

Kansas Administrative Regulations

Mined-Land Conservation and Reclamation (KDHE)

Article 6.—Permit Review

47-6-7. Permit suspension or revocation.

(a) A proceeding to suspend or revoke a permit shall begin with a show cause order issued by the secretary to the permittee. The show cause order shall set forth the following:

- (1) a list of the unwarranted or willful violations that contribute to a pattern of violations;
- (2) a copy of each order or notice containing one or more of the violations listed;
- (3) the basis for determining the existence of a pattern of violations; and
- (4) the recommendation that the permit be suspended or revoked and the length and terms of the recommended suspension.

(b) Answer. The permittee shall have 30 days after receipt of the order within which to file an answer.

(c) Contents of answer. The permittee's answer to a show cause order shall set forth the following:

- (1) the reasons, in detail, why a pattern of violations does not exist or has not existed, including each reason for contesting the following:
 - (A) the fact of any violation alleged by the department;
 - (B) the willfulness of any violation; or
 - (C) whether or not any violation was caused by the unwarranted failure of the permittee.
 - (2) each mitigating factor the permittee believes exists in determining the terms of the revocation or the length and terms of the suspension;
 - (3) any other alleged relevant facts; and
 - (4) whether or not a hearing on the show cause order is desired.
- (d) Burden of proof in suspension or revocation proceedings. In proceedings to suspend or revoke a permit, the department shall have the burden of going forward to

establish a prima facie case for suspension or revocation of the permit. The permittee shall have the ultimate burden of persuasion that the permit should not be suspended or revoked.

(e) Procedure. Except as provided for in this regulation, the procedure set forth in K.A.R. 47-4-14a(d) shall be followed.

(f) Decision by the presiding officer.

(1) After determining that a pattern of violations exists or has existed, the presiding officer shall order the permit either suspended or revoked. It shall not be required that the presiding officer find that all the violations listed in the show cause order occurred in order to establish a pattern. However, the presiding officer shall find that sufficient violations occurred in order to establish a pattern.

(2) The minimum suspension period imposed shall be three working days, except when the presiding officer finds that this would result in manifest injustice and would not further the purposes of the act. The presiding officer may impose preconditions to lifting the suspension.

(3) The decision of the presiding officer shall be issued within 20 days of the following:

(A) after the closing date of the hearing record; or

(B) after receipt of the answer, if no hearing is requested by any party and the presiding officer determines that no hearing is necessary.

(4) At any stage of a suspension or revocation proceeding, the parties may enter into a settlement, subject to the approval of the presiding officer.

(g) Summary judgment. When the permittee fails to appear at a hearing, these conditions apply:

(1) the permittee shall be deemed to have waived his right to a hearing;

(2) the presiding officer may make these assumptions for purposes of the proceeding:

(A) each violation listed in the order occurred;

(B) each violation was willfully or negligently caused by the permittee; and

(C) a pattern of violations exists.

(3) the presiding officer shall either conduct an ex-parte hearing or require the department to furnish proposed findings of fact and conclusions of law in order to issue an initial decision.

(h) Appeals.

(1) Any party may appeal the initial order by filing a notice of appeal with the secretary within 15 days after receipt of the order.

(2) Except as provided for in this regulation, this appeal shall follow the procedure in K.A.R. 47-4-14(a)(d)(14). The secretary shall act immediately to issue an expedited briefing schedule. The decision of the secretary shall be issued within 60 days after the date the record is closed by the secretary or, the date the answer is filed.

(3) Any further appeal from the secretary's final order shall be taken pursuant to the Kansas judicial review act, K.S.A. 77-601 *et seq.*

(Authorized by K.S.A. 49-405; implementing K.S.A. 49-406; effective Feb. 11, 1991; amended May 2, 1997.)

***** Authenticated Kansas Administrative Regulation *****