

DIVISION OF MINERAL MINING PROCEDURES MANUAL		PROCEDURE NO.	4.14.00
		ISSUE DATE	09/10/91
SUBJECT	Hearing Procedures	Section	Permitting
		Last Revised	

OBJECTIVE AND INTENT:

To ensure that hearings are held and managed consistently and in accordance with State law.

PROCEDURES:

1. New Permit Applications

Any property owner within 1,000 feet of the area to be permitted may file objections and request a hearing on a new permit application within 10 days of the date the property owner received notice of the application.

(As per *Section 45.1-184.1 of the Code of Virginia* and *MOTC Regulation Section 3.6.8*).

2. Administrative Process Act

The Administrative Process Act of the Code of Virginia allows agencies to hold either informal or formal fact finding hearings to reach case decisions.

Parties to mineral mining hearings are provided the opportunity for an informal fact finding hearing before a DMM appointed hearings officer or hearings convener. Once a permit decision is made to issue or deny the permit (i.e., a case decision is made), parties may appeal the case decision to circuit court.

(Informal hearing per *Section 9-6.14:11 of the Code of Virginia*)

Parties to the case:

- must be given reasonable notice of the hearing
- may appear in person, by counsel, or by another qualified representative
- may present factual data, argument or proof
- must receive notice of any contrary fact basis or information which can be relied on in making an adverse decision
- must receive a prompt written decision including the factual or procedural basis for the decision

(As per *Section 9-6.14:11 of the Code of Virginia*)

3. Location

Unless the parties to a hearing otherwise agree, hearings are to be held in the locality where the major portion of the land is located.

(As per *Section 9-6.14:5 of the Code of Virginia*)

The location must be accessible to the handicapped.

(As per October 4, 1989 directive from Governor Baliles)

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The type of facility used for a hearing is optional. A formal setting, such as a Board of Supervisor's chamber, is preferred. The facility should be large enough to accommodate all people expected to attend.

4. Hearing Convener

As a general rule, hearings should be run by DMM staff. However, if there are especially complex issues, or if a large number of people are expected to attend a hearing (requiring more formal rules of order be followed), the DMM Director may use a hearing officer. The DMM Director may consider the cost of using a hearing officer as compared to the cost of using DMM staff when deciding on who will conduct a hearing.

If DMM staff is conducting the hearing, the Mine Inspector Supervisor responsible for the opposite division from the site in question will oversee the hearing. If the Supervisor is unable to conduct the hearing, the DMM Director will appoint a substitute.

Use of a hearing officer is governed by the *Administrative Process Act* and the *Virginia Supreme Court Hearings Officer System Rules of Administration*.

(As per *Section 9-6.14:14.1 of the Code of Virginia*)

5. Hearing Schedule

There is no requirement that a hearing be held within a set number of days after the request is received. However, in order to facilitate a timely decision, a hearing should be held within 30 to 45 days of the date when a permit application is determined to be complete by DMM in accordance with the *Permit Application Review Procedure 4.13.00*.

6. Notice of the Hearing

The DMM Hearing Brochure will be provided to hearing requestors upon receipt of their hearing request.

Notice of the hearing must be given to the operator or applicant and the person or persons who requested the hearing. The notice will be mailed return receipt requested so there is documentation that notice has been made.

(As per *Section 9-6.11:11.A of the Code of Virginia*)

Individual notice to parties to the hearing must state when and where the hearing is to be held, who may appear and speak, what information the department has to base a decision on and where the information is available.

(As per *Section 9-6.11:11.A of the Code of Virginia*)

DMM will provide notice of the hearing date, place, and time to the chief of the local political subdivision where the mine is to be located (county administrator, city manager, etc.).

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As soon as the hearing is scheduled, the Division of Mineral Mining will submit the information for publication in the Virginia Register and placement on the VIP Net notice board to the Office of Program Support. Notice must be published in the Register if time permits.

(As per *Section 9-6.14:22.C of the Code of Virginia* and the *Virginia Register Style Manual, Chapter 7*)

Notice of the hearing must be given to any person who requests that information. This includes any person who has a standing request to be notified of meetings on a continual basis. **A standing request must only be recognized if made within one year of the date of the hearing or if the request has been renewed.**

(As per *Section 2.1-343 of the Code of Virginia*)

There are no requirements for general public notice beyond publication in the Virginia Register. General public notice of an informal fact finding hearing may, at the option of the DMM Director, be given by publication in a newspaper of general circulation in the area where the permitted activity is located.

If public notice of a hearing is published, the notice will state the date, time, and location of the hearing, provide a brief explanation of the subject of the hearing and state where additional information is available.

7. Public Access to Permit Information

Parties to the hearing must have access to any data or information on which the department may base a decision. DMM may provide for public access to the information at the DMM office.

(As per *Section 2.1-342 of the Code of Virginia*)

8. Hearing Procedures

In an informal fact finding proceeding, formal rules of evidence, swearing witnesses, or other quasi-judicial practices do not need to be followed.

Official minutes must be kept. If the Division is conducting the hearing, the Mine Inspector Supervisor convening the hearing will make arrangements for another person to keep minutes. If a hearing officer is to be used, DMM staff will keep minutes. A tape of the hearing will also be made. A transcript is not required unless it is needed by DMM staff, is requested by a party to the hearing, or is needed for the record in a further appeal to the Board of Surface Mining Review or a court. **If requested by an outside party, all costs incurred for the production of a transcript will be the responsibility of that party.**

(As per *Section 2.1-343 of the Code of Virginia*)

The Code does not limit who has standing to be heard at the hearing. All persons may speak or submit written comments.

