



COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MINES, MINERALS AND ENERGY  
DIVISION OF MINED LAND RECLAMATION  
P. O. DRAWER 900; BIG STONE GAP, VA 24219  
TELEPHONE: (276) 523-8157

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## VIRGINIA COAL SURFACE MINING AND RECLAMATION PERMANENT REGULATORY PROGRAM

### ADMINISTRATIVE HEARINGS PROCEDURES

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## ADMINISTRATIVE HEARINGS

The Virginia Coal Surface Mining Control and Reclamation Act of 1979 (Act) and the Virginia Coal Surface Mining Reclamation Regulations (VCSMRR) provide for the following types of administrative proceedings –

- Informal Conferences
- Informal Hearings/Assessment Conferences
- Formal Hearings (including temporary relief proceedings)
- Review and Reconsideration
- Judicial Review

The Reclamation Program Manager coordinates the informal conferences for permit and bond release applications (informal conference held prior to the final application decision).

The Legal Services Officer coordinates informal hearings and formal hearings to review agency decisions (i.e., issuance of enforcement action, civil penalties, complaint investigation reviews, and application approvals or denials), as well as any subsequent review and reconsideration or judicial appeal proceeding regarding the Division's administrative hearing decisions.

### **Informal Conference**

(Permitting & Bond Release Applications)

Applicable Act and regulation references:

§45.1-239	Public participation in process of issuing or revising permits
§45.1-252(D)(3)	Designating areas unsuitable for coal surface mining
§45.1-247(C)	Forfeiture or release of performance bond
§45.1-263(F)	Right of entry, acquisition, disposition and reclamation of land adversely affected by past coal mining practices
§4VAC25-130-761.12(d)	Procedures (Areas Unsuitable for Mining)
§4VAC25-130-773.13(c)	Informal Conference
§4VAC25-130-773.15(a)	Review of Permit Application
§4VAC25-130-774.13	Permit Revisions
§4VAC25-130-774.15	Permit Renewals
§4VAC25-130-800.40(f)	Requirements to Release Performance Bonds
§4VAC25-130-801.17	Bond Release Application

Written requests for an informal conference will be routed to the Reclamation Program Manager or the Review Inspector. The request –

- Must be submitted within 30 days from the last date of publication of the public notice.
- Should specify what interest the person has that could or would be adversely affected by the Division's decision on the application.
- Should briefly summarize the issues that will be raised by the requestor at the conference.
- Should indicate whether the citizen wants the conference in the general location of the proposed/permitted operation.

In setting the informal conference, the Review Inspector will –

- Schedule the conference for the DMME's Big Stone Gap office, or if requested in writing by the conference requestor, at a site that is accessible by the public and is located near the proposed/permit operation.
- Ensure the conference is conducted during normal business hours, unless the unique circumstances of the application and public interest necessitate holding the conference after normal work hours.
- Ensure the conference date, time, and location are published (in a newspaper of general circulation) for at least two weeks prior to the conference.
- Send notice of the conference by certified mail (return receipt requested) to the person(s) who requested the conference. A copy of the notice will also be provided to the applicant, DMLR staff involved in the application review, and the Legal Services Officer.

Upon receiving the conference notice, the Legal Services Officer will prepare the Virginia Town Hall notice for posting at the Department's Big Stone Gap and/or Keen Mountain office(s) and on the DMME internet site. A copy will be posted on the Virginia Regulatory Town Hall<sup>1</sup> internet site (<http://www.townhall.state.va.us/>) and sent to DMME's OMIS<sup>2</sup> section for placement on the DMME web page.

#### **Conducting the informal conference –**

- The Legal Services Officer will normally preside as the facilitator of the informal conference. If that person is unable to conduct the conference, the Customer Services Manager may serve or appoint another staff member to serve as the facilitator. The conference will be recorded by the Customer Services Office Services Specialist.
- A sign-in sheet will be used for persons wishing to present oral comments.

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<sup>1</sup> The Legal Services Officer will access the Virginia Regulatory Town Hall and follow its procedures for posting a public meeting notice. A copy of the notice will also be sent to the DMME Executive Secretary.

<sup>2</sup> OMIS – Office of Management of Information Systems

- DMLR attendees will normally include the conference facilitator, area inspector and supervisor, and a Reclamation Services or Program Manager.
- Upon opening the conference, the facilitator will inform the attendees of the conference's purpose and clarify that it is neither an adversarial proceeding nor forum for public debate. If the number of persons wishing to comment is significant, the facilitator may set a time limit (e.g., 5 minutes each) for each commenter. Should the commenter be reading from a lengthy prepared text, he/she may offer the written text for inclusion into the conference record.
- Depending on the number of participants and facility's accommodations, the facilitator may allow each participant to offer oral comment in the conference room or direct the person to a separate room where comments will be taken. This will ensure that each person's comments are noted and recorded in an orderly fashion for the record.
- The facilitator will close the conference after all persons wishing to present oral comment have done so. No further discussions concerning the application will be allowed after the conference is closed.
- The facilitator, if needed, may grant the attendees an additional 10 calendar days to submit written comments. The comments should be sent to the attention of the facilitator.

#### **Post conference –**

The facilitator will –

- Ensure that a copy of the conference transcript is prepared by the Customer Services Office Services Specialist and provided to the appropriate DMLR personnel.
- Summarize the questions or concerns offered during this public participation phase and remind the DMLR reviewing staff of the date that the application decision must be rendered - to ensure their responses to the conference comments are prepared prior to that date.
- Upon receipt of the DMLR conference response comments, prepare the DMLR summary findings and send such with a copy of the conference transcript to each of the conference commenters. This information shall also be sent to the applicant.

The Legal Services Officer will maintain a file copy of the conference comments, transcript, and DMLR responses and ensure a copy is sent to the Permit Section for placement in the applicable office permit or application file.

### **Complaint Reviews**

Applicable regulation reference:

§4VAC25-130-842.15      Review of Decision not to Inspect or Enforce

A person who alleges that a violation of the regulations is or has been present will have 30 days from the DMLR's complaint investigation report finding to request an informal review of the decision (not to inspect or take enforcement action). The request for informal review will be routed to the Legal Services Officer, who will conduct the review or assign it to a DMLR supervisor or to another appropriate Customer Services staff member.

The Legal Services Officer will acknowledge receipt of the review request and notify the complainant in writing as to when the review will be completed. A copy will be sent to the permittee. The Legal Services Officer or person assigned the informal complaint review will -

1. Working with the Reclamation Field Inspector, schedule the review with the complainant, so a decision may be rendered within 30 days from the DMLR's receipt of the review request.
2. If the concern involves a DMLR technical report investigation, obtain a copy and review the report findings.
3. Meet with the complainant to receive the person's concerns relative to the DMLR's findings and actions regarding the alleged violation.
4. Inform the person that the review would look at whether the investigation (a) was properly conducted per the regulations and DMLR's procedures, and (b) considered the relevant information.
5. Prepare the informal review decision, which will either affirm the DMLR's complaint investigation findings or recommend that the investigation be re-opened to consider additional information.
6. Ensure the informal review recommendation is rendered and prepared prior to expiration of the regulatory time requirement.

The Legal Services Officer will take the complaint review findings and prepare the decision letter for the Reclamation Services Manager's consideration and signature. Should the final decision be to re-open the complaint for further inspector or technical investigation, the decision letter will set a time frame for completion of any additional field and/or technical re-evaluation. This action would probably result in an addendum to the original technical report.

After being signed by the Reclamation Services Manager, the review decision will be returned to the Legal Services Officer, who will ensure it is mailed or delivered to the complainant(s) and company. The complaint review decision shall also inform the complainant of the regulatory time frame to request formal review. The Legal Services Officer will -

- Provide a copy of the decision to the Inspector, company, and any involved

- DMLR technical staff.
- Should the complainant request a formal review, follow the procedures for a formal public hearing.
- Place a copy of the complaint review decision on the DMME intranet ([Public Folders](#)) for future reference and DMME staff use.

### **Informal Hearings**

Applicable regulation references:

§4VAC25-130-843.15	Informal Public Hearing
§4VAC25-130-845.18	Procedures for Assessment Conference

Upon receipt of a written request for an informal hearing to contest a Division decision, the Legal Services Officer will determine whether –

- The request was submitted within the applicable regulatory time limit.
- The person submitting the request has the legal right to request the hearing or a valid legal interest that is or may be adversely affected by the DMLR's action/decision.
- The hearing applicant has stated what action/decision was being contested.

If the request is untimely, the person does not have the legal right to request review, or the request does not state what action or decision is being challenged, a denial letter will be sent by certified mail to the person who requested review, explaining the reason(s) that a hearing would not be granted.

If a hearing is granted, the Legal Services Officer shall assign the informal hearing officer<sup>3</sup> and notify the parties of the date, time, and location of the informal hearing. The hearing will be held at the mine site, at a location near the mine site, or at a location acceptable to the parties. The proceeding will be open to the public. Any person attending the hearing may provide comments relevant to the contested matter.

The Legal Services Officer will provide a copy of the appropriate file materials to the Informal Hearing Officer.

