open hearing with confrontation and cross-examination of witnesses, except where that person fails to comply with a prehearing order or fails to appear at the scheduled hearing.

**460:2-7-8. Determination by hearing examiner**

(a) The hearing examiner shall incorporate in his decision concerning the civil penalty, findings of fact on each of the four criteria set forth in I DOM/RR Section 845.13 and conclusions of law.

(b) If the hearing examiner finds that:

- (1) A violation occurred or that the fact of the violation is uncontested, he shall establish the amount of the penalty, but in doing so, he shall adhere to the point system and conversion table contained in I DOM/RR Section 845.14, except that the hearing examiner may waive the use of such point system where he determines that a waiver would further abatement of the violations of the act. However, the hearing examiner shall not waive the use of the point system and reduce the proposed assessment on the

basis of an argument that a reduction in the proposed assessment could be used to abate other violations of the act; or

(2) No violation occurred, he shall issue an order that the proposed assessment be returned to the petitioner.

(c) If the hearing examiner makes a finding that no violation occurred or if the hearing examiner reduces the amount of the civil penalty below that of the proposed assessment and a timely petition for review of his decision is not filed with the Director or the Director refuses to grant such a petition, the Department shall have 30 days from the expiration date for filing a petition with the Director if no petition is filed, or 30 days from the date the Director refuses to grant such a petition, within which to remit the appropriate amount to the person who made the payment, with interest at the rate of 6 percent, or at the prevailing Department of the Treasury rate, whichever is greater.

(d) If the hearing examiner increase the amount of the civil penalty above that of the proposed assessment, the hearing examiner shall order payment of the appropriate amount within 30 days of receipt of the decision.

**460:2-7-9. Appeals**

Any party may petition the Director to review the decision of a hearing examiner concerning an assessment of a civil penalty according to the procedures set forth in 460:2-19-1.

## SUBCHAPTER 8. PETITIONS FOR REVIEW OF PROPOSED INDIVIDUAL CIVIL PENALTY ASSESSMENT

**Section**

460:2-8-1.	Purpose
460:2-8-2.	Who may file
460:2-8-3.	Time for filing
460:2-8-4.	Contents and service of petition
460:2-8-5.	Answer, motion, or statement of Department
460:2-8-6.	Amendment of petition
460:2-8-7.	Notice of hearing
460:2-8-8.	Elements, burdens of proof
460:2-8-9.	Decision by Administrative Hearing Officer
460:2-8-10.	Petition for discretionary review

[Source: Codified 8-28-98]

**460:2-8-1. Purpose**

This Subchapter governs administrative review of proposed individual civil penalty assessments under Chapter 20, against a director, officer, or agent of a corporation.

[Source: Added at 15 Ok Reg 3967, eff 8-28-98]

**460:2-8-2. Who may file**

Any individual served a notice of proposed individual civil penalty assessment may file a petition for review with the Legal Division of the Oklahoma Department of Mines, 2915

N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106 (telephone 405/427-3859).

[Source: Added at 15 Ok Reg 3967, eff 8-28-98; Amended at 31 Ok Reg 2083, eff 9-12-14]

#### **460:2-8-3. Time for filing**

(a) A petition for review of a notice of proposed individual civil penalty assessment must be filed within 30 days of its service on the individual.

(b) No extension of time will be granted for filing a petition for review of a notice of proposed individual civil penalty assessment. Failure to file a petition for review within the time period provided in paragraph (a) of this section shall be deemed an admission of liability by the individual, whereupon the notice of proposed assessment shall become a final order of the Director and any tardy petition shall be dismissed.

[Source: Added at 15 Ok Reg 3967, eff 8-28-98]

#### **460:2-8-4. Contents and service of petition**

(a) An individual filing a petition for review of notice of proposed individual civil penalty shall provide:

- (1) A concise statement of the facts entitling the individual to relief;
- (2) A copy of the notice of proposed assessment;
- (3) A copy of the notice(s) of violation, order(s) or final decision(s) the corporate permittee is charged with failing or refusing to comply with that have been served on the individual by the Department; and
- (4) A statement whether the individual requests or waives the opportunity for an evidentiary hearing.

(b) Copies of the petition shall be served in accordance with Section 2-1-10 of Chapter 2 (a) and (b) of this Chapter.

[Source: Added at 15 Ok Reg 3967, eff 8-28-98]

#### **460:2-8-5. Answer, motion, or statement of Department**

Within 30 days from receipt of a copy of a petition, the Department shall file with the Hearing Officer an answer or motion, or statement that it will not file an answer or motion, in response to the petition.

[Source: Added at 15 Ok Reg 3967, eff 8-28-98]

#### **460:2-8-6. Amendment of petition**

(a) An individual filing a petition may amend it once as a matter of right before receipt by the individual of an answer, motion, or statement of the Department made in accordance with 460:2-8-5 of this subchapter. Thereafter, a motion for leave to amend the petition shall be filed with the Hearing Officer.

(b) The Department shall have 30 days from receipt of a petition amended as a matter of right to file an answer, motion, or statement in accordance with Section 460:2-8-5 of this Subchapter. If the Hearing Officer grants a motion to amend a

petition, the time for the Department to file an answer, motion, or statements shall be set forth in the order granting the motion to amend.

[Source: Added at 15 Ok Reg 3967, eff 8-28-98]

#### **460:2-8-7. Notice of hearing**

The Hearing Officer shall give notice of the time and place of the hearing to all interested parties. The Hearing shall be of record and governed by O.S. Title 75, the Administrative Procedures Act.

[Source: Added at 15 Ok Reg 3967, eff 8-28-98]

#### **460:2-8-8. Elements, burdens of proof**

(a) The Department shall have the burden of going forward with evidence to establish a prima facie case that:

- (1) A corporate permittee either violated a condition of a permit or failed or refused to comply with an order issued under 45 O. S. 1981, Section 724. et. seq., or an order incorporated in the final decision of the Director, (except an order incorporated in a decision issued under sections 45 O. S. Subsection 769 (b) of the Act or implementing regulations), unless the fact of violation or failure or refusal to comply with an order has been upheld in a final decision in a proceeding under Sections 2-7-1 through 2-7-9, 2-9-2 through 2-9-12, or Sections 2-11-1 through 2-11-8, and Sections 2-19-1 or 2-39-2 of this Chapter, and the individual is one against whom the doctrine of collateral estoppel may be applied to preclude relitigation of fact issues;
- (2) The individual, at the time of the violation, failure or refusal, was a director, officer, or agent of the corporation; and
- (3) The individual willfully and knowingly authorized, ordered, or carried out the corporate permittee's violation or failure or refusal to comply.

(b) The individual shall have the ultimate burden of persuasion by a preponderance of the evidence as to the elements set forth in (a) (1) of this section and as to whether he was a director or officer of the corporation at the time of the violation or refusal.

(c) The Department shall have the ultimate burden of persuasion by a preponderance of the evidence as to whether the individual was an agent of the corporation, as to (a) (3) of this section, and as to the amount of the individual civil penalty.

[Source: Added at 15 Ok Reg 3967, eff 8-28-98]

#### **460:2-8-9. Decision by Administrative Hearing Officer**

(a) The Hearing Officer shall issue a written decision containing findings of fact and conclusions of law on each of the elements set forth in section 460:20-8-8 of this Subchapter.

(b) If the Hearing Officer concludes that the individual is liable for an individual civil penalty, he shall order that it be paid in accordance with 460:20-63-6, absent the filing of a

petition for discretionary review in accordance with Section 460:2-8-10 of this Subchapter.

[Source: Added at 15 Ok Reg 3967, eff 8-28-98]

#### **460:2-8-10. Petition for discretionary review**

(a) Any affected party may petition the Department Director to review an order or decision by the Hearing Officer disposing of an individual civil penalty proceeding under section 460:2-8-9 of the is Subchapter.

(b) A petition under this section shall be filed on or before 30 days from the date of receipt of the order or decision sought to be reviewed, and the time for filing shall not be extended.

(c) A petitioner under this Section shall list the alleged errors of the Hearing Officer and shall attach a copy of the order or decision sought to be reviewed.

(d) Any affected party may file with the Director a response to the petition for review within 10 days of receipt of a copy of such petition.

(e) Not later than 30 days from the filing of a petition for review under this section, the Director shall grant or deny the petition in whole or in part.

(f) If the petition for review is granted the rules in Sections 2-19-4 through 2-19-7 of this Chapter are applicable. If the petition is denied, the decision of the Hearing Officer is final subject to 460:2-1-3.

(g) Payment of a penalty is due in accordance with 460:2-63-6 of this Chapter.

