

350.0301 Petition challenging determination of cabinet -- Conduct of hearings -- Administrative regulations -- Secretary may designate deputy to sign final orders.

- (1) Any person who considers himself aggrieved by any determination made by the cabinet under this chapter may file, in accordance with administrative regulations promulgated by the cabinet under the provisions of this chapter, a petition alleging that the determination is contrary to law or fact and is injurious to him, the grounds and reasons therefor, and demand a hearing. Unless the cabinet considers that the petition is frivolous, it shall serve written notice of the petition on each person named therein and shall schedule a hearing before the cabinet not less than twenty-one (21) days after the date of the notice unless the person complained against waives in writing the twenty-one (21) day period. The right to demand a hearing pursuant to this section shall be limited to a period of thirty (30) days after the petitioner has had actual notice of the determination complained of, or could reasonably have had notice. However, the petitioner shall have the opportunity to contest the validity of an underlying notice of noncompliance in a timely-filed demand for hearing to contest the validity of a cessation order issued for a failure to abate the violation contained in the notice of noncompliance.
- (2) All hearings, other than conferences, under this chapter shall be held before a hearing officer, duly qualified to practice law in the Commonwealth of Kentucky, who may be a full-time employee of the cabinet, serve by contract, or be paid on a per diem basis in the discretion of the cabinet. After the conclusion of the hearing, the hearing officer shall within thirty (30) days make to the secretary a report and recommended order which shall contain a finding of fact and a conclusion of law. If the secretary finds upon written request of the hearing officer that additional time is needed, the secretary may grant an extension. The hearing officer shall serve a copy of his report and recommended order upon all parties of record and their attorney of record to the proceeding, and they shall be granted the right to file exceptions thereto within fourteen (14) days of service. Any party may submit a written response to exceptions within twenty-one (21) days of service of the report and recommended order. Exceptions and responses not timely filed shall be noted and made a part of the record but shall not be considered by the secretary in making a final order. The secretary shall consider the report, exceptions, and recommended order and decide the case. The decision shall be served by mail upon all parties and their attorney of record and shall be a final order of the cabinet.
- (3) Any party to a hearing under this subsection may be represented by counsel, may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. The record of the hearing shall be open to public inspection, and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original.
- (4) All hearings conducted pursuant to this chapter shall be open to the public.
- (5) The cabinet shall promulgate administrative regulations, pursuant to the provisions set forth in this chapter, establishing formal and informal hearing procedures by which any hearing shall, upon the written request of the

operator, permittee, or person, be held in the county or regional office where the surface coal mining operation is located, before an impartial hearing officer who is independent of any prosecutorial functions of the cabinet. The administrative regulations shall provide for the conduct of hearings and investigation of any matter relating to the regulation of surface coal mining and reclamation operations; provide for the assessment and payment of civil penalties, including the placement of proposed civil penalty assessments into an escrow account prior to a formal hearing on the amount of the assessment; and provide for a waiver of the placement of the proposed civil penalties into escrow for those individuals who demonstrate with substantial evidence an inability to pay the proposed civil penalties into escrow. The procedures developed pursuant to this subsection shall provide that the hearings be held in the most expeditious manner possible within the time constraints established under this chapter. No person who presided at a prior hearing shall either preside at a subsequent hearing or participate in any further decision or subsequent administrative appeal in the same matter.

- (6) The cabinet may promulgate administrative regulations pursuant to the provisions set forth in this chapter establishing procedures for the holding of administrative conferences needed to implement the provisions of this chapter.
- (7) The secretary may designate a deputy to sign any or all final orders of the cabinet, whether the orders are the result of hearing or agreement.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 123, sec. 51, effective June 20, 2005. -- Amended 1996 Ky. Acts ch. 210, sec. 1, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 178, sec. 2, effective July 15, 1994. Created 1992 Ky. Acts ch. 304, sec. 1, effective July 14, 1992.