### **Conducting the Informal Hearing -**

Upon opening the hearing, the Informal Hearing Officer will introduce himself, ask the other persons attending to identify themselves, inform the participants of the matter under

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<sup>3</sup> The Legal Services Officer may assign a DMLR supervisor or another appropriate Customer Services Section staff member as the informal hearing officer

review, and take notes of the hearing discussions. Cross-examination among the parties will be allowed, and the party(ies) may submit evidence that may be relevant to the contested action or decision. The Informal Hearing Officer must maintain order of the proceedings. Should a participant be overly disruptive or emotions start to interfere with civil discourse, the Informal Hearing Officer should adjourn the hearing and reschedule (if necessary) for another date, time, and location.

After receiving the comments and any exhibits from the participants, the Informal Hearing Officer shall inform the parties that a recommendation will be rendered within the applicable regulatory time frame. In the event more time will be required to review additional information pertinent to the hearing issue(s), the Informal Hearing Officer will inform the participants that the record will be left open until the information is obtained and considered.

The Informal Hearing Officer's recommendation will be submitted for approval to the -

- Reclamation Services Manager for permitting, enforcement, and bond issues.
- Legal Services Officer for review of civil penalties (assessment conference).

The Informal Hearing Officer's decision will contain a summary of the discussions presented at the hearing, and a recommendation to affirm, modify, or vacate the action under review. In a situation where enforcement action was taken due to the findings of a DMLR complaint/technical report, the Informal Hearing Officer should identify in the hearing recommendation any area(s) of the technical report finding that should be re-visited, re-evaluated, and/or modified (if necessary).

The hearing decision will be sent by certified mail (return receipt requested) to the person who requested the review. If the hearing involved the issuance of enforcement action under Part 4VAC25-130-843, a copy must be provided to any person who filed a concern or complaint with the Division that resulted in the action being reviewed. The hearing decision will also inform the hearing applicant of the procedure for requesting a formal public hearing, if aggrieved by the decision.

The Legal Services Officer will maintain the administrative hearing file, place a copy of the decision on the DMME intranet site for future reference and use by DMME staff, and receive the certified mail receipt that acknowledges service of the informal hearing decision.

### **Formal Public Hearings**

Applicable Act and regulation references:

§45.1-240	Decision of Director upon permit application; hearing; appeal
§45.1-246(B)	Civil and criminal penalties
§45.1-247(B)	Forfeiture or release of performance bond

§45.1-249	Administrative review of notice or order issued under §45.1-245
§45.1-250	Hearings
§45.1-251	Judicial review of final order or decision or of decision under §45.1-263
§45.1-252	Designating areas unsuitable for coal surface mining
§4VAC25-130-764.15	Initial Processing, Record keeping, and Notification Requirements
§4VAC25-130-764.17	Hearing Requirements
§4VAC25-130-764.19	Decision
§4VAC25-130-772.12(e)	Permit Requirements for Exploration Removing More Than 250 Tons of Coal
§4VAC25-130-773.15	Review of Permit Applications
§4VAC25-130-773.21(c)	Improvidently Issued Permits: Rescission Procedures
§4VAC25-130-774.11(c)	Division Review of Permits
§4VAC25-130-774.15(f)	Permit Renewals
Part 4VAC25-130-775	Administrative Review
Part 4VAC25-130-789	Procedures Applicable to Administrative Hearing
§4VAC25-130-800.40	Requirements to Release Performance Bonds
§4VAC25-130-800.51	Administrative Review of Performance Bond Forfeiture
§4VAC25-130-843.13	Suspension or Revocation of Permits
§4VAC25-130-843.16	Formal Review of Citations
§4VAC25-130-845.19	Request for Hearing (civil penalty determination)

There are several types of administrative formal hearings available to the permittee or person wishing to contest a Division action. However, the basic hearing process is generally the same for each type of hearing (§§45.1-250 and 2.2-4020 of the **Code of Virginia**).

A request for a formal hearing will be routed to the Legal Services Officer, who will determine if the written request was timely and proper. If the request was submitted after the regulatory time frame, the Legal Services Officer will notify the hearing applicant in writing that the right to the hearing had expired.

For timely filed requests, the Legal Services Officer shall send the person a letter acknowledging receipt of the hearing request. In the letter, the Legal Services Officer may ask for additional information to determine the person's legal standing and whether a hearing will be granted. The letter should advised or inquire –

- That the formal review will be conducted pursuant to §45.1-250 of the **Code of Virginia**, the applicable VCSMRR, and/or §2.2-4020 of the **Virginia Administrative Process Act**, as amended.
- That the agency will be represented by the Virginia Attorney General's office.

- Whether the person/company will have legal counsel representation in the matter, and, if yes, to provide legal counsel's name, address, and telephone number.
- That the permittee or other persons will have the right to petition to intervene in the formal hearing per §§4VAC25-130-789.2 VCSMRR.
- That as the moving party (Applicant) in a formal public hearing, the party requesting the hearing will be required to show –
  - The Hearing Officer the interest which is or may be adversely affected by the Division's decision; and,
  - That the Division's decision being reviewed was improper under the Act and the regulations.
- That the formal hearing is an administrative review proceeding of specific limited jurisdiction. If the hearing request does not reveal a material issue in dispute, no hearing is required. Consequently, either (1) the failure to state a claim, or (2) stating a claim for which relief is not available within the limited jurisdiction of the administrative review, would make it unnecessary to conduct a formal hearing.

The hearing applicant may be asked to provide a more definitive statement of the claim upon which administrative relief is requested.

For timely and proper requests, the Legal Services Officer will gather preliminary information relevant to the hearing request for forwarding to the assigned Hearing Officer and Assistant Attorney General. Information and support documentation will be solicited from the appropriate sections of the Division. Due to the time constraints imposed by regulation and law, a hearing will be scheduled expeditiously, contingent upon the Hearing Officer's and Assistant Attorney General's availability.

### **Hearing Officers**

In 1986, legislation established a Hearing Officer system, administered by the Executive Secretary of the Virginia Supreme Court. The Legal Services Officer serves as the agency contact with the Executive Secretary's office to obtain the services of a qualified hearing officer.

In cooperation with the Executive Secretary's office, the Department has provided specialized training in the laws and regulations administered by the agency to various hearing officers. After completing the training, the hearing officers are qualified to preside over formal administrative hearings for the Department.

When a formal hearing request is received, the Legal Services Officer or staff will contact the Hearing Officers to obtain a list of their available dates. The list of available dates will be provided to the Assistant Attorney General and other involved legal counsel for hearing scheduling purposes.

Depending on availability, the assignment of a hearing officer will be by rotation with the

person at the top of the rotation contacted first and asked to serve. If the prospective hearing officer has a schedule conflict, the Legal Services Officer will proceed to contact the other hearing officers in sequence until an acceptable hearing date can be set.

### **Pre-hearing Preparations**

The Legal Services Officer will inform (by letter) the hearing applicant, permittee, Assistant Attorney General, hearing officer, other parties, and appropriate Division personnel of the hearing date, time, and location. The hearing will be conducted at the Department's Big Stone Gap office.

If requested by the hearing participants, the Legal Services Officer will issue subpoenas for witnesses and written or printed materials. The Reclamation Services Manager will assist in the service of the subpoenas.

Section managers will ensure the participation of appropriate Division personnel as requested by the Assistant Attorney General or Legal Services Officer.

The Legal Services Officer will prepare –

- A copy of the relevant file materials for the Assistant Attorney General.
- A request for court reporter for the hearing through the Office of General Services; ensuring the necessary requisition is completed.
- A hearing preparation summary of the action being contested. This will be sent to the appropriate DMLR personnel for review and input prior to the pre-hearing meeting with the Assistant Attorney General.
- A draft PowerPoint presentation regarding the case, which may be used by DMLR's counsel in the actual formal hearing. If used by the Assistant Attorney general, a paper copy will be offered at the formal hearing as an exhibit with copies provided to the Hearing Officer and other parties of the hearing.
- On the hearing date, the DMME conference room for the formal hearing.

Working with the Assistant Attorney General, the Legal Services Officer will arrange a pre-hearing meeting with DMLR personnel to review the facts of the case and probable agency testimony. The preparatory meeting will usually be conducted at least a week prior to the formal hearing.

### **Temporary Relief Hearing**

A special type of formal hearing may be conducted when a company or person with a valid legal interest requests a hearing for temporary relief from the Division's action or decision, pending the outcome of the formal hearing decision. The applicable Act and regulation references are –

§45.1-240(C)	Decision of Director upon permit application; hearing; appeal
§45.1-249(C)	Administrative review of notice or order issued under §45.1-245
§45.1-251(B)	Judicial review of final order or decision or of decision under §45.1-263

§4VAC25-130-775.11(b) Administrative review

If the hearing applicant has standing to request the formal hearing, the Legal Services Officer will schedule the temporary relief proceeding as soon as possible. In the event that a company's mining operations were caused to cease due to Division enforcement action, the relief hearing must be held within 5 working days of receipt of the request (§45.1-249(C) of the **Code of Virginia**).

The temporary relief hearing may be conducted on a separate date or just prior to the actual formal hearing. The temporary relief proceeding must be open to the public. The moving party (applicant) must prove to the Hearing Officer that –

- There is a substantial likelihood that the decision of the Director will be favorable to him/her.
- Temporary relief will not adversely affect the health or safety of the public or cause significant imminent environmental harm to land, air, or water resources.

