

## **APPEAL PROCEDURES OF THE SOUTH CAROLINA MINING COUNCIL**

(See S.C. Code Section 48-20-10, *et seq.* and Mining Council Regulation 89-10, *et seq.*)

Appeals to the South Carolina Mining Council ("Council") are governed by Sections 1-23-310-360 of the SC Code of Laws [applicable sections for a contested case hearing under the Administrative Procedures Act (APA)]; Section 48-20-190 of the SC Code of Laws; the SC Rules of Evidence; and South Carolina Regulation Section 89-290. The SC Rules of Civil Procedure may be followed as guidance on matters not addressed by the foregoing authorities.

An applicant for an operating mining permit or certificate of exploration that is denied or conditioned or any other person who is aggrieved and directly affected by the mining permit may appeal the final decision of the South Carolina Department of Health and Environmental Control ("DHEC" or the "Department") granting, conditioning, or denying the permit. S.C. Code Ann. 48-20-190 (2008). Any person submitting an appeal must do so within 30 days after notification of DHEC's decision by filing written notice of appeal to Secretary of the Council with a copy of the notice to DHEC. The notice of appeal should include:

1. the name(s) and address of the Petitioner(s);
2. the circumstances which qualify the Petitioner(s) as aggrieved and directly affected by DHEC's decision pursuant to the SC Mining Act;
3. sufficient information (name, location, etc.) to identify the mining permit; and,
4. specific matters appealed and the relief requested.

Notice of appeal should be addressed to the Council as follows:

South Carolina Mining Council  
Attn.: Clerk of the Council  
c/o SC Department of Health and Environmental Control  
2600 Bull Street  
Columbia, South Carolina 29201-1708

A copy of the appeal should be addressed to:

South Carolina Department of Health and Environmental Control  
Bureau of Land and Waste Management  
Division of Mining and Solid Waste Management  
2600 Bull Street  
Columbia, South Carolina 29201-1708

The Chairman of the Council must schedule a reasonable time for hearing the appeal not less than twenty (20) nor more than forty (40) days from the date the Council receives the appeal. The Secretary of the Council, on behalf of the Chairman, will notify the other

members of the Council and the parties to the appeal apprising them of the appeal, the date it was filed, and the dates between which it can be held. As soon as a date can be established and the members polled as to any conflicts in hearing the case, a notice is sent to all parties with the date, time, and place for hearing.

In preparing for presenting an appeal before the Council, the Petitioner should anticipate that the procedures summarized here will be followed unless the circumstances require a change that is consistent with the requirements of the Code. If a change in procedure is required, the Chairman or the Council's Legal Advisor will notify each party.

An aggrieved party may elect to be represented at the hearing by an attorney or proceed pro se.

The Council shall establish a standing Appeals Committee ("Committee") each year at its Annual Meeting. The Committee shall consist of the Chairman of the Council and two members elected by a majority of the Council, one member being a mining industry representative and the other not being a mining industry representative. In the event that the Chairman is unable to serve on the Committee, the Vice-Chairman shall assume the chairmanship of the Committee for the period of time necessary to address the pending appeal. An alternate shall be elected for each of the other Committee members.

The Council believes that the three-member Committee is the most efficient means of hearing an appeal; however, at the Petitioner's request, the Council may decide by majority vote that the appeal will be heard by the full Council. Any Petitioner requesting a hearing before the full Council should communicate the request in its petition, including the reasons for requesting that the hearing be heard by the full Council. The Petitioner may also request a hearing before a hearing panel. If requested, the Chairman of the Council may accept recommendations for member(s) of the hearing panel from all parties. The hearing panel may consist of one or more individuals. The Chairman of the Council shall be responsible for appointing the hearing panel which must be agreed to by the appellant(s), the Council, the operator and the Department. A majority of the members of the Council or the hearing panel, as applicable, will constitute a quorum. At all hearings conducted by the Committee of the Council, all three members shall be required for a quorum.