The hearing convener will ask everyone at the hearing to sign-up on a sheet provided at the entrance to the hearing room. The sign-up sheet will have space for the person's name, affiliation, if any, and an indication if they wish to speak at the hearing.

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The hearing convener will open the hearing and introduce all officials and DMM staff that are present. The convener will state that the hearing is an informal fact finding hearing governed by the *Administrative Process Act of the Code of Virginia, Section 9-6.14:11*.

The hearing convener will identify the issues to be addressed at the hearing, including:

- The name of the operator or applicant, the location of the proposed operation and the name(s) of the parties that requested the hearing;
- the issues raised by the objectors;
- what information DMM has at hand to use in making a decision on the hearing issues; and,
- the scope of DMME authority over the operation in question. Request that speakers limit their comments to the issues within DMME jurisdiction.

The hearing convener will announce that persons may speak for themselves, be represented by counsel, or by another authorized representative.

(As per Section 9-6.14:11A(ii) of the Code of Virginia)

The hearing convener will state that a public record of the hearing is being kept (i.e., minutes of the meeting, a tape, etc.). The convener will state that attendees may submit written comments in addition to or in lieu of speaking. If written comments are to be accepted after the close of the hearing, the convener will state the deadline for submission of comments, where the comments will be sent, and that these comments will become part of the official record of the hearing.

The hearing convener will state that the applicant has been asked to present his application. If the applicant does not present his application the DMM mine inspector will be asked to give a brief informational presentation of the application.

If there are to be a large number of speakers, the hearing convener may limit the time allotted individual speakers. The convener may also limit the number of speakers representing any organization. If limits are to be set, announce the limits before anyone has spoken. If speakers go beyond their allotted time, be polite but firm in stopping speakers. Ask them to summarize their remaining comments in one or two sentences.

The hearing convener will call speakers in order from the sign-up list. After the last person on the list has spoken, the convener will allow any other person to speak, subject to any limitations on time or organization representation.

The hearing convener has the option of allowing persons to return and speak in response to comments made by others. However, the convener will be careful not to let a debate over any issue get started.

After all speakers have finished, the hearing convener will thank attendees and state when a decision is expected to be made by the DMM Director. The convener will formally close the hearing.

9. Hearing Report

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The hearing convener will write a hearing report to be submitted to the DMM Director. The Director will specify when the report is due from the convener. Contents of the convener's report are not established by Code. However, the report will be a record of the full set of issues and facts in the case. The report will include:

- the subject, date, time and location of the hearing;
- minutes of the hearing, including the list of speakers;
- a summary of comments - usually compiled by subject; and,
- written findings of fact, conclusions of law, and a recommended decision for the DMM Director.

10. DMM Director's Decision

The DMM Director must put the hearing decision in writing. Although there are no statutory time limits for issuing the decision, parties to the hearing are entitled to a prompt decision. The DMM Director may wish to meet the same standard followed by the Board of Surface Mining Review and issue the decision within 60 days of the hearing.

(As per *Section 9-6.14:11(iv) of the Code of Virginia*)

The Administrative Process Act requires the written decision to state the factual or procedural basis for an adverse decision in any case. To meet this standard, the DMM Director's decision will include:

- a brief statement of the issues;
- a statement of the findings of fact and conclusions of law; and,
- the text of the decision.

(As per *Section 9.6-14:11(v) of the Code of Virginia*)

For a new permit, Division staff will mail or hand-deliver a copy of the decision to the operator and other parties to the hearing. Certified mail is not required.

The decision and all supporting documentation will be placed in the permit file. The decision, together with the full record of the case, must be made available for public inspection and copying.

(As per *Section 9-6.14:14 of the Code of Virginia*)

DEPARTMENT OF MINES, MINERALS AND ENERGY
DIVISION OF MINERAL MINING
Hearing Required Items Checklist

Operator/Applicant:

Permit/License Number:

Operation Name:

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Operation Location:

___ **Date of notice to neighboring property owners:**

___ **Request for hearing received within 10 days of property owner receipt of notice**

___ **Hearing scheduled:** Date: _____ Time:

Location:

___ **Hearing site accessible to handicapped**

___ **Request for assistance to visually or hearing impaired person received:**

- Yes No
 If yes, assistance arranged

___ **Notice of hearing sent to:**

- Persons requesting hearing
 Operator/Applicant
 Persons requesting individual notice of the hearing
 Persons with standing request for notice of hearings

___ **Notice states:**

- When and where hearing to be held
 Who may speak
 Information at hand to be used in the decision
 Where information at hand available

___ **Notice of Meeting sent to OPS for publishing in the Virginia Register and VIP Net.**

___ **If a hearing officer is used, selection made from the Virginia Supreme Court Hearing Officer System**

___ **Minutes of hearing kept**

___ **Hearing convener announces at hearing start:**

- Name of applicant/operator
 Name of person(s) requesting the hearing
 Issues before the hearing
 Information at hand to base the decision on
 That persons may speak in person, be represented by counsel, or designate a representative to speak

___ **DMM Director's written decision issued and delivered to parties to the hearing; decision contains:**

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- Brief statement of issues
- Findings of fact and conclusions of law
- Text of the decision**

___ Decision and documentation placed in file, made available for public review on request