The temporary relief proceeding will be conducted in accordance with Section 2.2-4020 of the **Virginia Administrative Process Act**. The Hearing Officer will receive evidence, testimony, and legal argument from the parties, and then render a recommendation to grant or deny the temporary relief request for the Deputy Director's consideration.

The Hearing Officer recommendation will be sent to the Legal Services Officer who will route it on to the Division Director and DMME Deputy Director. The Deputy Director will render the final decision to grant or deny the relief. The Legal Services Officer will ensure a copy of the decision is provided to the parties of the hearing.

### **Formal Hearing Procedure**

The Assistant Attorney General will determine the best manner to present the Division's case. The Legal Services Officer will provide assistance, as requested.

The Hearing Officer will conduct the formal hearing in accordance with the applicable provisions of the **Virginia Administrative Process Act**, §45.1-250 of the **Code of Virginia**, and the VCSMRR.

The hearing applicant (party seeking to reverse the agency decision) has the ultimate

burden of proof.

After the presentation of evidence and argument, the Hearing Officer may permit the parties to submit written briefs. The Legal Services Officer will monitor the briefing schedule to ensure compliance by the parties and an expeditious decision.

The Hearing Officer's recommended decision (findings of fact, conclusions of law, and recommended findings) and hearing exhibits will be received by the Legal Services Officer. The hearing decision will be forwarded by the Legal Services Officer to the appropriate Division personnel for comment.

Comments will be sent to the Legal Services Officer, who, after discussion with the Division Director and/or appropriate managers will prepare a draft decision for the Deputy Director's signature. The recommended decision and formal hearing record will be forwarded to the Deputy Director. The Deputy Director's final decision and hearing officer's opinion will be sent by certified mail to the parties.

The Legal Services Officer will ensure that the administrative hearing record is compiled and maintained. In anticipation of further administrative or judicial review, the Legal Services Officer will ensure that the record contains only the material considered by the Hearing Officer. An appeal of a final formal hearing decision will be subject to review and reconsideration by the Deputy Director. No further evidence would be admissible during review or reconsideration. Appeals beyond the formal hearing shall be based solely upon the administrative hearing record.

### **Review and Reconsideration**

A party to the formal hearing may request review and reconsideration by the Deputy Director. The written request will be routed to the Legal Services Officer, who will:

- Determine if it was proper and timely submitted.
- Notify the party as to whether review and reconsideration will be granted. If not granted, specify reason(s) the request was denied.
- Notify the parties of the schedule to submit or present written and oral argument to the Deputy Director, and that the submission of additional evidence will not be allowed.
- Provide the Deputy Director with the formal hearing administrative record, including exhibits and closing briefs considered by the Hearing Officer.
- Schedule the appropriate conference room for the hearing, obtain the services of a court reporter (if such will not be performed by the Customer Services Office Services Specialist), and ensure the conference room is set up on the hearing date.

After the parties are given the opportunity to present oral or written argument, the Deputy Director will complete review of the hearing record and formal hearing decision. Upon

completion of the review and reconsideration, the Deputy Director will prepare a written decision. The decision will also inform the appellant of the right to appeal to the Circuit Court, pursuant to the Rules of the Supreme Court of Virginia. The Legal Services Officer will ensure all parties and appropriate DMLR staff are provided a copy of the decision.

### **Judicial Review**

A party to the administrative hearing may appeal the review and reconsideration decision to the appropriate County or City Circuit Court, pursuant to the Rules of the Virginia Supreme Court.

The party seeking appeal must file a Notice of Appeal with the agency within 30 days of receiving the review and reconsideration decision. This must be followed with service of a "Petition of Appeal" that has been filed with the appropriate Circuit Court Clerk's office, as required by the Rules of the Virginia Supreme Court.

In the event the final administrative decision is appealed to the Circuit Court (Section §45.1-251 of the Act) and the Assistant Attorney General advises that the petition of appeal is proper and timely, the Legal Services Officer will ensure the delivery of a copy of the complete administrative record to the appropriate Circuit Court Clerk's office.

Prior to forwarding the record to the Circuit Court Clerk, the Legal Services Officer will inform the parties by letter of the administrative record content. The parties will be given an opportunity to inform the Legal Services Officer as to whether they see any omission or deficiency in the record compilation.

If no objections to the record are received, the record will be sent by certified mail or hand delivered to the appropriate Circuit Court Clerk's office. A cover letter summarizing the contents of the record will be included. A copy of the cover letter will be sent to counsel for each party to the appeal and appropriate Division personnel. In the event of hand delivery of the record, the Clerk's office will be provided a form to certify receipt of the administrative record.

The Assistant Attorney General will notify the Legal Services Officer when and if additional information should be sent to the Court.

**APPENDIX**

Examples of Correspondence and Hearing Documents  
 (not inclusive)

**Informal Conference**

Letter scheduling informal conference	p. 16
Notice of Meeting	p. 17
Conference sign-in sheet	p. 18
Conference statement	p. 19
Cover letter with conference transcript	p. 20

**Informal Complaint Review**

Letter acknowledging review request	p. 21
Informal complaint review summary and finding	p. 22
Decision to affirm	p. 23
Decision to re-open investigation	p. 24

**Informal Hearing**

Letter scheduling hearing	p. 25
Notice of informal hearing	p. 26
Informal hearing summary and finding	p. 27
Decision cover letter	p. 28
Letter scheduling assessment conference	p. 29
Letter scheduling joint informal hearing and assessment conference	p. 30
Notice of assessment conference	p. 31
Assessment conference summary and finding	p. 32
Decision cover letter	p. 33

**Formal Hearing**

Letter acknowledging review request on permit application	p. 34
Letter scheduling hearing on enforcement action	p. 35
Letter scheduling hearing on enforcement and penalty actions	p. 38
Hearing preparation summary (attorney-client	p. 39

privilege)	
Notice of formal public hearing	p. 41
Subpoena	p. 42
Subpoena Duces Tecum	p. 43
Letter addressing petition to intervene	p. 44
Decision cover letter – permit action	p. 45
Decision cover letter – enforcement action	p. 46

### **Review and Reconsideration**

Letter informing DMLR initiating review request	p. 47
Letter acknowledging review request	p. 48
Hearing scheduled for review and reconsideration	p. 50
Review and Reconsideration decision when review requested by DMLR	p. 51
Review and Reconsideration decision	p. 53

### **Judicial Review**

Notice of appeal acknowledgement	p. 54
Certification of administrative record	p. 56
Certification of delivery of administrative hearing record	p. 58
Certification of mailing of administrative hearing record	p. 59

*Date*

Certified Mail # \_\_\_\_\_

*Address of conference requestor*

Dear \_\_\_\_\_:

The informal conference to receive comments concerning *applicant's name* permit application number \_\_\_\_\_ is scheduled for \_\_\_\_\_ p.m. on *date*. The proceeding will be conducted at the Division of Mined Land Reclamation office in Big Stone Gap, Virginia (*or insert address if conference will be held somewhere else*). Public notice of the scheduled informal conference will be published in the *enter newspaper name* on *enter date of publication*.

The conference will be held pursuant to §4VAC25-130-773.13 (c) of the Virginia Coal Surface Mining Reclamation Regulations. The conference will be an informal fact finding proceeding. It is not an adversarial proceeding nor is it a forum for debate.

Comments received during the informal conference, along with written comments, will be considered during the review of the permit application. Contact me at (276) 523-\_\_\_\_\_ should you have any questions.

Sincerely,

*name*  
Review Inspector

c: Area Inspector  
Area Supervisor  
Reclamation Program Manager  
*Applicant*.  
Legal Services Officer

<b>Meeting:</b>	Public Informal Conference on Permit Application No. _____, <i>Enter Applicant's name.</i>
<b>Date of meeting:</b>	
<b>Time of meeting:</b>	.
<b>Location:</b>	Department of Mines, Minerals and Energy's office located at 3405 Mountain Empire Road; Big Stone Gap, Virginia Conference Room 219 of the Buchanan-Smith Building ( <i>or insert location if held somewhere else</i> )
<b>Agenda to be provided:</b>	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no
<b>Minutes to be taken:</b>	<input checked="" type="checkbox"/> yes
	 Location is accessible to the handicapped. Special accommodations for the disabled will be made available at the public meeting or hearing on request. Anyone needing special accommodations should contact the Department of Mines, Minerals and Energy at least seven days prior to the meeting or hearing date.
<b>Details:</b>	The purpose of this meeting is to receive public comments (pursuant to §4VAC25-130-773.13(c) of the <b>Virginia Coal Surface Mining Reclamation Regulations</b> ) on the permit application by <i>enter Applicant's name</i> to conduct surface coal mining and reclamation operations. (The proposed permit area comprises _____ acres and is located approximately _____ in _____ County. The application proposes an <u><i>enter brief description of type of operation(s).</i></u> )
<b>Person to contact for additional information:</b>	
<input type="checkbox"/> Name:	
<input type="checkbox"/> Title:	Legal Services Officer
<input type="checkbox"/> Address:	Department of Mines, Minerals and Energy P. O. Drawer 900 Big Stone Gap, Virginia 24219
<input type="checkbox"/> Telephone:	(276) 523-
<input type="checkbox"/> Fax:	(276) 523-8163
<input type="checkbox"/> Telecommunications number for the hearing impaired:	Call the Virginia Relay Center at 800-828-1120.
<input type="checkbox"/> E-Mail:	<i>enter e-mail address of Legal Services Officer</i>
<input type="checkbox"/> Agency Homepage:	<a href="http://www.dmme.virginia.gov">http://www.dmme.virginia.gov</a>