[Source: Added at 15 Ok Reg 3967, eff 8-28-98]

## **SUBCHAPTER 9. REVIEW OF SECTION 776 AND 777 NOTICES OF VIOLATIONS AND ORDERS OF CESSATION**

### **Section**

460:2-9-1.	Scope
460:2-9-2.	Who may file
460:2-9-3.	Time for filing
460:2-9-4.	Effect of failure to file
460:2-9-5.	Contents of application
460:2-9-6.	Answer
460:2-9-7.	Contents of answer
460:2-9-8.	Notice of hearing
460:2-9-9.	Amendments to pleadings
460:2-9-10.	Failure to state a claim
460:2-9-11.	Related notices or order
460:2-9-12.	Burden of proof in review of Section 776 or Section

#### **460:2-9-1. Scope**

The regulations of this Chapter govern applications for review of:

- (1) Notices of violation or the modification, vacation, or termination of a notice of violation under Section 777 of the act; or
- (2) Orders of cessation which are not subject to expedited review under 460:2-11-1 or the modification,

vacation, or termination of such an order of cessation under Sections 776 or 777 of the act.

#### **460:2-9-2. Who may file**

A permittee issued a notice or order by the Department pursuant to the provisions of Section 776 or Section 777 of the act or any person having an interest which is or may be adversely affected by a notice or order subject to review under 460:2-9-1 may file an application for review with the Department.

#### **460:2-9-3. Time for filing**

Any person filing an application for review under this Chapter shall file that application within 30 days of the receipt of a notice or order or within 30 days of receipt of notice of modification, vacation, or termination of such a notice or order. Any person not served with a copy of the document shall file the application for review within 40 days of the date of issuance of the document.

#### **460:2-9-4. Effect of failure to file**

Failure to file an application for review of a notice of violation or order of cessation shall not preclude challenging the fact of the violation during a civil penalty proceeding. Failure to file an application for review of a notice of violation pursuant to this Subchapter and failure to challenge the fact of the violation during a civil penalty proceeding shall result in the notice of violation becoming a final order of the Department.

[Source: Amended at 20 Ok Reg 2813, eff 8-26-03]

#### **460:2-9-5. Contents of application**

Any person filing an application for review of a notice of violation or order of cessation shall incorporate in that application regarding each claim for relief:

- (1) A statement of facts entitling that person to administrative relief;
- (2) A request for specific relief;
- (3) A copy of any notice or order sought to be reviewed;
- (4) A statement as to whether the persons requests or waives the opportunity for an evidentiary hearing; and
- (5) Any other relevant information.

#### **460:2-9-6. Answer**

(a) Where an application for review of a notice of violation or order of cessation is filed by a permittee, DOM as well as any other person granted leave to intervene pursuant to 460:2-1-11 shall file an answer within 20 days of service of a copy of such application.

(b) Where an application for review is filed by a person other than a permittee, the following shall file an answer within 20 days of service of a copy of such application:

- (1) DOM;
- (2) The permittee; or
- (3) Any other person granted leave to intervene pursuant to 460:2-1-11.

**460:2-9-7. Contents of answer**

An answer to an application for review of a notice of violation or order of cessation shall incorporate:

- (1) A statement specifically admitting or denying the alleged facts state by the applicant;
- (2) A statement of any other relevant facts;
- (3) A statement of whether an evidentiary hearing is requested or waived; and
- (4) Any other relevant information.

**460:2-9-8. Notice of hearing**

Pursuant to Section 786A of the act, the applicant for review of a notice or order and other interested persons shall be given written notice of the time and place of the hearing at least five working days prior thereto.

**460:2-9-9. Amendments to pleadings**

(a) An application for review of a notice of violation or order of cessation may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing examiner upon proper motion.

(b) Upon receipt of an initial or amended application for review or subsequent to granting leave to amend, the hearing examiner shall issue an order setting a time for filing an amended answer if the examiner determines that such an answer is appropriate.

**460:2-9-10. Failure to state a claim**

Upon proper motion or after the issuance of an order to show cause by the hearing examiner, a hearing examiner may dismiss at any time an application for review of a notice or order which fails to state a claim upon which administrative relief may be granted.

**460:2-9-11. Related notices or order**

(a) An applicant for review of a notice or order shall file a copy of any subsequent notice or order which modifies, vacates, or terminates the notice or order sought to be reviewed within 10 days of receipt.

(b) An applicant for review of a notice shall file a copy of an order of cessation for failure to timely abate the violation which is the subject of the notice under review within 10 days of receipt of such order.

(c) If an applicant for review desires to challenge any subsequent notice or order, the applicant must file a separate application for review.

(d) Applications for review of related notice or orders are subject to consolidation.

**460:2-9-12. Burden of proof in review of Section 776 or Section 777**

(a) In review of Section 776 or Section 777 notices of violation or orders of cessation or the modification, vacation, or termination thereof, including expedited review under 460:2-11-1, DOM shall have the burden of going forward to

establish a prima facie case as to the validity of the notice, order, or modification, vacation, or termination thereof.

(b) The ultimate burden of persuasion shall rest with the applicant for review.

## SUBCHAPTER 11. EXPEDITED REVIEW OF SECTION 776 OR 777 ORDERS OF CESSATION

**Section**

460:2-11-1.	Purpose
460:2-11-2.	Who may file
460:2-11-3.	Where to file
460:2-11-4.	Time for filing
460:2-11-5.	Contents of application
460:2-11-6.	Computation of time for decision
460:2-11-7.	Waiver of the 30-day decision requirement
460:2-11-8.	Procedure if 30-day decision requirement is not waived

**460:2-11-1. Purpose**

The purpose of this Subchapter is to govern applications filed under Section 786B of the act for expedited review of orders of cessation for which temporary relief has not been granted under Section 786C or Section 787 of the act. If a person is qualified to receive a thirty-day decision under the regulations of this Subchapter, he may waive that right and file an application under 460:2-9-5, and the procedures in 460:2-9-1 et seq. shall apply. If there is a waiver as set forth in 460:2-9-9, the final administrative decision shall be issued within 120 days of the filing of the application.

**460:2-11-2. Who may file**

(a) An application for review of an order of cessation may be filed under this section, whenever temporary relief has not been granted under Section 786C or Section 787 of the act by:

- (1) The permittee who have been issued an order of cessation under Section 776 or Section 777 of the act; or
- (2) Any person having an interest which is or may be adversely affected by the issuance of an order of cessation under Section 776 or Section 777 of the act.

(b) A permittee or any person having an interest which is or may be adversely affected by a Section 776 or Section 777 order of cessation waives his right to expedited review upon being granted temporary relief pursuant to Section 786C or Section 787 of the act.

**460:2-11-3. Where to file**

An application for expedited review of Section 776 or 777 orders of cessation shall be filed with the OHA, Department of Mines.

**460:2-11-4. Time for filing**

(a) Any person intending to file an application for expedited review under Section 786B of the act shall notify the legal

counsel for the Department of Mines within 15 days of the receipt of the order. Any person not served with a copy of the order shall file notice of intention to file an application for review within 20 days of the date of issuance of the order.

(b) Any person filing an application for review under 460:2-11-5 shall file the application within 30 days of receipt of the order. Any person not served with a copy of the order shall file an application for review within 40 days of the date of issuance of the order.

#### **460:2-11-5. Contents of application**

(a) Any person filing an application for expedited review under Section 787B of the act shall incorporate in that application regarding each claim for relief:

- (1) A statement of facts entitling that person to administrative relief;
- (2) A request for specific relief;
- (3) A statement which delineates each issue to be addressed by the applicant during the expedited proceeding;
- (4) A copy of the order sought to be reviewed;
- (5) A list identifying each of the applicant's witnesses by name, address, and place of employment, including expert witnesses and the area of expertise to which they will address themselves at the hearing, and a detailed summary of their testimony;
- (6) Copies of all exhibits and other documentary evidence that the applicant intends to introduce as evidence at the hearing and descriptions of all physical exhibits and evidence which is not capable of being copied or attached; and
- (7) Any other relevant information.

(b) If any applicant fails to comply with all the requirements of 460:2-11-5(a), the hearing examiner may find that the applicant has waived the 30-day decision requirement or the hearing examiner shall order that the application be perfected and the application shall not be considered filed for purposes of the 30-day decision until perfected. Failure to timely comply with the hearing examiner's order shall constitute a waiver of the 30-day decision.

#### **460:2-11-6. Computation of time for decision**

In computing the 30-day time period for administrative decisions, intermediate Saturdays, Sundays, State and Federal legal holidays, and other nonbusiness days shall be excluded in the computation.

#### **460:2-11-7. Waiver of the 30-day decision requirement**

(a) Any person qualified to receive 30-day decision may waive that right:

- (1) By filing an application pursuant to Subchapter 9 of this Chapter;
- (2) By failing to comply with all the requirements of 460:2-11-5(a); or
- (3) In accordance with 460:2-11-8(j).

(b) Any person qualified to receive a 30-day decision shall waive that right:

- (1) By obtaining temporary relief pursuant to Section 786C or Section 787 of the act;
- (2) By failing to perfect an application pursuant to 460:2-11-5(b); or
- (3) In accordance with 460:2-11-8(i).

