



Ohio Administrative Code Rule 1513-3-16 Conduct of evidentiary hearings.

Effective: November 1, 2018

(A) The reclamation commission shall conduct hearings and other proceedings in such a manner as to render a complete decision on all issues which are presented, and shall take any steps consistent with the impartial discharge of its duties which are reasonable and necessary to ascertain all relevant facts. The commission shall determine the conduct of the hearing and the order of presentation of evidence.

(B) Burden of persuasion.

(1) In review of notices of violation and cessation orders, the division of mineral resources management shall have the ultimate burden of persuasion as to the validity of the notice of violation or cessation order.

(2) In review of civil penalty assessments, the division of mineral resources management shall have the ultimate burden of persuasion as to the fact of the underlying violation and as to the amount of the penalty.

(3) In review of any other orders or decisions of the chief of the division of mineral resources management, the ultimate burden of persuasion shall rest with the appellant.

(C) Evidence.

(1) The reclamation commission shall not be bound by the Ohio Rules of Evidence as promulgated by the Ohio supreme court.

(2) Parties shall have the right to present evidence, cross examine witnesses and object to evidence.

(3) The commission will rule upon the admissibility of evidence.



(4) If any parties object to the admission or rejection of any evidence or to other limitations of the scope of any examination or cross-examination, they shall state briefly the grounds for such objection, and the record may include argument thereon, as allowed by the commission.

(5) A continuing objection, once made, shall be sufficient to preserve objection to an area of evidence.

(6) If the commission refuses to admit evidence, the party offering the same may make a proffer thereof, and the proffer shall be made a part of the record of the hearing. Proffers may consist of testimony or documentary evidence. Proffers may be made in the following manner:

(a) A summary statement by counsel as to the content of the expected testimony;

(b) Questions propounded upon the witness and answered; or

(c) Submission of documentary evidence or tangible objects.

(7) Government documents relating to an appeal may be considered by the commission in adjudicating the case, but copies thereof may be substituted in the record of the proceedings. If certain government documents entered as part of the record are required by the chief for use by the division of mineral resources management pending the appeal, the chief may retain such documents subject to recall by the commission.

(8) The commission may, upon motion of any party, direct that a portion of a hearing be conducted in camera and that the corresponding portion of the record be sealed to prevent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information. The party requesting such protection shall have the burden of establishing that such protection is required.

(9) Parties to a commission hearing shall produce at hearing sufficient copies of any proposed exhibits, so that:

(a) The marked exhibit is kept with the commission's case file;



(b) Each attending commission member and the hearing officer is provided with a copy of any proposed exhibits; and

(c) All parties are provided with copies of any proposed exhibits.

(10) Where an exhibit is oversized, copies in a reduced format shall be provided where possible. If an exhibit is oversized, and cannot be readily reproduced in a reduced format, the offering party is not required to produce additional copies of the proposed exhibit at hearing in accordance with paragraph (C)(9) of this rule.

(D) A stipulation concerning issues of fact or authenticity of documents before the commission must have the concurrence of all full parties to an appeal. A stipulation may be oral or written, and if written, shall be signed by all full parties and filed with the commission prior to hearing. Such a stipulation is binding upon the commission. A stipulation shall be a conclusive determination of the facts stipulated to.

(E) Written testimony.

(1) Affidavits may be admitted only if the evidence is otherwise admissible and all full parties agree that affidavits may be used in lieu of oral testimony by a witness. A party desiring to use an affidavit in lieu of oral testimony must serve all full parties with a copy of the affidavit at least fifteen days prior to a hearing. If all full parties to the appeal agree upon the use of the affidavit in lieu of oral testimony, the affidavit shall be filed with the commission at least five days prior to the hearing.

(2) In the case of an unavailable declarant, testimony may be offered in compliance with rule 804 of the Ohio Rules of Evidence.

(3) The use of a deposition in lieu of the deponent's oral testimony at hearing shall be allowed under the same provisions as are articulated in rule 32 of the Ohio Rules of Civil Procedure. A party desiring to use a deposition or any designated part thereof at hearing, shall file the complete deposition with the commission and serve written notice to every other party at least ten days prior to hearing.



(4) Objections to deposition testimony shall be resolved in accordance with rule 32 of the Ohio Rules of Civil Procedure.

(5) Where a party is attempting to use written testimony, and such written testimony has been filed with the commission and served upon the parties in accordance with these rules, any full party shall present to the commission a schedule of objections to the written testimony prior to the commencement of hearing.

(6) When another action involves the same subject matter and has been brought between the same parties or their representatives or successors in interest, all affidavits, depositions or testimonies lawfully taken in a commission proceeding may be used in another commission proceedings as if originally taken therefor. In the second commission proceeding the admissibility of the written testimony shall again be determined.

(F) Witnesses.

(1) The commission may limit the number of witnesses upon any issue and may require any party to present additional evidence on any issue.

(2) The commission may require that a witness be called only once at hearing, and that the parties conduct all direct and cross examinations at the time when that witness is called to testify.

(3) The commission may require each party in an appeal to identify prior to the commencement of a hearing each person who will be called as a witness in an appeal.

(4) Upon motion of a party or in the commission's discretion, the commission may order the separation of witnesses at hearing, provided that the commission shall not exclude:

(a) A party; or

(b) An officer or employee of a party who is designated as its representative by its attorney; or



- (c) A person whose presence is shown by a party to be essential to the presentation of his cause.
- (5) A witness at any hearing shall testify under oath or affirmation, which may be administered by any member of the commission, by a hearing officer or by an Ohio notary.
- (6) At a hearing where witnesses are called, only one attorney for each party may examine or cross-examine a witness unless otherwise permitted by the commission.
- (7) The commission may examine on the record the interested parties or witnesses.
- (G) If the appellant fails to appear personally or by counsel or other authorized representative at a hearing scheduled after being duly notified of the hearing, and if good cause for such failure to appear is not shown, the commission may dismiss the appeal.
- (H) By agreement of the parties, a case may be submitted for decision on stipulated facts and briefs; however, the reclamation commission may direct that the case be heard in an evidentiary hearing or argued before the commission.
- (I) The reclamation commission may order the parties to a proceeding to submit briefs at a time designated by the commission, on issues raised in an appeal or on any issues as the commission in its discretion shall determine.
- (J) The commission may order the parties to submit written closing arguments, post-hearing briefs or proposed findings of fact and conclusions of law.
- (K) During the course of a hearing, the commission may order oral argument upon any issue.
- (L) At any time after hearing, but prior to the issuance of a decision, the commission may at its discretion or upon motion of a party, reopen an appeal for further proceedings.