**Informal Conference - Sign in Sheet**

*Enter time and date*

Application # \_\_\_\_\_

Department of Mines, Minerals and Energy

**Big Stone Gap Office (or enter address of conference location if not at DMME office)**

**Purpose**            **Comments/Concerns/Objections concerning *Applicant's name* 's permit application number**  
\_\_\_\_\_

Name	Address	Telephone	Check if you want to present oral comments

**Permit Application #**

*Applicant's Name.*

**Public Informal Conference**

*Enter time & date*

Department of Mines, Minerals and Energy  
Big Stone Gap Office (*or other location of conference*)

**Introductions of DMLR facilitator and other DMME/DMLR personnel**

This conference is being conducted in accordance with §4VAC25-130-773.13(c) of the Virginia Coal Surface Mining Reclamation Regulations for the purpose of receiving written and oral comments from interested parties concerning **Permit Application #** \_\_\_\_\_ of *Applicant's Name*. The proposed operation would be located approximately \_\_\_\_\_ *enter location* \_\_\_\_\_ in \_\_\_\_\_ County.

This is an informal fact finding proceeding. It is not an adversarial proceeding nor is it a forum for debate; therefore, cross-examination is not appropriate. In order for the Division to make an informed decision, we need to receive your written and oral comments relative to this specific application. Each comment is important and will become a part of the administrative review record.

Part 4VAC25-130-773 of the regulations sets forth the conditions and requirements for a permit.

We will record the oral comments you may wish to offer. If you prefer, you may submit written comments. The Division will prepare a transcript of the oral comments received today, which will become a part of the administrative public record.

Within 60 days of the close of this conference, the Division will render its final decision on the permit application. Persons who submit written or oral comments will be notified in writing of the Division's decision to grant or deny the application.

Please be advised that pursuant to §4VAC25-130-775.11 of the regulations, the applicant, or any person who may be adversely affected by the Division's decision, may request a formal public hearing to contest the agency's decision.

If you wish to make oral comments regarding this application, please come forward one at a time and identify yourself. State your name, complete address, and your concerns or comments.

*Date*

*Commenter's address*

Re: **Informal Conference** - Transcript, Application #\_\_\_\_\_, *Applicant Name*.

Dear \_\_\_\_\_:

Thank you for your participation in the informal conference of \_\_\_\_\_ *Date*. The Division will be evaluating the concerns raised and will provide a response to such. In the meantime, I have enclosed a copy of the conference transcript for your information.

The Division will render a final decision on the application by \_\_\_\_\_ *Date*. You will be notified of that decision.

Respectfully,

*Name*

Legal Services Officer

c: *Permit Review Inspector*  
*Reclamation Inspector*  
*Applicant*

*Date*

Complainant's address

\_\_\_\_\_, Virginia \_\_\_\_\_

Certified Mail Return

Return Receipt No. \_\_\_\_\_

Re: Informal Review - Enforcement Complaint No. \_\_\_\_\_  
Permit No. \_\_\_\_\_, *Permittee name*

Dear \_\_\_\_\_:

In response to your letter of enter date, the Division will conduct an informal review of complaint investigation \_\_\_\_\_ to determine whether the Division's enforcement complaint investigation was in accordance with the laws and regulations administered by this agency.

The informal review will be conducted on of enter date at enter time at enter the location of the meeting. The review is pursuant to §4VAC25-130-842.15(b) of the **Virginia Coal Surface Mining Reclamation Regulations** and will involve a review of the Division's enforcement records and consideration of your comments relative to the aforementioned complaint investigation to determine whether the Division took appropriate and proper action.

After reviewing the applicable records and considering your comments, I (or enter reviewer's name if other than the Legal Services Officer), will prepare a written report of findings. Reclamation Services Manager name will forward a copy of the findings to you by enter date.

I hope the informal review and ultimate findings will address your concerns; however, if not, you will have the right under §4VAC25-130-842.15(d) of the regulations to request a formal administrative hearing. The right to seek formal administrative review and burden of proof will be explained in the informal review decision.

If you have any questions in the meantime concerning the informal review or any subsequent administrative hearing review process, please let me know.

Respectfully,

*name*

Legal Services Officer

c: *Reviewer, if other than the Legal Services Officer*  
*Permittee*  
*Reclamation Inspector & Technical Investigator(s) if technical report prepared*



COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MINES, MINERALS AND ENERGY  
DIVISION OF MINED LAND RECLAMATION  
P. O. DRAWER 900; BIG STONE GAP, VA 24219  
TELEPHONE: (276) 523-8157

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**Informal Complaint Review**

**Complainant:** \_\_\_\_\_ **Permit No.:** \_\_\_\_\_

**Complaint:** \_\_\_\_\_ **Company:** \_\_\_\_\_

**Review Request:** \_\_\_\_\_

**Summary of Complaint Review**

**Complainant's Concerns**

**Informal Review Finding**

By: \_\_\_\_\_  
Legal Services Officer

Date: \_\_\_\_\_

*date*

Complainant's address

\_\_\_\_\_, Virginia \_\_\_\_\_

Certified Mail Return  
Receipt No. \_\_\_\_\_

Re: Informal Review Decision of Enforcement Complaint No. \_\_\_\_\_,  
*Permittee name*'s Permit No. \_\_\_\_\_

Dear \_\_\_\_\_:

In response to your written request, the Division conducted an informal review of Enforcement Complaint No. \_\_\_\_\_ to determine whether the Division's enforcement complaint investigation was in accordance with the laws and regulations administered by this agency.

The review was conducted pursuant to §4VAC25-130-842.15(b) of the **Virginia Coal Surface Mining Reclamation Regulations** by *reviewer's name*. His opinion is attached.

Based upon the enclosed, the Division's decision to close the investigation is hereby affirmed.

Please be advised that pursuant to §4VAC25-130-842.15(d) of the regulations, you may request a formal administrative hearing to review this determination. Your written request should be sent to the attention of *name*, Hearing Coordinator. The request should specifically state how you are adversely affected by this determination and how the Division's decision regarding the complaint investigation was improper pursuant to the Virginia Coal Surface Mining Control and Reclamation Act of 1979, as amended, and the regulations promulgated thereunder.

Should you have any questions in the meantime concerning the formal administrative hearing review process, please contact the Hearings Coordinator at (276) 523-\_\_\_\_\_.

Respectfully,

*name*

Reclamation Services Manager

c: *Reviewer, if other than the Legal Services Officer*  
*Permittee*  
*Reclamation Inspector*  
*Technical Investigator(s) if technical report prepared*

*date*

Complainant's address

\_\_\_\_\_, Virginia \_\_\_\_\_

Certified Mail Return

Receipt No. \_\_\_\_\_

Re: Informal Review Decision of Enforcement Complaint No. \_\_\_\_\_,  
*Permittee name*'s Permit No. \_\_\_\_\_

Dear \_\_\_\_\_:

In response to your written request, the Division conducted an informal review of Enforcement Complaint No. \_\_\_\_\_ to determine whether the Division's enforcement complaint investigation was in accordance with the laws and regulations administered by this agency.

The review was conducted pursuant to §4VAC25-130-842.15(b) of the **Virginia Coal Surface Mining Reclamation Regulations** by *reviewer's name*. His opinion is attached.

Based upon the enclosed opinion, the Division will re-open the complaint to address the recommendations identified in the attached opinion. An addendum to Technical Report No. \_\_\_\_\_ will be prepared to summarize any revision or conclusion that may result from this review. *Name*, Reclamation Program Manager, will forward the addendum to you within 30 days.

Respectfully,

*name*

Reclamation Services Manager

c: *Reviewer, if other than the Legal Services Officer*  
*Permittee*  
*Reclamation Inspector*  
*Technical Investigator(s) if technical report prepared*

*date*

*contact name & address*

Certified Mail Return  
Receipt No. \_\_\_\_\_

Re: Informal Hearing Request - Issuance of NOV# \_\_\_\_\_, Permit No. \_\_\_\_\_

Dear \_\_\_\_\_:

An informal hearing (§4VAC25-130-843.15 VCSMRR) will be conducted at the mine site (*or insert other suitable location*) at *time* on *date*, to review the issuance of Notice of Violation No. \_\_\_\_\_, violation(s) \_\_\_ of \_\_\_.

Please be advised that the informal hearing will be open to the public. The Informal Hearing Officer may accept oral or written argument and any other information relevant to the issuance of the notice.

Should you have any questions concerning the hearing in the meantime, please call me at (276) 523-\_\_\_\_\_.

Respectfully,

*name*  
Legal Services Officer

c: *Reclamation Inspector*  
\_\_\_\_\_, Informal Hearing Officer  
*Complainant (if complaint investigation resulted in issuance of the enforcement action)*



COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MINES MINERALS AND ENERGY  
DIVISION OF MINED LAND RECLAMATION  
P. O. DRAWER 900; BIG STONE GAP, VIRGINIA 24219  
TELEPHONE: (276) 523-8157

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### **NOTICE OF INFORMAL HEARING**

In compliance with the requirements set forth in §4VAC25-130-843.15 of the **Virginia Coal Surface Mining Reclamation Regulations**, notice is hereby given that the Division of Mined Land Reclamation will hold an informal hearing to review the issuance of \_\_\_\_\_ to \_\_\_\_\_, Permit No. \_\_\_\_\_.