#### **460:2-11-8. Procedure if 30-day decision requirement is not waived**

If the applicant for expedited review of a Section 776 or 777 order of cessation does not waive the 30-day decision requirement of Section 786B of the act, the following special rules shall apply:

- (1) The applicant shall serve all known parties with a copy of the application simultaneously with the filing of the application with the OHA. If service is accomplished by mail, the applicant shall inform all known parties by telephone at the time of mailing that an application is being filed and shall inform the hearing examiner by telephone that such notice has been given. However, no ex parte communication as to the merits of the proceeding may be conducted with the hearing examiner.
- (2) Any party desiring to file a response to the application for review shall file a written response with 5 working days of service of the application.
- (3) If the applicant has requested a hearing, the hearing examiner shall act immediately upon receipt of the application to notify the parties of the time and place of the hearing at least 5 working days prior to the hearing.
- (4) The hearing examiner may require the parties to submit proposed findings of fact and conclusions of law at the hearing which may be orally supplemented on the record at the hearing, or where proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the hearing.
- (5) The hearing examiner shall make an initial decision. He shall either rule from the bench on the application, orally stating the reasons for his decision or he shall issue a written decision. If the hearing examiner makes an oral ruling, his approval of the record of the hearing shall constitute his written decision. The decision of the hearing examiner must be issued within 15 days of the filing of the perfected application under 460:2-11-5.
- (6) If any party desires to appeal to the Director, such party shall:
  - (A) If the hearing examiner makes an oral ruling, make an oral statement, within a time period as directed by the hearing examiner, that the decision is being appealed and request that the hearing examiner certify the record to the Director; or
  - (B) If the hearing examiner issues a written decision after the close of the hearing, file a notice of appeal with the hearing examiner and with the Director within 2 working days of receipt of the hearing examiner's decision.
- (7) If the decision of the hearing examiner is appealed, the Director shall act immediately to issue an expedited briefing schedule, and the Director shall act expeditiously

to review the decision of the Director must be issued within 30 days of the date the perfected application is filed with the OHA pursuant to 460:2-11-5.

(8) If all parties waive the opportunity for a hearing and the hearing examiner determines that a hearing is not necessary, but the applicant does not waive the 30-day decision requirement, the hearing examiner shall issue an initial decision within 15 days of receipt of the application. The decision shall contain findings of fact and an order disposing of the disposing of the application. The decision shall be served upon all the parties and the parties shall have 2 working days from receipt of such decision within which to appeal to the Director. The Director shall issue his decision within 30 days of the date the perfected application is filed with the OHA pursuant to 460:2-11-5.

(9) If at any time after the initiation of this expedited procedure, the applicant requests a delay or acts in a manner as to frustrate the expeditious nature of this proceeding or fails to comply with any requirement of 460:2-11-8(a), such action shall constitute a waiver of the 30-day requirement of Section 786B of the act.

(10) If the applicant seeks to offer witnesses, exhibits, or testimony at the hearing in addition to those identified, submitted, described, or summarized in the application for expedited review perfected in accordance with the requirements of 460:2-11-5, upon objection by an opposing party to such offer, the hearing examiner may allow such objecting party additional time in order to prepare for cross-examination of unidentified witnesses or to identify and prepare for cross-examination of unidentified witnesses or to identify and prepare rebuttal evidence or otherwise unidentified witnesses or to identify and prepare rebuttal evidence or otherwise uncover any additional prejudice which may result to such party. The hearing examiner may rule that the running of the 30-day time for decision is stayed for the period of any additional time allowed pursuant to this subsection or may determine that the applicant has waived his right to the 30-day decision.

## **SUBCHAPTER 13. PROCEEDINGS FOR SUSPENSION OR REVOCATION OF PERMITS UNDER SECTION 778 OF THE ACT**

### **Section**

460:2-13-1.	Initiation of proceedings
460:2-13-2.	Answer
460:2-13-3.	Contents of answer
460:2-13-4.	Burden of proof in suspension or revocation
460:2-13-5.	Determination by the hearing examiner
460:2-13-6.	Summary disposition
460:2-13-7.	Appeals

### **460:2-13-1. Initiation of proceedings**

(a) A proceeding on a show cause order issued by the Department pursuant to Section 778 of the act shall be initiated by

the Department filing a copy of such an order with the OHA at the same time the order is issued to the permittee.

- (b) A show cause order filed with the OHA shall set forth:
- (1) A list of the unwarranted or willful violations which contribute to a pattern of violations;
  - (2) A copy of each notice or order which contains one or more of the violations listed as contributing to a pattern of violations;
  - (3) The basis for determining the existence of a pattern of violations; and
  - (4) Recommendations whether the permit should be suspended or revoked, including the length and terms of a suspension.

### **460:2-13-2. Answer**

The permittee shall have 30 days from receipt of a show cause order issued pursuant to Section 778 of the Act within which to file an answer with the OHA.

### **460:2-13-3. Contents of answer**

The permittee's answer to a show cause order shall contain a statement setting forth:

- (1) The reasons in detail why a pattern of violations, as described in I DOM/RR Section 843.13 does not exist or has not existed, including all reasons for contesting:
  - (A) The fact of any of the violations alleged by DOM as constituting a pattern of violations;
  - (B) The willfulness of such violations; or
  - (C) Whether such violations were caused by the unwarranted failure of the permittee.
- (2) All mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;
- (3) Any other alleged relevant facts; and
- (4) Whether a hearing on the show cause order is desired.

### **460:2-13-4. Burden of proof in suspension or revocation**

In proceedings to suspend or revoke a permit under Section 778 of the Act, DOM shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

### **460:2-13-5. Determination by the hearing examiner**

(a) Upon a determination by the hearing examiner that a pattern of violations exists or has existed, pursuant to I DOM/RR Section 843.13(a) (2) or (a) (3), the hearing examiner shall order the permit either suspended or revoked. In making such a determination, the hearing examiner need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.



(b) If the permit is suspended, the minimum suspension period shall be 3 working days unless the hearing examiner finds that the imposition of the minimum suspension period would result in manifest injustice and would not further the purposes of the act. Also, the hearing examiner may impose preconditions to be satisfied prior to the suspension being lifted.

(c) The decision of the hearing examiner shall be issued within 20 days following the date the hearing record is closed by the hearing examiner or within 20 days of receipt of the answer, if no hearing is necessary.

(d) At any stage of a suspension or revocation proceeding being conducted by a hearing examiner, the parties may enter into a settlement, subject to the approval of the hearing examiner.

#### **460:2-13-6. Summary disposition**

(a) In a proceeding for suspension or revocation of a permit under Section 778 of the Act where the permittee fails to appear at a hearing, the permittee shall be deemed to have waived his right to a hearing and the hearing examiner may assume for purposes of the proceeding that:

- (1) Each violation listed in order occurred;
- (2) Such violations were caused by the permittee's unwarranted failure or were willfully caused; and
- (3) A pattern of violations exists.

(b) In order to issue an initial decision concerning suspension or revocation of the permit when the permittee fails to appear at the hearing, the hearing examiner shall either conduct an ex parte hearing or require DOM to furnish proposed findings of fact and conclusions of law.

#### **460:2-13-7. Appeals**

Any party in a proceeding for suspension or revocation of a permit under Section 778 of the Act desiring to appeal the decision of the hearing examiner shall have 5 days from receipt of the hearing examiner's decision within which to file a notice of appeal with the Director. The Director shall act immediately to issue an expedited briefing schedule. The decision of the Director shall be issued within 60 days of the date the hearing record is closed by the hearing examiner, or if not hearing is held, within 60 days of the date, the answer is filed.

## **SUBCHAPTER 15. [RESERVED]**

## **SUBCHAPTER 17. APPLICATIONS FOR TEMPORARY RELIEF**

<b>Section</b>	
460:2-17-1.	Purpose
460:2-17-2.	When to file
460:2-17-3.	Where to file
460:2-17-4.	Contents of application
460:2-17-5.	Response to application
460:2-17-6.	Determination on application concerning a notice of violation issued pursuant to Section 777 of the act

460:2-17-7. Determination on application concerning an order of cessation issued pursuant to Section 776 or Section 777 of the act

460:2-17-8. Appeals

#### **460:2-17-1. Purpose**

The regulations of this Subchapter contain the procedures for seeking temporary relief under Section 786 review proceedings under the act. The special procedures for seeking temporary relief from an order of cessation are set forth in 460:2-17-7.

#### **460:2-17-2. When to file**

An application for temporary relief may be filed by any party to a proceeding at any time prior to a decision by a hearing examiner.

#### **460:2-17-3. Where to file**

An application for temporary relief shall be filed with the hearing examiner to whom the case has been assigned. If no assignment has been made, the application shall be filed with the OHA, Department of Mines.

#### **460:2-17-4. Contents of application**

An application for temporary relief shall include:

- (1) A detailed written statement setting forth the reasons why relief should be granted;
- (2) A showing that there is a substantial likelihood that the findings and decision of the hearing examiner in the matters to which the application relates will be favorable to the applicant;
- (3) A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources;
- (4) If the application relates to an order of cessation issued pursuant to Section 776 or 777 of the act, a statement of whether the requirement of Section 786C of the act for decision on the application within 5 days is waived; and
- (5) A statement of the specific relief requested.

