

ARKANSAS DEPARTMENT OF  
POLLUTION CONTROL AND ECOLOGY

LOCATION - SUBJECT: Amendments  
To Arkansas Surface Coal Mining  
And Reclamation Code

MINUTE ORDER NO. 90-69

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WHEREAS, the 72nd General Assembly of the State of Arkansas recognized by enactment of the Arkansas Surface Coal Mining and Reclamation Act of 1979, Act 134 of 1979 as Amended by Act 647 of 1979 (hereinafter "the Act") that there is a need to establish a program of regulations over all aspects of surface coal mining and reclamation operations, and to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations by developing and implementing a State program pursuant to §503 of the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87 (hereinafter "SMCRA") which includes regulations consistent with but no more restrictive than the regulations issued by the Secretary of the Interior pursuant to the SMCRA; and

WHEREAS, on November 21, 1980 the Secretary of the Interior approved the said program of regulations for the State of Arkansas conditional upon amending certain provisions of the Arkansas Surface Coal Mining and Reclamation Code; and

WHEREAS, §5(b)(1) of the Act provides that the Commission on Pollution Control and Ecology has the following powers and duties:

To adopt, amend and issue rules and regulations in accordance with the procedures set forth herein, pertaining to surface coal mining and reclamation operations in accordance with but no more restrictive than Public Law 95-87, consistent with the general intent and purposes of that Act, and consistent with but no more restrictive than the regulations issued by the Secretary of the Interior pursuant to Public Law 95-87, as required for the state to develop an approved state program and to assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations pursuant to §503 of Public Law 95-87; provided that the Commission may, by regulation, include, modify or omit permit application requirements, permit approval or denial procedures, bond requirements and environmental protection performance standards as it deems appropriate for surface coal mining operations affecting two acres or less;

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Pursuant to the above duty and pursuant to §§27 and 28 of the Act, the Commission gave notice of a public hearing for the purpose of promulgating the following rules and regulations governing surface coal mining and reclamation operations in Arkansas. Said hearing was held on this 21st day of November, 1980;

WHEREAS, upon consideration of the purposes and requirements of the Act, the regulations issued by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement, all matter of fact, written and verbal testimony and statements made prior to and during this hearing, the Commission finds that it should adopt the following amendments to the regulations to enable the Department to assume permanent regulatory authority over surface coal mining and reclamation operations in this state;

NOW, THEREFORE, IT IS DETERMINED AND ORDERED by the Commission that:

1. There is a need to amend the Code to satisfy the conditions imposed by the Secretary of the Interior, and that such amendments are reasonable and proper; and
2. The matter has been held open for public comments in accordance with the Act; and
3. The Commission held a public hearing concerning the promulgation of such amendments; and
4. The Commission based its determination upon consideration of all written and oral comments presented to the Commission; and
5. The Arkansas Surface Coal Mining and Reclamation Code be, and hereby is amended as follows:
  - a. Section 771.23(e)(iii) is hereby amended to read as follows:

(iii) After May 3, 1978 and prior to November 21st, 1980.
  - b. Section 788.19(h) is hereby amended to read as follows:

(h) The applicant has submitted proof that all reclamation fees required by Section 402 of Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977 have been paid.

c. Section 845.19(a) is hereby amended to read as follows:

(a) The person charged with the violation may request an adjudicatory public hearing in accordance with Section 29 of the Act to contest the proposed penalty or the fact of the violation by submitting a petition to the Commission within 30 days from receipt of the proposed assessment. The adjudicatory hearing shall be held within sixty (60) days from the date of receipt by the Commission of the petition requesting an adjudicatory hearing. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under Section 843.16.

COMMIS-  
SIONERS

JS  
CB  
JA  
EW  
AA  
MM  
PW  
    
  

Fred Brooks  
Chairman

Submitted by Floyd G. Durham Date Passed 11/21/80