The informal hearing shall be conducted on date at time at location (if not at the permit site, also provide the location of the permit and the county(ies) it is in).

The permittee may submit additional material for consideration during the conference.

Any person shall have the right to attend the conference and participate.

The permittee shall have 15 days after receipt of the informal hearing decision to request a formal public hearing under §4VAC25-130-843.16(a) of **the Virginia Coal Surface Mining Reclamation Regulations**.

Posted: date



*date*

*contact name & address*

Certified Mail Return  
Receipt No. \_\_\_\_\_

Re: Informal Hearing Decision - Issuance of *(type of enforcement action & identification #)*  
\_\_\_\_\_, Permit No. \_\_\_\_\_

Dear \_\_\_\_\_:

An informal hearing was held on *enter date*, to review the issuance of *enter NOV/CO #*,  
violation(s)    of   .

Based upon the attached opinion of the Informal Hearing Officer, I am **affirming** (vacating or  
**modifying**) the issuance of the *(type of enforcement action & identification #)*.

Pursuant to §4VAC25-130-843.16(a) of the **Virginia Coal Surface Mining Reclamation  
Regulations**, you (or any person having an interest which is or may be adversely affected by this decision)  
have the right to request a formal public hearing to review this decision. The request must be submitted in  
writing within 15 days from service of this decision to the:

Hearings Coordinator  
Division of Mined Land Reclamation  
P. O. Drawer 900  
Big Stone Gap, Virginia 24219

Please be advised that the party requesting formal review shall bear the burden of proof at the  
formal hearing.

Should you have any questions concerning the formal hearing process, please call *name*,  
Hearings Coordinator, at (276) 523-\_\_\_\_\_.

Respectfully,

*Name*  
Reclamation Services Manager

c: *Reclamation Inspector*  
\_\_\_\_\_, Informal Hearing Officer  
*Complainant (if complaint investigation resulted in issuance of the enforcement action)*

*date*

*contact name*  
*company & address*

Certified Mail Return  
Receipt No. \_\_\_\_\_

Re: **Assessment Conference** - Penalty Determination of *NOV or CO#*,  
*Permit or Tracking #*

Dear \_\_\_\_\_:

An assessment conference (§4VAC25-130-845.18 VaCSMRR) will be conducted at the *location* at *time* on *date*, to review the civil penalty determination(s) of *NOV or CO#*, violation(s) \_\_\_\_\_ of \_\_\_\_\_.

Please be advised that the assessment conference will be open to the public. The Conference Officer may accept oral or written argument and any other information relevant to the civil penalty determination from any person attending the conference.

Should you have any questions concerning the conference in the meantime, please call me at (276) 523-8157.

Respectfully,

Legal Services Officer

c: *Reclamation Inspector*  
\_\_\_\_\_, Conference Officer

*date*

*contact name*  
*company & address*

Certified Mail Return  
Receipt No. \_\_\_\_\_

Re: **Assessment Conference and Informal Hearing** – Permit No. \_\_\_\_\_,  
*NOV or CO#*

Dear \_\_\_\_\_:

An informal hearing<sup>4</sup> and assessment conference<sup>5</sup> will be conducted at *time* on *date* at *location* to review the issuance and civil penalty determination of *NOV or CO#*, *violation(s) of* to Permit No. \_\_\_\_\_.

Please be advised that the informal hearing and assessment conference will be open to the public. The Informal Hearing Officer may accept oral or written argument and any other information relevant to the issuance and civil penalty determination(s) of *NOV or CO#*, *violation(s) of*.

Should you have any questions in the meantime, please let me know.

Respectfully,

Legal Services Officer

c: *Reclamation Inspector*

\_\_\_\_\_, Informal Hearing Officer

*If applicable, complainant (person who filed complaint that resulted in the issuance of the NOV or CO)*

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<sup>4</sup> §4VAC25-130-843.15(c) of the Virginia Coal Surface Mining Reclamation Regulations (VCSMRR)

<sup>5</sup> §4VAC25-130-845.18 VCSMRR



COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MINES, MINERALS AND ENERGY  
DIVISION OF MINED LAND RECLAMATION  
P. O. DRAWER 900; BIG STONE GAP, VA 24219  
TELEPHONE: (276) 523-8157

---

## **Notice of Assessment Conference**

In compliance with the requirements set forth in §4VAC25-130-845.18 of the **Virginia Coal Surface Mining Reclamation Regulations**, notice is hereby given that the Division of Mined Land Reclamation will hold an informal assessment conference to review the proposed civil penalty against *enter company name* for *enter applicable NOV and/or CO # and very brief description of what each violation concerned (e.g., effluent discharge, trees and shrubs)*, issued to Permit No. \_\_\_\_\_ .

The assessment conference shall be conducted on date at time at location (if at DMME office, also include the location of the permit site) .

The permittee may submit additional material for consideration during the conference.

Any person shall have the right to attend the conference and participate.

The permittee shall have 30 days after receipt of the assessment conference decision to request a formal public hearing under §4VAC25-130-845.19(a) of the **Virginia Coal Surface Mining Reclamation Regulations**.

Posted: enter date notice is posted at DMME office



*date*

*contact name*  
*company & address*

Certified Mail Return  
Receipt No. \_\_\_\_\_

Re: **Assessment Conference Decision** - Penalty Determination of *NOV or CO#*,  
*Permit or Tracking #*

Dear \_\_\_\_\_:

An assessment conference (§4VAC25-130-845.18(a) VCSMRR) was held on *date*, to review the civil penalty determination(s) of *NOV or CO#*, violation(s) \_\_\_\_ of \_\_\_\_\_. Based upon the attached opinion of *conference officer's name*, the **civil penalty determination is *affirmed or reduced* to \$ *amount*.**

Please be advised that you may request a formal public hearing under §4VAC25-130-845.19(a) of the regulations to contest the penalty determination(s) and the fact of issuance of *NOV or CO#*, violation(s) \_\_\_\_ of \_\_\_\_\_. Your written request must be submitted with payment of the civil penalty to this office within 30 days from your receipt of this decision. The penalty payment would be placed in escrow pending final administrative/judicial review.

Regardless of whether you wish to contest the civil penalty determination or fact of issuance of the notice or order, the penalty amount will be due and payable within 30 days from your receipt of this decision. Should a timely appeal result in the vacation or reduction of the penalty, the Division would refund the applicable amount with accrued interest (calculated from date of payment).

Please submit payment of the penalty in the form of cash, money order, or check. A money order or check (company, cashier's, or certified) must be made payable to the "Treasurer of Virginia". To expedite our receipting of the penalty payment, please note the violation and permit numbers with your payment.

Should you have any questions concerning the formal hearing or payment processes, please call me at (276) 523-8157.

Respectfully,

*name*  
Legal Services Officer

*date*

*Hearing applicant's address*

Certified Mail Return  
Receipt No. \_\_\_\_\_

Re: **Formal Hearing Request** – Approval of Application No. \_\_\_\_\_, *company name*, Permit No. \_\_\_\_\_

Dear \_\_\_\_\_:

This is to acknowledge receipt of your letter of *date*, requesting a formal hearing to contest the Division's decision to approve permit application number \_\_\_\_\_ of *company name*.

Please be advised that the formal public hearing is similar to a court case in which the parties are usually represented by legal counsel. An attorney approved by the Executive Secretary of the Virginia Supreme Court would serve as Hearing Officer. A formal hearing, if held, would be conducted at the Department's Big Stone Gap office during normal business hours.

If your request for a formal hearing is granted, as the moving party (Applicant) seeking review of the Division's approval of the permit application, you will have:

- to show the Hearing Officer that you have an interest which is or may be adversely affected by the Division's decision to approve the application; and,
- the burden to show that the Division's decision to approve the application was improper, under the **Virginia Coal Surface Mining Control and Reclamation Act of 1979**, as amended, and the regulations promulgated thereunder.

The following definition is found in §4VAC25-130-700.5 of the **Virginia Coal Surface Mining Reclamation Regulations** –

***“Person having an interest which is or may be adversely affected” or “person with a valid legal interest” shall include any person:***

***(a) Who uses any resources of economic, recreational, aesthetic, or environmental value that is, or may be, in fact adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the division; or***

*(b) Whose property is, or may be, in fact adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the division.*

*The term “adversely affected” is further defined as meaning perceptibly harmed. “Aesthetics” means the consideration of that which is widely regarded to be a visibly beautiful element of a community or area.*

Your letter of date does not set out how you may be adversely affected by the Division’s decision concerning Application No. \_\_\_\_\_, nor specifically state what you allege the Division has failed to do in its review and approval of the permit application (i.e., that is contrary to the requirements of the **Virginia Coal Surface Mining Control and Reclamation Act of 1979**, as amended, and the **Virginia Coal Surface Mining Reclamation Regulations**). As you are the applicant (in requesting this hearing), the agency is asking for a more definite statement of the claim upon which you request administrative relief be granted.