#### **460:2-17-5. Response to application**

(a) Except as provided in 460:2-17-7(b), all parties to the proceeding to which an application for temporary relief relates shall have 5 days from the date of receipt of the application to file a written response.

(b) Except as provided in 460:2-17-7(b), the hearing examiner may hold a hearing on any issue raised by the application if he deems it appropriate.

#### **460:2-17-6. Determination on application concerning a notice of violation issued pursuant to Section 777 of the act**

Where an application has been filed requesting temporary relief from a notice of violation issued under Section 777 of the

act, the hearing examiner shall expeditiously issue an order or decision granting or denying such relief.

**460:2-17-7. Determination on application concerning an order of cessation issued pursuant to Section 776 or Section 777 of the act**

(a) If the 5-day requirement of Section 786C of the act is waived, the hearing examiner in a proceeding for temporary relief shall expeditiously conduct a hearing and render a decision on the application.

(b) If there is no waiver of the 5-day requirement of Section 786C of the act, the following special rules shall apply:

(1) The 5-day time for decision shall not begin to run until the application is filed pursuant to 460:2-17-3 or a copy of the application is received by the Department legal counsel, whichever occurs at a later date.

(2) The application shall include an affidavit stating that telephone notice has been given to the Department. The telephone notice shall identify the mine, mine operation, the date and number of the order from which relief is requested, the name of the inspector involved, and the name and phone number of the applicant.

(3) Prior to or at the hearing, the applicant shall file with the OHA an affidavit stating the date upon which the copy of the application was delivered to the office of the Department legal counsel or the applicant may make an oral statement at the hearing setting forth that information. For purposes of the affidavit or statement, the applicant may rely upon telephone confirmation by the office of the Department legal counsel that the application was received.

(4) In addition to the service requirements of (1) and (2) of this Subsection, the applicant shall serve any other parties by telephone at the time of mailing that an application is being filed, the contents of the application, and with whom the application was filed.

(5) The Department legal counsel and all other parties may indicate their objection to the application by communicating such objection to the hearing examiner and the applicant by telephone. However, no ex parte communication as to the merits of the proceeding may be conducted with the hearing examiner. The Department legal counsel and all other parties shall simultaneously reduce the objections to writing. The written objections must be immediately filed with the hearing examiner and immediately served upon the applicant.

(6) Upon receipt of communication that there is an objection to the request, the hearing examiner shall immediately order a location, time, and date for the hearing by communicating such information to the legal counsel, all other parties, and the applicant by telephone. The hearing examiner shall reduce such communications to writing in the form of a memorandum in the file.

(7) If a hearing is held:

(A) The hearing examiner may require the parties to submit proposed findings of fact and conclusions of law at the hearing which may be orally supplemented

on the record at the hearing or where written proposed findings of fact and conclusions of law have not been admitted at the hearing, they may be orally presented for the record at the hearing.

(B) The hearing examiner shall either rule from the bench on the application, orally stating the reasons for his decision or he shall within 24 hours of completion of the hearing issue a written decision. If the hearing examiner makes an oral ruling, his approval of the record of the hearing shall constitute his written decision.

(8) The order or decision of the hearing examiner shall be issued within 5 working days of receipt of the application for temporary relief.

(9) If at any time after the initiation of this expedited procedure, the applicant request a delay or acts in a manner as to frustrate the expeditious nature of this proceeding or fails to supply the information required by 460:2-17-4, such action shall constitute a waiver of the 5-day requirement of section 786C of the act.

**460:2-17-8. Appeals**

(a) Any party desiring to appeal a decision of a hearing examiner granting temporary relief may appeal to the Director.

(b) Any party desiring to appeal a decision of a hearing examiner denying temporary relief may appeal to the Director, or, in the alternative, if the hearing examiner has rendered a decision pursuant to 460:2-17-7, may seek review pursuant to Section 787 of the act.

(c) The Director shall issue an expeditious briefing schedule and shall issued a decision on the appeal expeditiously.

**SUBCHAPTER 19. APPEALS TO THE DIRECTOR FROM DECISIONS OR ORDERS OF HEARING EXAMINERS**

**Section**

460:2-19-1.	Petition for discretionary review of a proposed civil penalty
460:2-19-2.	Notice of appeal
460:2-19-3.	Interlocutory appeals
460:2-19-4.	Briefs
460:2-19-5.	Remand
460:2-19-6.	Final decisions
460:2-19-7.	Reconsideration

**460:2-19-1. Petition for discretionary review of a proposed civil penalty**

(a) Any party may petition the Director to review an order or decision by a hearing examiner disposing of a civil penalty proceeding under 460:2-7-1.

(b) A petition filed under this section shall be filed on or before 30 days from the date of receipt of the order or decision sought to be reviewed and the time for filing may not be extended.

- (c) A petitioner under this section shall list the alleged errors of the hearing examiner and shall attach a copy of the order or decision sought to be reviewed.
- (d) Any party may file with the Director a response to the petition for review within 10 days of receipt of a copy of such petition.
- (e) Not later than 30 days from the filing of a petition under this section, the Director shall grant or deny the petition in whole or in part.
- (f) If the petition is granted, the rules in 460:2-19-4 through 460:2-19-7 are applicable and the Director shall use the point system and conversion table contained in I DOM/RR Part 845 in recalculating assessments; however, the Director shall have the same authority to waive the civil penalty formula as that granted the hearing examiner in 460:2-7-8(b). If the petition is denied, the decision of the hearing examiner shall be final for the Department.

#### **460:2-19-2. Notice of appeal**

- (a) Any aggrieved party may file a notice of appeal from an order or decision of a hearing examiner disposing of a proceeding under the regulations of this Subchapter, except a civil penalty proceeding under 460:2-7-1.
- (b) Except in an expedited review proceeding under 460:2-11-1, or in a suspension or revocation proceeding under 460:2-13-1, a notice of appeal shall be filed with the Director on or before 30 days from the date of receipt of the order or decision sought to be reviewed and the time for filing may not be extended.

#### **460:2-19-3. Interlocutory appeals**

- (a) If a party has sought certification under 460:2-3-5, that party may petition the Director for permission to appeal from an interlocutory ruling by a hearing examiner.
- (b) A petition under this section shall be in writing and not exceed 10 pages in length.
- (c) If the correctness of the ruling sought to be reviewed involves a controlling issue of law the resolution of which will materially advance final disposition of the case the Director may grant the petition.
- (d) Upon granting the petition under this section, the Director may dispense with briefing or issue a briefing schedule.
- (e) Unless the Director or the hearing examiner orders otherwise, an interlocutory appeal shall not operate as a stay of further proceedings before the examiner.
- (f) In deciding an interlocutory appeal, the Director shall confine himself to the issue presented on appeal.
- (g) The Director shall promptly decide appeals under this section.
- (h) Upon affirmance, reversal, or modification of the hearing examiner's interlocutory ruling or order, the jurisdiction of the Director shall terminate, and the case shall be remanded promptly to the hearing examiner for further proceedings.

#### **460:2-19-4. Briefs**

- (a) Unless the Director orders otherwise, an appellant's brief is due on or before 30 days from the date of receipt of notice

by the appellant that the Director has agreed to exercise discretionary review authority pursuant to 460:2-19-1 or a notice of appeal is filed.

- (b) If any appellant fails to file a timely brief, an appeal under the regulations of this Subchapter may be subject to summary dismissal.
- (c) An appellant shall state specifically the rulings to which there is an objection, the reasons for such objections, and their relief requested. The failure to specify a ruling as objectionable may be deemed by the Director as a waiver of the objection.
- (d) Unless the Board orders otherwise, within 20 days after service of appellant's brief, any other party to the proceeding may file a brief.
- (e) If any argument is based upon the evidence of record and there is a failure to include specific record citations, when available, the Director need not consider the arguments.
- (f) Further briefing may take place by permission of the Director.
- (g) Unless the Director provides otherwise, appellant's brief shall not exceed 50 typed pages and an appellee's brief shall not exceed 25 typed pages.

#### **460:2-19-5. Remand**

The Director may remand appeal cases if further proceedings are required.

#### **460:2-19-6. Final decisions**

The Director may adopt, affirm, modify, set aside, or reverse any finding of fact, conclusion of law, or order of the hearing examiner.

#### **460:2-19-7. Reconsideration**

- (a) A party may move for reconsideration of the decision or order of a hearing examiner; however, the motion shall be filed with the Director within 30 days of the date of the decision.
- (b) The filing of a petition for reconsideration shall not stay the effect of any decision or order and shall not affect the finality of any decision or order for purposes of judicial review.

## **SUBCHAPTER 21. APPEALS TO THE DIRECTOR FROM DECISIONS OF THE DEPARTMENT**

#### **Section**

460:2-21-1.	Scope
460:2-21-2.	Who may appeal
460:2-21-3.	Appeals; how taken
460:2-21-4.	Service
460:2-21-5.	Answer
460:2-21-6.	Summary dismissal
460:2-21-7.	Request for hearing

**460:2-21-1. Scope**

This Subchapter is applicable to appeals from decisions of the Department concerning appeals which are not required by the act to be determined by formal adjudication.