An attorney from the Office of General Counsel of DHEC that does not represent the Office of Environmental Quality Control, or other counsel retained by DHEC, will be assigned to assist the Mining Council as its legal advisor and will, at the direction of the Appeals Committee Chairman (as described below), communicate with the parties concerning prehearing matters.

**Prehearing Procedures:** In order to ensure that a timely hearing will be held, the Chairman will set the date, time and location of the hearing and authorize the Council's Legal Advisor to act in its interest prior to the hearing to respond to all parties concerning legal and procedural issues including but not limited to witnesses, discovery, issuance of subpoenas, and rules of evidence. In the event that all parties agree, the parties may petition the Chairman, through the Council's Legal Advisor, to schedule a hearing date that extends beyond the statutory date provided that the date selected allows the Council to give at least twenty (20) days notice of the hearing.

The Committee Chairman may direct its Legal Advisor to hold a pre-hearing conference (by telephone if convenient) to determine such things as whether the issues can be simplified, the resolution of matters of evidence, expert witnesses and discovery and whether the matter can be resolved through settlement, mediation or other forms of alternative dispute resolution. All parties should be aware that the Committee expects and intends to focus on the pertinent issues, and each party is encouraged to identify matters which it intends to have judicially noticed and matters of law or fact which can be stipulated. The Committee may consider pending motions and any other matter that will expedite the hearing when the hearing is opened.

**Hearing Procedure:** The Council will conduct the hearing on an appeal of the final decision of the Department as follows:

#### PRE-HEARING MATTERS

**Subpoenas:** The blank subpoena form may be obtained from either the Clerk of the Council or the Council's Legal Advisor. Parties may issue subpoenas for witnesses and for files, records, and documentation and should file proof of service with the Clerk. Service of the subpoena is the responsibility of the issuing party. When any person fails to comply with a subpoena, the issuing party is responsible for pursuing and cost of any judicial enforcement of that subpoena. A continuance may be granted at the issuing party's request upon a showing that the witness is necessary to their case.

**Depositions:** Depositions may be taken in accordance with S.C. Code § 1-23-320(C). The Committee Chairman may authorize discovery depositions upon a showing by a party or his counsel that such discovery is necessary to fully present his case or the parties may agree to discovery depositions with the Committee Chairman's approval.

**Documents:** Any records, reports, and documentation ("Exhibits") a party plans to submit at hearing to be entered into evidence before the Committee should be exchanged by the parties no later than fifteen (15) calendar days prior to the hearing. Witness lists should also be provided to the other party(ies) at that time unless the Committee Chairman directs another time for exchange. A copy of the Exhibits and witness lists should be provided to the Clerk of the Council and Legal Advisor at the same time. Witnesses or documentation that a party submits after this time will be subject to objection and, if objected to, may be allowed or

excluded at the discretion of the Committee Chairman.

Motions: Motions, except those made during hearings, must be reduced to writing and filed with the Clerk and served on the parties at least twenty (20) days prior to the commencement of a hearing. Responses to motions are due within ten (10) days after service. Replies are due within five (5) days of service of the response. These times may be modified by order of the Committee Chairman or designee for good cause. Written motions to quash a subpoena will be made pursuant to the SC Rules of Civil Procedure. The Committee, in its discretion and upon due notice to all parties of record, may entertain oral argument and response on pre-filed motions in advance of the scheduled hearing. Otherwise, motions will be decided without oral argument or at hearing. The Committee Chairman may make a ruling on a motion prior to or at the hearing on the merits or in the written order making disposition of the subject matter of the proceeding.

#### CONDUCT OF HEARINGS

Prior to the commencement of the hearing, the Committee Chairman may grant a continuance at the request of a party for good cause. If neither the petitioner(s) nor his legal counsel attends the hearing, the petitioner(s) is deemed to have waived the right to pursue the appeal further unless there is reasonable justification for the failure to attend the hearing.