The formal hearing is an administrative review proceeding of specific limited jurisdiction. If a hearing request does not reveal a material issue in dispute, no hearing is required. Consequently, either (1) the failure to state a claim, or (2) stating a claim for which relief is not available within the limited jurisdiction of this administrative review, would make it unnecessary to conduct a formal hearing.

For your information, the agency’s position in this matter is similar to the requirements set forth under the federal regulations governing formal administrative hearings under the Surface Mining Control and Reclamation Act of 1977, as amended. Specifically, under 43 CFR Subpart L (Special Rules Applicable to Surface Coal Mining Hearings and Appeals), Section 4.1363(a),

*The request for review shall include:*

- 1. A clear statement of the facts entitling the one requesting review to administrative relief;*
- 2. An explanation of each specific alleged error in OSMRE’s decision, including reference to the statutory and regulatory provisions allegedly violated;*
- 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.*

Please provide information that sets forth the valid legal interest(s) you have in this matter (that is or will be adversely affected by the application approval), and what you allege the Division of Mined Land Reclamation has failed to do (i.e., regulatory or statutory requirements) in its approval of Application Number \_\_\_\_\_. You will have until the close of business on date, to submit the written information to my attention. Also advise by date, as to whether you will be represented by legal counsel in this matter. (If you will be represented,

please provide that person's name, address, and telephone number.) Upon receipt and review of your response, I will inform you (and your legal counsel, if applicable) as to whether a formal hearing will be scheduled.

Respectfully,

*name*  
Legal Services Officer

c: *Reclamation Inspector*  
*Permit Reviewer*  
*Reclamation Program Manager*  
*Company*

*date*

*Hearing Applicant & address*

Certified Mail Return  
Receipt No. \_\_\_\_\_

Re: **Formal Hearing** – Issuance of \_\_\_\_\_, Permit No.  
\_\_\_\_\_

Dear \_\_\_\_\_:

The formal hearing to review the issuance of *enter NOV/CO/RON#s or show cause order* is scheduled for *time* on *date*. The public hearing will be held in Conference Room 219 of the Department's Big Stone Gap office (Buchanan-Smith Building).

The hearing will be conducted pursuant to §45.1-249 of the **Code of Virginia** and Section §4VAC25-130-843.16 of the **Virginia Coal Surface Mining Reclamation Regulations**. \_\_\_\_\_, Esquire shall serve as the Hearing Officer.

Please be advised of the following:

- 1) The agency will object to any request for continuance of the formal hearing, which is made within 10 days of the scheduled hearing date.
- 2) Each party needs to have a minimum of 3 sets (or 1 for each party and the Hearing Officer) of each exhibit it intends to place into the administrative record.

Should you have any questions in the meantime, please call me at (276) 523-8157.

Respectfully,

*name*  
Legal Services Officer

c: *Hearing Officer*, Esquire  
*AAG*, Esquire  
*Reclamation Inspector*  
*Other involved parties*

*date*

*Hearing Applicant & address*

Certified Mail Return  
Receipt No. \_\_\_\_\_

Re: **Formal Hearing** – Issuance and Civil Penalty Determination(s) of  
\_\_\_\_\_, Permit No. \_\_\_\_\_

Dear \_\_\_\_\_:

The formal hearing to review the issuance and civil penalty determination(s) of *enter NOV/CO #s* is scheduled for *time* on *date*. The public hearing will be held in Conference Room 219 of the Department's Big Stone Gap office (Buchanan-Smith Building).

The hearing will be conducted pursuant to §45.1-246(C) of the **Code of Virginia** and §4VAC25-130-845.19(c) of the **Virginia Coal Surface Mining Reclamation Regulations**. \_\_\_\_\_, Esquire shall serve as the Hearing Officer.

Please be advised of the following:

- 3) The agency will object to any request for continuance of the formal hearing, which is made within 10 days of the scheduled hearing date.
- 4) Each party needs to have a minimum of 3 sets (or 1 for each party and the Hearing Officer) of each exhibit it intends to place into the administrative record.

Should you have any questions in the meantime, please call me at (276) 523-8157.

Respectfully,

*name*  
Legal Services Officer

c: *Hearing Officer*, Esquire  
*AAG*, Esquire  
*Reclamation Inspector*  
*Other involved parties*

**SUBJECT TO ATTORNEY – CLIENT PRIVILEGE**

**FORMAL HEARING PREPARATION**

<b><u>Applicant:</u></b>	<i>Name address &amp; telephone #</i>	<b><u>Legal Counsel:</u></b>	
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Request for formal hearing received from \_\_\_\_\_ on date to review the Division's decisions concerning \_\_\_\_\_.

---

**Permit No.** \_\_\_\_\_ - *Permittee and address*

**Location of Operation:** \_\_\_\_\_, Virginia  
(\_\_\_\_\_ County)

**Type of Operation:** \_\_\_\_\_

**Authorized Representative:** \_\_\_\_\_

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**Subject:** *summarize DMLR action being contested*

**Applicable Hearing:**

§4VAC25-130- *(enter reg citation)* of the regulations & §2.2-4020 of the Virginia Administrative Process Act.

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**Background**

*Date* \_\_\_\_\_ *What happened this date*

---

**Applicable Regulations:**

*Insert applicable regulations that apply in this review.*

---

**DMLR prima facie case:**

**DMLR Witnesses:** *list and what each may testify to*

**QUESTIONS:** In order to assist our preparations for the formal hearing, please review the above information and let the Hearings Coordinator know of any other information that may be useful, corrections needed, or any other relevant information. Also review and answer the following questions if familiar with this case. **Your response should be sent to the Hearings Coordinator (G. Bledsoe) by date.**

1. What specific evidence should the DMLR put on?
  
  
  
  
  
  
  
  
  
  
2. Who will be witnesses for the applicant? What will each likely testify to?
  
  
  
  
  
  
  
  
  
  
3. What are our weaknesses in this case? strengths?  
  
**Weakness -**  
  
**Strength -**
  
  
  
  
  
  
  
  
  
  
4. Are there any surprises we should anticipate from the other side?
  
  
  
  
  
  
  
  
  
  
5. Any other comments/concerns relative to the issues?



COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MINES MINERALS AND ENERGY  
DIVISION OF MINED LAND RECLAMATION  
P. O. DRAWER 900; BIG STONE GAP, VIRGINIA 24219  
TELEPHONE: (276) 523-8157

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## **NOTICE OF FORMAL PUBLIC HEARING**

Notice is hereby given that the Division of Mined Land Reclamation will hold a formal public hearing pursuant to §§45.1-249, 45.1-250(B), and 2.2-4020 of the **Code of Virginia**, as amended, and §4VAC25-130-843.16 of the **Virginia Coal surface Mining Reclamation Regulations** to review the issuance of enter enforcement action identification info (effluent discharge) to company name's Permit No. \_\_\_\_\_.

The formal hearing shall be conducted on date at time at **the Department's Big Stone Gap office, Conference room 219.**

Posted: date posted



COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MINES, MINERALS AND ENERGY  
DIVISION OF MINED LAND RECLAMATION  
P. O. DRAWER 900; BIG STONE GAP, VA 24219  
TELEPHONE: (276) 523-8157

**SUBPOENA**

*Name*  
**(Applicant)**

versus

Department of Mines, Minerals and Energy  
Division of Mined Land Reclamation  
**(Respondent)**

Re: Permit No. \_\_\_\_\_  
*Action/decision being reviewed*

To: *Person being subpoenaed*

**Pursuant to §§ 2.2-4022 and 45.1-230(B)(1) of the Code of Virginia, you are hereby summoned to appear** at the Virginia Department of Mines, Minerals and Energy’s Big Stone Gap office (located off U.S. Route 23, above Mountain Empire Community College, in the Buchanan-Smith Building) in Conference Room No. 219 at time on the \_\_\_\_ day of month & year, **to testify on behalf of the Respondent.**

Issued this \_\_\_\_ day of month & year by

\_\_\_\_\_  
*name*  
Legal Services Officer  
Division of Mined Land Reclamation

**Certification of Service:**

Service of this subpoena is hereby admitted by the delivery of a true copy to me this \_\_\_\_\_ day of \_\_\_\_\_, year

\* I certify that I served this subpoena on this date, \_\_\_\_\_, year by personally delivering a copy to the named witness.

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Witness \_\_\_\_\_

Title \_\_\_\_\_

**\* This portion of the certification is not necessary if the person subpoenaed admits personal service.**



COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MINES, MINERALS AND ENERGY  
DIVISION OF MINED LAND RECLAMATION  
P. O. DRAWER 900; BIG STONE GAP, VA 24219  
TELEPHONE: (276) 523-8157

**SUBPOENA DUCES TECUM**

*Name*  
**(Applicant)**

versus

Department of Mines, Minerals and Energy  
Division of Mined Land Reclamation  
**(Respondent)**

Re: Permit No. \_\_\_\_\_  
*Action/decision being reviewed*

To: *Person being subpoenaed*

**Pursuant to §§ 2.2-4022 and 45.1-230(B)(1) of the Code of Virginia, you are hereby summoned to appear** at the Virginia Department of Mines, Minerals and Energy's Big Stone Gap office (located off U.S. Route 23, above Mountain Empire Community College, in the Buchanan-Smith Building) in Conference Room No. 219 at ***time*** on the \_\_\_\_ day of ***month & year***, to testify on behalf of the Respondent and to submit ***describe information that must be provided.***

Issued this \_\_\_\_ day of ***month & year*** by

\_\_\_\_\_  
*name*  
Legal Services Officer  
Division of Mined Land Reclamation

**Certification of Service:**

Service of this subpoena is hereby admitted by the delivery of a true copy to me this \_\_\_\_\_ day of \_\_\_\_\_, ***year***

\* I certify that I served this subpoena on this date, \_\_\_\_\_, ***year*** by personally delivering a copy to the named witness.