**460:2-21-2. Who may appeal**

Any person who is or may be adversely affected by a written decision of the Department may appeal to the Director where the decision specifically grants such right of appeal.

**460:2-21-3. Appeals; how taken**

(a) A person appealing under this Subchapter or a person appealing or written decision of the Department shall file a written notice of appeal with the Department and a copy of such notice shall be simultaneously be sent to the Director.

(b) The notice of appeal shall be filed within 20 days from the date of receipt of the decision. If the person appealing has not been served with a copy of the decision, such appeal must be filed within 30 days of the date of the decision.

(c) The notice of appeal shall indicate that an appeal is intended and must identify the decision being appealed. The notice shall include the serial number or other identification of the case and the date of the decision. The notice of appeal may include a statement of reasons for the appeal and any arguments the appellant desires to make.

(d) If the notice of appeal did not include a statement of reasons for the appeal, such a statement shall be filed with the Director within 20 days after the notice of appeal was filed. In any case, the appellant shall be permitted to file with the Director additional statements of reasons and written arguments or briefs within 20-day period after filing the notice of appeal.

**460:2-21-4. Service**

(a) The appellant shall serve personally or by certified mail, return receipt requested, a copy of the notice of appeal of a written decision of the Department and a copy of any statement of reasons, written arguments, or to the documents on each party within 15 days after filing the document. Proof of service shall be filed with the Director within 15 days after service.

(b) Failure to serve may subject the appeal to summary dismissal pursuant to 460:2-21-6.

**460:2-21-5. Answer**

(a) Any party served with a notice of appeal of a written decision of the Department who wishes to participate in the proceedings on appeal shall file an answer with the Director within 20 days after service of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal.

(b) If additional reasons, written arguments, or other documents are filed by the appellant, a party shall have 20 days after service thereof within which to answer. The answer shall state the reasons the party opposes or supports the appeal.

**460:2-21-6. Summary dismissal**

An appeal of a written decision of the Department shall be subject to summary dismissal, in the discretion of the Director, for failure to file or serve, upon all persons required to be served, a notice of appeal or statement of reasons for appeal.

**460:2-21-7. Request for hearing**

(a) Any party in an appeal of a written decision of the Department may request the Director to order a hearing before a hearing examiner in order to present evidence on an issue of fact. Such request shall be made in writing and filed with the Director within 20 days after the answer is due. Copies of the request shall be served in accordance with 460:2-21-4.

(b) The allowance of a request for a hearing is within the discretion of the Director, and the Director may, on his own motion, refer any case to a hearing examiner for a hearing on an issue of fact. If a hearing is ordered, the Director shall specify the issues upon which the hearing is to be held.

## **SUBCHAPTER 23. PETITIONS FOR AWARD OF COSTS AND EXPENSES UNDER SECTION 786E OF THE ACT**

**Section**

460:2-23-1.	Who may file
460:2-23-2.	Where to file; time for filing
460:2-23-3.	Contents of petition
460:2-23-4.	Answer
460:2-23-5.	Who may receive an award
460:2-23-6.	Awards
460:2-23-7.	Appeals

**460:2-23-1. Who may file**

Any person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of that person's participation in any administrative proceeding under the act which result in:

- (1) A final order being issued by a hearing examiner; or
- (2) A final order being issued by the Director.

**460:2-23-2. Where to file; time for filing**

The petition for an award of costs and expenses including attorneys' fees must be filed with the hearing examiner who issued the final order, or if the final order was issued by the Director, with the Director, within 45 days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

**460:2-23-3. Contents of petition**

A petition filed under this Subchapter or an award of costs and expenses including attorney's fees 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:

- (1) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred

for, or in connection with, the person's participation in the proceeding;

(2) Receipts or other evidence of such costs and expenses; and

(3) Where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation, and ability of the individual or individuals performing the services.

#### **460:2-23-4. Answer**

Any person served with a copy of a petition for an award of costs and expenses including attorney's fees shall have 30 days from service of the petition within which to file an answer to such petition.

#### **460:2-23-5. Who may receive an award**

Appropriate costs and expenses including attorneys' fees may be awarded:

(1) To any person from the permittee, if the person initiates any administrative proceedings reviewing enforcement actions, upon a finding that a violation of the act, regulations, or permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made if the hearing examiner or the Director determines that the person made a substantial contribution to the full and fair determination of the issues.

(2) To any person other than a permittee or his representative from DOM, if the person initiates or participates in any proceeding under the act upon a finding that the person made a substantial contribution to a full and fair determination of the issues.

(3) To a permittee from DOM when the permittee demonstrates that DOM issued an order of cessation, a notice of violation or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee.

(4) To a permittee from any person where the permittee demonstrates that a person initiated a proceeding under Section 786 of the act or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee.

(5) To DOM where it demonstrates that any person applied for review pursuant to Section 786 of the act or that any party participated in such a proceeding in bad faith and for the purpose of harassing and embarrassing the government.

#### **460:2-23-6. Awards**

An award under the Subchapter may include:

(1) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under the act; and

(2) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award in the OHA.

#### **460:2-23-7. Appeals**

Any person aggrieved by a decision concerning the award of costs and expenses in an administrative proceeding under the act may appeal such award to the Director under procedures set forth in 460:2-19-2 et seq., unless the Director has made the initial decision concerning such award.

## **SUBCHAPTER 25. REQUEST FOR REVIEW OF APPROVAL OR DISAPPROVAL OF APPLICATIONS FOR PERMITS**

### **Section**

460:2-25-1.	Scope
460:2-25-2.	Who may file
460:2-25-3.	Where to file; when to file
460:2-25-4.	Contents of request
460:2-25-5.	Time for hearing
460:2-25-6.	Status of permit approvals pending review
460:2-25-7.	Burden of proof
460:2-25-8.	Request for temporary relief from a decision to approve or disapprove a permit application in whole or in part
460:2-25-9.	Determination by the hearing examiner
460:2-25-10.	Appeals

#### **460:2-25-1. Scope**

This Subchapter sets for the procedures for obtaining formal review of a decision by the Department to approve or disapprove a permit application, in whole or in part. Permit applications subject to this Subchapter shall include all applications for new permits, including those new permits required under I DOM/RR Sections 788.12(d), 788.13(b), and 788.14(b) (2).

#### **460:2-25-2. Who may file**

An applicant or any person having an interest which is or may be adversely affected by the decision of the Department to approve or disapprove a permit application, in whole or in part, may file a request for review of that decision.

#### **460:2-25-3. Where to file; when to file**

(a) A request for review of approval or disapproval of a permit shall be filed with the OHA of the Department of Mines within 30 days of receipt of a copy of the Department's written decision approving or disapproving the permit application, in whole or in part.

(b) Any person not served with a copy of the Department's written decision shall file the request for review within 40 days of the date of issuance of the written decision.

**460:2-25-4. Contents of request**

A request for review of approval or disapproval of a permit shall include:

- (1) A clear statement of the facts entitling that person to administrative relief;
- (2) An explanation of the alleged errors in the Department's decision;
- (3) A request for specific relief;
- (4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and
- (5) Any other relevant information.

**460:2-25-5. Time for hearing**

(a) The hearing examiner shall hold a hearing within 30 days of the date of the filing of a request for review of approval or disapproval of a permit and shall notify all interested parties of the time and place of the hearing.

(b) The hearing examiner may grant an extension of time for the hearing only if all parties to the hearing agree to such extension.

**460:2-25-6. Status of permit approvals pending review**

The issuance of a permit following Department approval of a permit application shall be stayed during the pendency of any administrative review proceeding resulting from such approval, but only where temporary relief has been requested by a party filing a proper request under 460:2-25-4 and only for the period from the time temporary relief is requested and the decision to grant or deny temporary relief is made under 460:2-25-8. Nothing in the regulations of this Subchapter shall prevent a permittee from filing a request for temporary relief at the time of the issuance of a permit where the permittee has reason to believe that an appeal may be filed with the Department on the issuance of a permit. However, the hearing examiner, pursuant to a request for temporary relief under 460:2-25-8, may, if the requirements of 460:2-25-8(e) are met, dissolve the stay and provide that the Department's approval or any part of it shall be in full force and effect immediately.

**460:2-25-7. Burden of proof**

(a) If a permit applicant is seeking review of the approval or disapproval of a permit, the Department shall have the burden of going forward to establish a prima facie case as to the failure to comply with the applicable requirements of the act or the regulations, and the permit applicant shall have the ultimate burden of persuasion as to entitlement to the permit.

(b) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application fails in some manner to comply with the applicable requirements of the act or the regulations.

**460:2-25-8. Request for temporary relief from a decision to approve or disapprove a permit application in whole or in part**

(a) Where review is requested pursuant to 460:2-25-3, any party may file a request for temporary relief at any time prior to the decision by the hearing examiner, so long as the relief sought is not the issuance of a permit where a permit application has been disapproved, in whole or in part.

(b) The request shall be filed with the hearing officer to whom the case has been assigned. If no assignment has been made, the application shall be filed with the OHA of the Department of Mines.