Exhibits: No prepared exhibits offered as evidence shall be of greater size, when folded, than 8 1/2 inches by 17 inches, unless such party has prepared a copy of the exhibit meeting such requirements to allow entry into the record by the court reporter. For all other exhibits, the original exhibit shall be furnished to the court reporter when offered into evidence. All exhibits shall be marked numerically in the order of identification. The Committee Chairman can make exceptions upon good cause.

Procedure: Each hearing shall be recorded by a court reporter retained by the Mining Council. The Committee Chairman or designee shall open the hearing by explaining the procedures to be followed in the hearing. The Committee will then handle preliminary matters. The hearing is *de novo*.

Each party shall be given an opportunity to make an opening statement. The Petitioner(s) shall present first, followed by the Department, and any other Respondents, in the order set by the Committee Chairman. The parties will present their cases in the same order.

The Committee Chairman shall rule on all motions, objections and other legal issues. The Legal Advisor shall advise the Committee Chairman and members on legal issues, including issues arising during the hearing. The Committee may at any time during the hearing go into executive session to receive legal advice.

The testimony of witnesses shall be under oath or affirmation. Witnesses will be sworn by the court reporter. Each party shall have the right to examine and cross-examine witnesses, as appropriate. After counsel for the parties have completed their examination of a witness, the Committee Chairman, the Legal Advisor, or any member of the Committee may direct questions to any party or witness during the proceedings. Counsel for the parties may ask follow-up questions only on the questions asked by the Committee members or the Legal Advisor.

Evidentiary matters as governed by the S.C. Rules of Evidence will apply in hearings before the Committee and effect shall be given to rules of privilege recognized by law. The Committee expects that only evidence relevant to the grounds on which the appeal is based or pertinent to the information on which DHEC based its decision pursuant to the SC Mining Act. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Notice may be taken of judicially cognizable facts. Parties will be afforded an opportunity to contest the material proposed to be noticed.

When the presentation of any evidence is objected to and the objection is sustained by the Committee Chairman, the proponent of the evidence will be allowed to present an offer of proof for the record. An offer of proof shall consist of a statement of the substance of the evidence to which objection has been sustained, or if the excluded evidence consists of evidence in documentary or written form, a copy of the evidence shall constitute the offer of proof.

Before closing the hearing, the Committee Chairman may allow the parties to make a closing statement. If closing is allowed, the Petitioner(s) will have the option of closing first or last, but if there is more than one petitioner and they cannot agree, the Committee Chairman shall decide the order.

Following the final arguments, the Chairman may request briefs and/or proposed findings of fact and conclusions of law from each party before issuing its decision.

#### COMMITTEE DECISIONS

The Committee may retire into executive session to receive legal advice from its Legal Advisor. No vote by the Committee may be taken in executive session. The decision of the Committee will be on the record with a member making a motion. Decisions of the Committee shall be determined by a simple majority of those members who heard the case. Within 30 calendar days of the conclusion of the hearing, the Committee shall issue its final written decision. The final decision of the Committee as it relates to an appeal shall include the (1) findings of fact, (2) statements of policy and conclusions of law, and (3) the Committee's decision. The Committee may sustain, reverse, or modify a

decision of the Department. Service of the opinion shall be by certified mail, registered mail, or by delivery to the parties' attorneys, at the discretion of the Committee.

One or more of the attorneys for the parties, with the help of the Legal Advisor, will assist the Committee in the preparation of the written decision, if directed by the Committee Chairman.

If any party requires a transcript of the proceedings, including for certification of the record to the Administration Law Court on appeal, such party is responsible for the payment of all costs of the transcript.

**Rules of Procedure:** The South Carolina Rules of Civil Procedure may be followed for guidance in proceedings before the Committee to resolve questions not addressed by these rules.

**Initial Date Adopted:** November 14, 2003

**Dates Modified:** June 2, 2010, November 3, 2021