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Witness \_\_\_\_\_

Title \_\_\_\_\_

**\* This portion of the certification is not necessary if the person subpoenaed admits personal service.**

*date*

*Name of Person/legal Rep seeking to intervene & address*

Re: **Petition to Intervene** - Formal Hearing – *hearing applicant* v. DMLR – Permit  
Application No. \_\_\_\_\_, *Company name* Permit No. \_\_\_\_\_

Dear \_\_\_\_\_:

This is to acknowledge receipt of your *date* petition on behalf of *party seeking to intervene* to intervene in the aforementioned formal hearing scheduled for *time* on *date*. I am forwarding your petition to \_\_\_\_\_, Hearing Officer.

By copy of this letter, I am requesting Hearing Officer \_\_\_\_\_ to render his decision to grant or deny your petition for intervention, pursuant to §4VAC25-130-789.2 of the **Virginia Coal Surface Mining Reclamation Regulations** at the formal hearing of *date*.

Should you have any questions in the meantime, please let me know.

Respectfully,

*Name*

Legal Services Officer

c: *Hearing Officer*, Esq.  
*AAG*, Esq.  
*Counsel for other parties*, Esq.

*date*

*Hearing Applicant*

Certified Mail Return  
Return Receipt No. \_\_\_\_\_

Re: Final Formal Hearing Decision – Approval of Application # \_\_\_\_\_, *permittee name*  
(Permit No. \_\_\_\_\_)

Dear \_\_\_\_\_:

I have caused an investigation to be made concerning the Division of Mined Land Reclamation's approval of *permittee name*'s application for permit (# \_\_\_\_\_).

A formal public hearing was held pursuant to §4VAC25-130-775.11(b) of the **Virginia Coal Surface Mining Reclamation Regulations** and § 2.2-4020 of the **Virginia Administrative Process Act** at the Department's Big Stone Gap office on *date*.

A copy of Hearing Officer *name*'s decision of *date*, is enclosed.

I hereby adopt \_\_\_\_\_'s "Findings of Facts" and "Conclusions of Law". I affirm (*if modifying or vacating decision, need to provide justification & revise decision accordingly*) that the Division's decision to approve permit application number \_\_\_\_\_ for *permittee name* was proper and in accordance with the **Virginia Coal Surface Mining Control and Reclamation Act of 1979**, as amended, and the regulations promulgated thereunder.

Please be advised that any party adversely affected by this decision may request review and reconsideration under the administrative review process.

A written request for review and reconsideration must be submitted to my attention within fourteen (14) days from your receipt of this decision. Please be advised that no further evidence would be admissible in the review and reconsideration process.

Respectfully,

*name*  
Deputy Director

c: *parties to hearing*

*date*

*Hearing applicant & address*

Certified Mail Return  
Receipt No. \_\_\_\_\_

Re: **Final Formal Hearing Decision** – *permittee name*, Permit No. \_\_\_\_\_

Dear \_\_\_\_\_:

On *date*, a formal public hearing was held at the Department's Big Stone Gap office (Buchanan-Smith Building) to review the issuance of *enter NOV/CO/RON #s or show cause order info.* to *company name*'s Permit No. \_\_\_\_\_.

A copy of Hearing Officer \_\_\_\_\_'s decision of *date* is enclosed.

I hereby adopt *(if not adopting, need to explain how the Hearing Officer erred in his opinion & then provide basis for the final decision)* \_\_\_\_\_'s "Findings of Facts" and "Conclusions of Law". *(If the decision is to modify or vacate the enforcement action, set out what the DMLR is required to do. If the enforcement action is affirmed include statement that action was proper per the regulations.)*

Please be advised that any party adversely affected by this decision may request review and reconsideration under the administrative review process. A written request for review and reconsideration must be submitted to my attention within fourteen (14) days from your receipt of this decision. Please be advised that no further evidence would be admissible in the review and reconsideration process.

Respectfully,

*name*  
Deputy Director

c: *AAG*  
*DMLR Director*  
*Other parties*  
*DMLR staff involved in case*

*date*

*name*

Deputy Director  
Department of Mines, Minerals and Energy  
P. O. Drawer 900  
Big Stone Gap, Virginia 24219

Re: **Request for Review and Reconsideration** - Formal Hearing Decision, *company name*  
& *what decision is being appealed (e.g. NOV#, & Permit #)*

Dear \_\_\_\_\_:

As provided by §45.1-250B of the Code of Virginia and §4VAC25-130-\_\_\_\_\_ of the **Virginia Coal Surface Mining Reclamation Regulations**, on behalf of the Division of Mined Land Reclamation, I hereby request a review and reconsideration of the formal hearing decision of *date*.

Respectfully,

*name*

Director

c: *list Parties*, Esq.  
*DMLR counsel*, Esq.  
*DMLR staff involved in decision*

*date*

*company/applicant rep & address*

Certified Mail Return  
Receipt No. \_\_\_\_\_

Re: **Request for Review and Reconsideration** – Final Formal Hearing Decision, *company name & what decision is being appealed (e.g. NOV#, & Permit #)*

Dear \_\_\_\_\_:

This is to acknowledge receipt of your request of *enter date* on behalf of *company/person*, for review and reconsideration of the formal hearing decision of *date*.

Deputy Director \_\_\_\_\_ will review and reconsider the administrative record concerning the *(DMLR action/decision that was the subject of the formal hearing)*, relative to the formal hearing decision of *date*.

The parties have already been provided with the written transcript of the *enter date of the* formal hearing.

Please be advised that no further evidence would be admissible in connection with the Deputy Director's review and reconsideration. The review will be limited to the administrative hearing record and any subsequent legal argument (oral and written) that the parties may wish to submit.

If the parties wish to submit written legal argument in support of their respective positions, please submit such to my attention by *date*.

If *party requesting the review (or other parties to the matter)* or the Division of Mined Land Reclamation wishes to present oral legal argument to Deputy Director *name*, please let me know by *date* (please provide your available dates from *date* through *date*, so that I may coordinate scheduling such proceeding).

Deputy Director \_\_\_\_\_ anticipates rendering his decision within 30 days, unless as the moving party, you request additional time to submit written or oral legal argument.

Should you have any questions or concerns regarding this matter in the meantime, please call me at (276) 523-8157.

Respectfully,

*name*

Legal Services Officer

c: *Dep. Director*  
*AAG*  
*List parties*  
*appropriate DMLR personnel involved in case*

*date*

*party(ies) requesting review  
address*

Certified Mail Return  
Return Receipt No. \_\_\_\_\_

**Re: Hearing - Review and Reconsideration** - *company name & what decision is being  
appealed (e.g. NOV#, & Permit #)*

Dear \_\_\_\_\_:

A hearing will be conducted on *date* at *time* to allow you the opportunity to present written and oral argument in support of your position. (If this date is not convenient for you, please contact my office.)

The hearing will be held in Conference Room #\_\_\_\_\_ of the Department of Mines, Minerals and Energy's Big Stone Gap, Virginia office. The office is located off U.S. Route 23 and above the campus of Mountain Empire Community College.

In preparing for this hearing, your written and oral argument should address how you believe the Hearing Officer erred in rendering his legal opinion, relative to the statutory and regulatory requirements applicable to this matter.

Should you have any questions or concerns regarding this process in the meantime, please call me at (276) 523-8157.

Respectfully,

*name*  
Legal Services Officer

c: *Dep. Director*  
*AAG*  
*List parties*  
*appropriate DMLR personnel involved in case*

*date*

*Legal rep & address*

Certified Mail Return  
Receipt No. \_\_\_\_\_

Re: **Review and Reconsideration Decision** – *company name & what decision is being appealed (e.g. NOV#, & Permit #)*

Dear \_\_\_\_\_-:

I have reviewed and reconsidered the final formal hearing decision of date, concerning the (the decision/action that was reviewed), Permittee/company Permit Number \_\_\_\_\_.

I have reviewed the formal hearing administrative record *and considered the oral arguments presented by the parties on date*. No further evidence was admitted during this review and reconsideration.

The Division argued that the Hearing Officer's decision should be (affirmed, modified, or reversed). Specifically, \_\_\_\_\_.

Hearing applicant contended \_\_\_\_\_.

I have considered the issue of whether the agency had the proper standing to request review and reconsideration. Since the Division of Mined Land Reclamation was a party to the administrative formal hearing, it had the right, pursuant to §§45.1-250(B) and 45.1-251(A) of the **Code of Virginia**, as amended, to exhaust the administrative remedies provided under the Act. Therefore, I hold that the Division had the right to request review and reconsideration of the date decision.