(c) The application shall include:

(1) A detailed written statement setting forth the reasons why relief should be granted;

(2) A statement of the specific relief requested;

(3) A showing that there is a substantial likelihood that the person seeking relief will prevail on the merits of the final determination of the proceeding; and

(4) A showing that the relief sought will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(d) The hearing examiner may hold a hearing on any issue raised by the application.

(e) The hearing examiner shall expeditiously issue an order or decision granting or denying such temporary relief. Temporary relief may be granted only if:

(1) All parties to the proceedings have been notified and given an opportunity to be heard on the request for temporary relief;

(2) The person requesting such relief shows that there is a substantial likelihood of prevailing on the merits of the final determination of the proceeding;

(3) Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources; and

(4) If such relief is the dissolution of the stay imposed under 460:2-25-6, the party requesting dissolution must establish that the public interest will not be adversely affected by such action.

(f) Appeals of temporary relief decisions shall be as follows:

(1) Any party desiring to appeal the decision of the hearing examiner granting or denying temporary relief may appeal to the Director, or in the alternative, may seek judicial review pursuant to Section 787 of the act.

(2) The Director shall issue a decision on the appeal expeditiously.

**460:2-25-9. Determination by the hearing examiner**

The hearing examiner in a proceeding for review of approval or disapproval of a permit shall issue a written decision within 10 days of the date the hearing record is closed by the hearing examiner.

**460:2-25-10. Appeals**

(a) Any party aggrieved by the decision of the hearing examiner in 460:2-25-9 shall have 2 working days from receipt of the decision within which to file a notice of appeal with the Director. A copy of the notice of appeal must simultaneously be filed with the hearing examiner.

(b) The Director shall act immediately to issue an expedited briefing schedule.

(c) The decision of the Director shall be issued within 30 days of the date the hearing record is closed by the hearing examiner.

(3) A request for specific relief;

(4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and

(5) Any other relevant information.

**460:2-27-5. Status of performance bond release pending review**

The Department shall not release a performance bond, in whole or in part, during the pendency of any review proceeding resulting from the approval of such release.

**460:2-27-6. Appeals**

Any party aggrieved by the decision of the hearing examiner in this Chapter may appeal to the Director under 460:2-19-2.

## SUBCHAPTER 27. REQUEST FOR REVIEW OF APPROVAL OR DISAPPROVAL OF A PERFORMANCE BOND RELEASE APPLICATION

**Section**

460:2-27-1.	Scope
460:2-27-2.	Who may file
460:2-27-3.	Where to file; when to file
460:2-27-4.	Contents of request
460:2-27-5.	Status of performance bond release pending review
460:2-27-6.	Appeals

**460:2-27-1. Scope**

This Subchapter sets forth the procedures for obtaining formal review pursuant to I DOM/RR Section 807.11, of a decision by the Department to approve or disapprove, in whole or in part, an application for release of a performance bond for surface coal mining and reclamation operations.

**460:2-27-2. Who may file**

The permittee or any affected person, as that term is defined in I DOM/RR Section 807.11(c), may file a request for review of a decision by the Department to approve or disapprove, in whole or in part, an application for release of a performance bond.

**460:2-27-3. Where to file; when to file**

(a) A request for review shall be filed with the OHA, Department of Mines, within 30 days of receipt of the Department's written decision approving or disapproving, in whole or in part, an application for release of a performance bond.

(b) Any affected person not served with a copy of the Department's written decision shall file the request for review within 40 days of the date of issuance of the written decision.

**460:2-27-4. Contents of request**

A request for review of approval or disapproval of a performance bond release application shall include:

- (1) A clear statement of the facts entitling that person to administrative relief;
- (2) An explanation of the alleged errors in the Department's decision;

## SUBCHAPTER 29. REQUEST FOR REVIEW OF PERFORMANCE BOND FORFEITURE

**Section**

460:2-29-1.	Scope
460:2-29-2.	Who may file; where to file; when to file
460:2-29-3.	Contents of request
460:2-29-4.	Status of forfeiture proceedings pending review
460:2-29-5.	Burden of proof
460:2-29-6.	Appeals

**460:2-29-1. Scope**

This Subchapter sets forth the procedures for obtaining formal review under I DOM/RR, Part 808 of a determination by the Department to forfeit all or part of a performance bond, as a result of the permittee's failure to meet the conditions upon the bond.

**460:2-29-2. Who may file; where to file; when to file**

(a) The permittee or surety, if applicable, may file a request for review of a determination of the Department to forfeit all or part of a performance bond.

(b) The request for review shall be filed with the OHA, Department of Mines, within 30 days of receipt of the Department's written determination.

**460:2-29-3. Contents of request**

The request for review of performance bond forfeiture shall include:

- (1) A clear statement of the facts entitling that person to administrative relief;
- (2) An explanation of the alleged errors in the Department's decision;
- (3) A request for specific relief;
- (4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and

- (5) Any other relevant information.

**460:2-29-4. Status of forfeiture proceedings pending review**

The filing of a request for review of a performance bond forfeiture shall automatically stay the Department from taking collection action after a forfeiture determination.

**460:2-29-5. Burden of proof**

The Department shall have the burden of going forward to establish a prima facie case for forfeiture of a performance bond. The ultimate burden of persuasion that the performance bond should not be forfeited shall rest with the permittee or surety, if applicable.

**460:2-29-6. Appeals**

Any party aggrieved by the final decision of the hearing examiner in this Chapter may appeal to the Director under procedures set forth in 460:2-19-2.

**SUBCHAPTER 31. STATE INSPECTION PROCEDURES**

**Section**

460:2-31-1.	Scope
460:2-31-2.	Who may file
460:2-31-3.	Where to file; when to file
460:2-31-4.	Contents of request
460:2-31-5.	Determination decision
460:2-31-6.	Appeals

**460:2-31-1. Scope**

This Subchapter sets forth the procedures for obtaining informal review pursuant to I DOM/RR Section 842.14 of the adequacy and completeness of the Department's inspections of surface coal mining and reclamation operations or coal exploration operations.

**460:2-31-2. Who may file**

Any person who is or may be adversely affected by a decision of the authorized representative not to inspect or take appropriate enforcement action with respect to any violation alleged by a person in a request to the Chief Mine Inspection for a state inspection pursuant to I DOM/RR section 842.12 may request of the decision not to inspect or enforce.

**460:2-31-3. Where to file; when to file**

A request for review shall be filed with the OHA, Department of Mines, within 30 days of receipt of the Department's written decision disapproving a request for inspection or the appropriate enforcement action to a violation alleged by a person who files request for a state inspection under I DOM/RR Section 842.12.

**460:2-31-4. Contents of request**

The request for review of the Department's inspection of surface coal mining and reclamation operations or coal exploration operations or a request for review pursuant to 460:2-31-2 shall include:

- (1) A clear statement of the facts entitling that person to administrative relief;
- (2) An explanation of the alleged errors in the Department's decision and/or why the decision merits review;
- (3) A request for specific relief; and
- (4) Any other relevant information.

**460:2-31-5. Determination decision**

The Department shall assign the review requested in this Chapter to a hearing examiner who shall review the facts and allegations at issue and base his decision on any and all information available to him, reporting his decision with a statement in writing of the reasons therefor to the Chief Mine Inspector and to the person requesting review within 30 days of the receipt of that party's request for review. The alleged violator shall be given a copy of the review but the name of the person requesting review shall not be disclosed unless waived by the party requesting review or required under the act.

**460:2-31-6. Appeals**

Informal review under this Subchapter shall affect any right to formal review by the Director to whom the party may address an appeal within 30 days of the hearing examiner's decision under 460:2-19-2.

**SUBCHAPTER 33. REQUEST FOR REVIEW OF DEPARTMENT DETERMINATION OF ISSUES UNDER 460:20 SECTION 761.12(H)**

**Section**

460:2-33-1.	Scope
460:2-33-2.	Who may file; where to file; when to file
460:2-33-3.	Contents of request
460:2-33-4.	Burden of proof
460:2-33-5.	Appeals

**460:2-33-1. Scope**

This Subchapter sets forth procedures for obtaining formal review pursuant to I DOM/RR, Section 761.12(h) of a determination by the Department that a person holds or does not hold a valid existing right, or that surface coal mining operations did or did not exist on the date of enactment of the Surface Mining Control and Reclamation Act (PL 95-87), on lands where operations are prohibited or limited by Section 783 of the act.



**460:2-33-2. Who may file; where to file; when to file**

(a) A permit applicant or any person with an interest which is or may be adversely affected by a determination of the Department that a person holds or does not hold a valid existing right, or that surface coal mining operations did or did not exist on the date of enactment of PL 95-87, may file a request for review of that determination with the OHA, Department of Mines.

(b) The request for review shall be filed within 30 days of receipt by the applicant of a copy of the Department's written determination, or within 30 days of publication of the determination in the Oklahoma Gazette Register.