Based upon my review of the hearing record, I *cannot* find that Hearing Officer name erred in his findings and ultimate recommendation. Therefore, I hereby *affirm* Mr. last name's opinion and adopt the "Findings of Facts" and "Conclusions of Law" as set forth in his decision of date. *The Division is hereby instructed to* \_\_\_\_\_.

Pursuant to the Rules of the Supreme Court of Virginia (Rule No. 2A:2), any party aggrieved by this decision will have thirty days following service of this decision to file judicial

notice of appeal with this office. Since this decision is being sent to the parties by mail, three days are added to the thirty-day period.

Respectfully,

*name*  
Deputy Director

c: *DMLR Director*  
*AAG*  
*Parties to review*  
*DMLR personnel involved in case*

*date*

*Legal rep & address*

Certified Mail Return  
Receipt No. \_\_\_\_\_

Re: **Review and Reconsideration Decision** – *enter action/decision under review, Company/Hearing Applicant name* Permit No. \_\_\_\_\_

Dear \_\_\_\_\_:

I have reviewed and reconsidered the final formal hearing decision of *date*, concerning the *enter action/decision under review, and applicable permittee, permit or application number.*

I have reviewed the formal hearing administrative record ( *and if applicable* - and considered the oral arguments presented by the parties on *date*. No further evidence was admitted during this review and reconsideration.

The Division argued that the Hearing Officer's decision should be (*affirmed, modified, or reversed*).

*Party that requested review & reconsideration (if other than DMLR)* contended that \_\_\_\_\_.

Based upon my review of the hearing record, I **cannot** find that Hearing Officer \_\_\_\_\_ erred in his findings and ultimate recommendation. Therefore, I hereby affirm (*or if modifying/vacating the decision in whole or part, specifically state what is being done with justification*) \_\_\_\_\_'s opinion and adopt the "Findings of Facts" and "Conclusions of Law" as set forth in his decision of *date*. The Division is hereby instructed to *describe what action is required if the action/decision being reviewed is modified or vacated.*

Pursuant to the Rules of the Supreme Court of Virginia (Rule No. 2A:2), any party aggrieved by this decision will have thirty days following service of this decision to file judicial notice of appeal with this office. Since this decision is being sent to the parties by mail, three days are added to the thirty-day period.

Respectfully,

*name*  
Deputy Director

c: *DMLR Director*  
*AAG*  
*Parties to review*  
*DMLR personnel involved in case*

date

*party pursuing appeal & address*

Certified Mail Return  
 Receipt No. \_\_\_\_\_

Re: Notice of Appeal – Party/Plaintiff vs. Department of Mines, Minerals and Energy, Division of Mined Land Reclamation (decision/action/Permit#)

Dear \_\_\_\_\_:

The following materials have been collected or are being prepared for forwarding to the Circuit Court of \_\_\_\_\_ County once the Department receives the proper petition of appeal. Please review this list and let me know if anything has been excluded from the administrative hearing record that you deem pertinent to your appeal.

	<b>Administrative Record Item</b>
	<b>Notice of Judicial Appeal</b> received by the Division of Mined Land Reclamation on <u>date</u> .
	Letter from _____ requesting a formal hearing concerning _____ (received <u>date</u> ).
	Letter from the Division of Mined Land Reclamation acknowledging receipt of request for formal hearing ( <u>date</u> ).
	Letter from the Division of Mined Land Reclamation scheduling formal hearing for <u>date</u> ( <u>date mailed</u> ).
	<b>Transcript</b> (and exhibits) of formal hearing of <u>date</u> .
	State's Exhibit
	Petitioner's Exhibit
	Final Formal Hearing Decision by Hearing Officer <u>name</u> affirmed by Deputy Director <u>name</u> ( <u>date</u> ).
	Request from <u>plaintiff</u> for review and reconsideration (received by DMME-BSG <u>date</u> )
	Letter from the Division of Mined Land Reclamation acknowledging receipt of request for review and reconsideration ( <u>date</u> ).
	Letter from _____ requesting to present oral argument (received <u>date</u> )
	Letter from the Division of Mined Land Reclamation scheduling review and reconsideration hearing for <u>date</u> ( <u>date mailed</u> ).
	<b>Transcript</b> (and exhibits) of review and reconsideration hearing of <u>date</u> .
	Review and Reconsideration decision by Deputy Director <u>name</u> ( <u>date</u> )

Please review the above and let me know (in writing) by date, of any deficiencies *you* deem present in the administrative hearing record. Should I not receive any written notice of deficiencies from you by that date, I will assume that you have no disagreement with the record content.

Respectfully,

*name*  
Legal Services Officer

c: *Deputy Director*  
*DMLR Director*  
*AAG*  
*Parties*  
*DMLR personnel involved in case*

date

*Name of Clerk.*

Court Clerk of \_\_\_\_\_ County

*address*

, Virginia 24614

Hand Delivered

Re: **Certification of Administrative Record** - Petition of Appeal – *name of Plaintiff* vs. Department of Mines, Minerals and Energy, Division of Mined Land Reclamation (**Case No.** \_\_\_\_\_)

Dear \_\_\_\_\_:

Pursuant to Section §45.1-251(A) of the **Code of Virginia**, and Rule 2A:3(b and c) of the Rules of the Virginia Supreme Court, as amended, I hereby certify that the enclosed material is the administrative record from which *plaintiff's name* now appeals:

Bates No.	Administrative Record Item
000001	<b>Notice of Judicial Appeal</b> received by the Department of Mines, Minerals and Energy (DMME) on <i>date</i> .
	<b>Petition for Appeal</b> received by the DMME on <i>date</i> .
	<i>date</i> letter from _____ - requesting a formal hearing concerning _____ (received <i>date</i> ).
	Letter dated <i>date</i> , from the Division of Mined Land Reclamation (DMLR) acknowledging receipt of formal hearing request.
	Letter dated <i>date</i> from DMLR scheduling formal administrative hearing for <i>date</i> .
	Transcript (and exhibits) from <i>date</i> formal administrative hearing.
	State's Exhibit A –
	State's Exhibit B –
	Petitioner's Exhibit 1 –
	Petitioner's Exhibit 2 –
	Letter dated <i>date</i> from DMLR to _____, Esq., transmitting copy of formal hearing transcript.
	<i>date</i> – opinion of Hearing Officer _____ - (received <i>date</i> ).

Bates No.	Administrative Record Item
	<i>date</i> – Final formal hearing decision by Hearing Officer _____ as adopted by Deputy Director _____
	<i>date</i> letter from _____ requesting review and reconsideration of final formal hearing decision.
	Letter dated <i>date</i> , from the DMME acknowledging receipt of request for review and reconsideration.
	<i>date</i> – Review and reconsideration decision by Deputy Director _____

Once the Court has completed the judicial review and rendered a decision, the Division would like to retrieve the administrative record materials. Please advise this office as to when we may pick up the administrative record.

Should you have any questions concerning this material, please contact me at (276) 523-8157.

Respectfully,

*name*  
Legal Services Officer

c: *plaintiff or counsel*  
*Deputy Director*  
*AAG*  
*DMME personnel involved in case*  
*Other parties*

*date*

**CERTIFICATION OF DELIVERY**  
**OF THE ADMINISTRATIVE HEARING RECORD**

**Case No.** \_\_\_\_\_

I, *name*, Legal Services Officer for the Division of Mined Land Reclamation of the Department of Mines, Minerals and Energy, do hereby certify that the administrative hearing record concerning *plaintiff name* vs. **Commonwealth of Virginia, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation** (Case No. \_\_\_\_\_) has been delivered to the **Circuit Court of \_\_\_\_\_ County**.

The Administrative record consists of a **Notebook** of materials -

- a. Cover letter of record contents.
- b. **Petition of Appeal** (Bates #000001 -).
- c. **Notice of Appeal** (Bates #)
- d. **Hearing record** (Bates # -).

Delivered by: \_\_\_\_\_  
*name*, Legal Services Officer  
Department of Mines, Minerals and Energy  
Division of Mined Land Reclamation

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**Receipt of Record Acknowledgement:**

I hereby acknowledge receipt of the aforementioned materials.

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date and Time: \_\_\_\_\_

*date*

**CERTIFICATION OF MAILING**  
**OF THE ADMINISTRATIVE HEARING RECORD**

**Case No.** \_\_\_\_\_

I, *name*, Legal Services Officer for the Division of Mined Land Reclamation of the Department of Mines, Minerals and Energy, do hereby certify that the administrative hearing record concerning *plaintiff's name* vs. **Commonwealth of Virginia, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation** (Case No. \_\_\_\_\_) is being sent by certified mail to the **Circuit Court of \_\_\_\_\_ County this day.**

The Administrative record consists of a **Notebook** of materials -

- e. Cover letter of record contents.
- f. **Petition of Appeal** (Bates #000001 -).
- g. **Notice of Appeal** (Bates #)
- h. **Hearing record** (Bates # -).

Attest:

\_\_\_\_\_  
*name*, Legal Services Officer  
Department of Mines, Minerals and Energy  
Division of Mined Land Reclamation

Commonwealth of Virginia  
County of Wise, to wit:

Acknowledged before me in my State and County aforesaid, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_  
Registration No. \_\_\_\_\_

Certified Mail Return Receipt Number: \_\_\_\_\_