**460:2-33-3. Contents of request**

A request for review of Department determination of issues under 1 DOM/RR Section 761.12(h) shall include:

- (1) A clear statement of the facts entitling that person to administrative relief;
- (2) An explanation of the alleged errors in the Department's decision;
- (3) A request for specific relief;
- (4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and
- (5) Any other relevant information.

**460:2-33-4. Burden of proof**

(a) If a permit applicant is seeking review pursuant to this Subchapter, the Department shall have the burden of going forward to establish a prima facie case. The ultimate burden of persuasion shall rest with the person seeking review of the determination.

(b) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that a person holds or does not hold a valid existing right, or the surface coal mining operations did not exist on the date of enactment of PL 95-87.

**460:2-33-5. Appeals**

Any party aggrieved by the decision of the hearing examiner in this Chapter may appeal to the Director under Section 4.1271.

460:2-35-4.	Contents of request
460:2-35-5.	Time for hearing
460:2-35-6.	Status of the Department order or decision pending review
460:2-35-7.	Burden of proof
460:2-35-8.	Request for temporary relief
460:2-35-9.	Determination by the hearing examiner
460:2-35-10.	Appeals

**460:2-35-1. Scope**

This Subchapter sets forth the procedures for obtaining formal review of a final decision by the Department concerning permit modification orders, and applications for permit revisions permit renewals, or the transfer, assignment, or sale of rights granted under permits.

**460:2-35-2. Who may file; where to file**

An applicant, permittee, or any person having an interest which is or may be adversely affected by a final decision of the Department ordering modification of a permit, or approving or disapproving applications for permit revisions, permit renewals, or the transfer, assignment or sale of rights granted under permits, may file a request for review of that decision with the OHA, Department of Mines.

**460:2-35-3. When to file**

(a) A request for review pursuant to this Chapter shall be filed within 30 days of receipt of the copy of the Department's written order or decision.

(b) Any person not served with a copy of the Department's written order or decision shall file the request for review within 40 days of the date of the issuance of the written order or decision.

**460:2-35-4. Contents of request**

A request for review pursuant to this Chapter shall include:

- (1) A clear statement of the facts entitling that person to administrative relief;
- (2) An explanation of the alleged errors in the Department's decision;
- (3) A request for specific relief;
- (4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and
- (5) Any other relevant information.

**460:2-35-5. Time for hearing**

(a) The hearing examiner shall hold a hearing within 30 days of the date of the filing of the request for review of the approval or disapproval of a permit revision or permit renewal and shall notify all interested parties of the time and place of such hearing.

(b) The hearing examiner shall act expeditiously to order a hearing on a request for review of a permit modification order or the approval or disapproval of the transfer, assignment or sale of rights granted under a permit.

## SUBCHAPTER 35. REQUEST FOR REVIEW CONCERNING PERMIT MODIFICATION ORDERS, AND APPLICATIONS FOR PERMIT REVISIONS, RENEWALS, AND THE TRANSFER, ASSIGNMENT, OR SALE OF RIGHTS GRANTED UNDER PERMITS

**Section**

460:2-35-1.	Scope
460:2-35-2.	Who may file; where to file
460:2-35-3.	When to file

(c) The hearing examiner may grant an extension of time for the hearing only if all parties to the hearing agree to such extension.

#### **460:2-35-6. Status of the Department order or decision pending review**

(a) The terms and effect of a permit modification order shall be stayed during the pendency of any administrative review proceeding resulting from that order.

(b) The issuance of a permit following Department approval of applications for permit revisions or permit renewals, or the approval of an application for the transfer, assignment, or sale of rights granted under permits, shall be stayed during the pendency of any administrative proceeding resulting from such approval. However, the hearing examiner, pursuant to a request for temporary relief under 460:2-35-8, may, if the requirements of 460:2-35-8(e) are met, dissolve the stay and provide that the Department's approval or any part of it shall be in full force and effect immediately.

#### **460:2-35-7. Burden of proof**

(a) In proceedings involving permit modification orders, the Department shall have the burden of going forward to establish a prima facie case. The ultimate burden of persuasion shall rest with the person seeking review of the order.

(b) In proceedings involving permit renewal decisions, those parties opposing renewal shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the renewal application should be disapproved.

(c) In proceedings involving decisions on applications for permit revisions and on applications for the transfer, assignment, or sale of rights granted under permits:

(1) If the applicant is seeking review, the Department shall have the burden of going forward to establish a prima facie case as to the failure of the applicant to comply with the applicable requirements of the act, and the applicant seeking review shall have the ultimate burden of persuasion as to entitlement to approval of the application.

(2) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails in some manner to comply with the applicable requirements of the act and the regulations.

#### **460:2-35-8. Request for temporary relief**

(a) Where review is requested pursuant to 460:2-35-2, any party may file a request for temporary relief at any time prior to a decision by the hearing examiner, so long as the relief sought is not the issuance of a permit where an application has been disapproved, in whole or in part.

(b) The request shall be filed with the hearing examiner to whom the case has been assigned. If no assignment has been made, the application shall be filed with the OHA, Department of Mines.

(c) The application shall include:

(1) A detailed written statement setting forth the reasons why relief should be granted;

(2) A statement of the specific relief requested;

(3) A showing that there is a substantial likelihood that the person seeking relief will prevail on the merits of the final determination of the proceedings; and

(4) A showing that the relief sought will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(d) The hearing examiner may hold a hearing on any issue raised by the application.

(e) The hearing examiner shall expeditiously issue an order or decision granting or denying such temporary relief. Temporary relief may be granted only if:

(1) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting relief shows that there is substantial likelihood of prevailing on the merits of the final determination of the proceedings;

(3) Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources; and

(4) If such relief is the dissolution of the stay imposed under 460:2-35-6(b), the party requesting dissolution must establish that the public interest will not be adversely affected by such action.

(f) Appeals of temporary relief decisions

(1) Any party desiring to appeal the decision of the hearing examiner granting or denying temporary relief may appeal to the Director or, in the alternative, may seek judicial review pursuant to Section 787 of the act.

(2) The Director shall issue an expedited briefing schedule and shall issue a decision on the appeal expeditiously.

#### **460:2-35-9. Determination by the hearing examiner**

(a) The hearing examiner shall issue a written determination on a request for review of a permit revision or permit renewal decision within 10 days of the date the hearing record is closed by the hearing examiner.

(b) The hearing examiner shall act expeditiously to issue a written decision on a request for review of a permit modification order or a decision on an application for the transfer, assignment, or sale of rights granted under a permit.

#### **460:2-35-10. Appeals**

(a) Any party aggrieved by the decision of the hearing examiner on a request for review of a permit revision or permit renewal decision shall have 2 working days from receipt of the decision within which to file a notice of appeal with the Director. A copy of the notice of appeal must simultaneously be filed with the hearing examiner.

(1) The Director shall act immediately to issue an expedited briefing schedule.

(2) The decision of the Director shall be issued within 30 days of the date the hearing record is closed by the hearing examiner.

(b) Any party aggrieved by the decision of the hearing examiner on a request for review of a permit modification order or decision on an application for the transfer, assignment, or sale or rights granted under a permit may appeal to the Director under 460:2-19-2.

## SUBCHAPTER 37. REQUEST FOR REVIEW OF APPROVAL OR DISAPPROVAL OF A COAL EXPLORATION APPLICATION

### Section

460:2-37-1.	Scope
460:2-37-2.	Who may file
460:2-37-3.	Where to file; when to file
460:2-37-4.	Contents of request
460:2-37-5.	Status of approvals pending review
460:2-37-6.	Burden of proof
460:2-37-7.	Appeals

### 460:2-37-1. Scope

This Subchapter sets forth the procedures for obtaining formal review, pursuant to I DOM/RR, Part 776, of a decision by the Department to approve or disapprove a coal exploration application, in whole or in part.

### 460:2-37-2. Who may file

An applicant or any person having an interest which is or may be adversely affected by a decision of the Department to approve or disapprove a coal exploration application, in whole or in part, may file a request of review of that decision.

### 460:2-37-3. Where to file; when to file

(a) A request for review shall be filed with the OHA, Department of Mines, within 30 days of receipt of the Department's written decision approving or disapproving the coal exploration application.

(b) Any person not served with a copy of the Department's written decision shall file the request for review within 40 days of the date of issuance of the written decision.

### 460:2-37-4. Contents of request

A request for review of the approval or disapproval of a coal exploration application shall include:

- (1) A clear statement of the facts entitling that person to administrative relief;
- (2) An explanation of the alleged errors in the Department's decision;
- (3) A request for specific relief;
- (4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and
- (5) Any other relevant information.

### 460:2-37-5. Status of approvals pending review

The approval of a coal exploration application shall be stayed during the pendency of an administrative review proceeding resulting from such approval.

### 460:2-37-6. Burden of proof

(a) If a coal exploration applicant is seeking review, the Department shall have the burden of going forward to establish a prima facie case as to the failure to comply with the applicable requirements of the act and regulations, and the ultimate burden of persuasion as to the entitlement to the approval rests with the applicant.

(b) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails in some manner to comply with the applicable requirements of the act and regulations.

### 460:2-37-7. Appeals

Any party aggrieved by the decision of the hearing examiner in this Chapter may appeal to the Director under 460:2-19-2.

## SUBCHAPTER 39. RULEMAKING

### Section

460:2-39-1.	Petitions requesting promulgation, amendment, or repeal of a rule or regulation
460:2-39-2.	Referral
460:2-39-3.	Department determination
460:2-39-4.	Opportunity for argument
460:2-39-5.	Department decision
460:2-39-6.	Application of Administrative Procedures Act

### 460:2-39-1. Petitions requesting promulgation, amendment, or repeal of a rule or regulation

Any person may petition the Department requesting the promulgation, amendment, or repeal of a Department rule or regulation. All petitions submitted must contain the following information.

- (1) All petitions must be submitted in typewritten or legible printed form.
- (2) All petitions must clearly identify the party(s) submitting such petition and must include a statement reflecting the interest of the party(s) in submitting such petition.
- (3) All petitions must clearly state that the petition is for the promulgation of a new rule, the amendment of an existing rule, or the repeal of an existing rule, or, separately, any combination of the above. In the instance of a requested amendment to any existing rule(s), a complete text of the existing rule language requested for change or deletion and/or such language as may be requested to be added must be specified. In the instance of a requested

repeal of any rule(s), the petition must state the complete rule(s) requested for repeal.

(4) All petitions must clearly and separately state the factual basis and reasons, legal grounds, and technical justification for each requested rule promulgation, amendment, or repeal, and shall indicate whether petitioner desires a public hearing. Any and all supporting documents, records, statistics, studies, or information must be submitted with the petition.

(5) All petitions must be duly signed and endorsed by all petitioning parties, or their legal representatives, and such signatures and endorsement must be duly acknowledged by notary.

**460:2-39-2. Referral**

All petitions requesting the promulgation, amendment, or repeal of any Department rule, as provided by this Subchapter, shall be referred to the Department for review and consideration. The Department shall initially determine if the petition is in adequate and proper form. If determined not to be in proper form. If determined not to be in proper and adequate form, the Department shall thereupon return the petition to the petitioning party for correction and resubmission.

**460:2-39-3. Department determination**

Upon receipt of a petition requesting the promulgation, amendment, or repeal of a rule, the Chief Mine Inspector shall determine if the petition sets forth facts, technical justification, and law which may provide a reasonable basis for issuance, amendment, or repeal of a regulation. Facts, technical justification, or law previously considered in a petition for rulemaking on the same issue shall not provide a reasonable basis. If the Chief Mine Inspector determines that the petition has a reasonable basis, a notice shall be published in the Oklahoma Gazette seeking comments from the public on the proposed change. The Department may hold a public hearing, may conduct an investigation, or take other action to determine whether the petition should be granted.

**460:2-39-4. Opportunity for argument**

Before making final determination, the requesting party shall be allowed reasonable opportunity for argument, written and/or oral, in support of a petition before the Department requesting the promulgation, amendment or repeal of a rule. In making its final determination on the petition, the Department may, in its discretion, resort to either of the following non-exclusive actions or proceedings (or any combination thereof):

- (1) For good and sufficient cause, summarily grant or deny the petition; or
- (2) Refer the request to staff for additional review, consideration, and recommendation prior to a determination thereon by the Department.

**460:2-39-5. Department decision**

Within 90 days from receipt of a petition requesting the promulgation, amendment, or repeal of a rule, the Department

shall issue a written decision either granting or denying the petition. The Chief Mine Inspectors decision shall constitute the final decision for the Department.

(1) If the petition is granted, the Chief Mine Inspector shall initiate a rulemaking proceeding.

(2) If the petition is denied, the Chief Mine Inspector shall notify the petitioner in writing, setting forth the reason for denial.

**460:2-39-6. Application of Administrative Procedures Act**

Should any petition for promulgation, amendment, or repeal of a rule be granted by the Department, in whole or in part, the petition as granted shall thereafter be treated as in the case of all rulemaking and the procedures of the Administrative Procedures Act shall thereupon become applicable in the further adoption of such rule promulgation, amendment, or repeal.

**SUBCHAPTER 41. HEARING PROCEDURES FOR LANDS UNSUITABLE PETITIONS**

<b>Section</b>	<b>Scope</b>
460:2-41-1.	Scope
460:2-41-2.	Parties
460:2-41-3.	Hearing site
460:2-41-4.	Time for intervention
460:2-41-5.	Notice of hearing
460:2-41-6.	Date of the hearing
460:2-41-7.	Dismissal of proceedings
460:2-41-8.	Consolidation of proceedings
460:2-41-9.	Withdrawal of petition
460:2-41-10.	Decision
460:2-41-11.	Time to issue decision
460:2-41-12.	Notice of final decision
460:2-41-13.	Judicial review

**460:2-41-1. Scope**

This Subchapter sets forth the procedures for a hearing pursuant to I DOM/RR Section 764.17 for petitions to designate lands unsuitable for all or certain types of surface coal mining operations and for terminating designations.

**460:2-41-2. Parties**

A petitioner(s) for the designation of land as unsuitable for surface coal mining shall be considered statutory parties. Any other person claiming a right to participate as a party may seek to intervene in a proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address, and telephone number. Persons with an ownership interest of record in the property and other persons known to the Department to have an interest in the property and other persons known to the Department to have an interest in the property shall be parties. Any interested local, state, or federal

agency, including OSM and EPA, shall have the right to intervene as parties.

#### **460:2-41-3. Hearing site**

The Department shall hold a public hearing in the locality of the area covered by a petition to designate land unsuitable for surface coal mining, unless all parties agree to a different site.

#### **460:2-41-4. Time for intervention**

Until three days before the Department holds a hearing under I DOM/RR Section 764.17, any person may intervene in the proceedings.

#### **460:2-41-5. Notice of hearing**

(a) The Department shall give notice of a hearing for a petition to designate land unsuitable for surface coal mining, including the time, date, and location by certified mail post-marked not less than 30 days before the date to:

- (1) Local, state, and federal agencies which may have an interest in the decision on the petition;
- (2) All petitioners and the intervenors; and
- (3) Any person with an ownership or other interest known to the Department in the area covered by the petition.

(b) The general public shall be notified by a local newspaper advertisement for two consecutive weeks; these advertisements shall be published four and five weeks prior to the date scheduled for the public hearing. An additional advertisement shall be published during week prior to the scheduled hearing.

#### **460:2-41-6. Date of the hearing**

The Department shall hold a public hearing within ten months after receipt of a complete petition to designate land unsuitable for surface coal mining.

#### **460:2-41-7. Dismissal of proceedings**

If all petitioners and intervenors agree, a hearing for a petition to designate land unsuitable for surface coal mining may be dismissed at any time. Motions for dismissal shall be in writing unless made orally in the record.

#### **460:2-41-8. Consolidation of proceedings**

The Department may consolidate in a single hearing the hearings required for each of several petitions to designate lands unsuitable for surface coal mining which are related to areas in the same locale.

#### **460:2-41-9. Withdrawal of petition**

In the event all petitioners and intervenors stipulate agreement prior to a hearing for a petition to designate land unsuitable for surface coal mining, the petition may be withdrawn from consideration and the hearing not held.

#### **460:2-41-10. Decision**

The Department shall use the following criteria in reaching its decision in a petition to designate land unsuitable for surface coal mining:

- (1) The information contained in the data base and inventory system for lands unsuitable as required in I DOM/RR Section 764.21;
- (2) Information provided by other governmental agencies;
- (3) The detailed statement prepared under I DOM/RR Section 764.17(e), which includes:
  - (A) Use of existing and available information on the potential coal resources of the area;
  - (B) The demand for coal resources;
  - (C) The impact of such designation on the environment, economy, and the supply of coal.
- (4) Any other relevant information submitted during the comment period.

#### **460:2-41-11. Time to issue decision**

The Department shall issue its final written decision, including a statement of reasons, within 60 days of completion of a public hearing for a petition to designate land unsuitable for surface coal mining, or, if no public hearing is held, then within 12 months after receipt of the complete petition.

#### **460:2-41-12. Notice of final decision**

The Department shall give notice of its final decision in this Chapter by sending a copy of the final decision by certified mail to all petitioners, every other party to the proceeding, and to the state director of OSM.

#### **460:2-41-13. Judicial review**

The decision of the Department with respect to a petition to designate land unsuitable for surface coal mining, or the failure of the Department to act within the time limits set forth in I DOM/RR Section 764.19 shall be subject to judicial review by a court of competent jurisdiction in accordance with the act and I DOM/RR Section 787.12.

### **SUBCHAPTER 43. COMPUTATION OF TIME**

#### **Section**

460:2-43-1. Computation of Time

#### **460:2-43-1. Computation of Time**

Except as otherwise provided in the regulations of this Subchapter, computation of time is based upon the following:

- (1) Except as otherwise provided, computation of time is based upon calendar days.
- (2) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is

a Saturday, Sunday, or legal holiday on which the Department is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(3) Intermediate Saturdays, Sundays, or legal holidays are excluded from the computation when the period or prescribed time is seven days or less.