

1975 WL 29025 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 23, 1975

*1 A decision by the Department regarding modification of a reclamation plan is effective as of the date of the Department's decision.

Director
Division of Mining and Reclamation
Land Resources Commission

QUESTION PRESENTED:

When does a modified reclamation plan under the terms of the South Carolina Mining Act become binding on the operator?

STATUTES INVOLVED:

Section 63-721 of the 1962 Code of Laws of South Carolina, as amended, states:

If at any time it appears to the Department from its inspection of the affected land that the activities under the reclamation plan and other terms and conditions of the permit are failing to achieve the purposes and requirements of this act, it shall give the operator written notice of that fact, of its intention to modify the reclamation plan and other terms and conditions of the permit in a stated manner, and of the operator's right to a hearing on the proposed modification at a stated time and place. The date for such hearing shall be not less than thirty nor more than sixty days after the date of the notice unless the Department and the operator shall mutually agree on another date. Following the hearing the Department shall have the right to modify the reclamation plan and other terms and conditions of the permit in the manner stated in the notice or in such other manner as it deems appropriate in view of the evidence submitted at the hearing.

Section 63-725 of the Code provides for an appeal to the Mining Council.

Section 63-726 of the Code provides for an appeal to the Circuit Court.

DISCUSSION OF ISSUES:

Section 63-721, supra, directs that after inspection and determination by the Department (the Land Resources Conservation Commission) that a reclamation plan is failing to achieve the purposes and requirements of the South Carolina Mining Act, it shall give to the operator concerned written notice of that fact, of its intention to modify said reclamation plan in a stated manner, and of the operator's right to a hearing on the proposed modification to be held at a specified time and place which ordinarily must be at a time not less than thirty nor more than sixty days after the date of the notice. After that hearing the Department may make its decision regarding action on the proposed modification of the subject reclamation plan.

Section 63-725 states that within sixty days after the Department's decision or determination and with written notice to the Department, the operator has the further right of taking an appeal to the Mining Council. The Mining Council, in turn, must schedule and conduct a full and complete hearing to be held at a reasonable time and place after reasonable notice to both parties. From the decision thereafter rendered by the Mining Council, the operator may take a further appeal to the Court of Common Pleas for Richland County or for the county in which the mining operation is to be conducted. (§ 63-726)

*2 While appellate relief is provided to an operator following an adverse ruling by the Department after the initial hearing on the proposed modification, Section 63-721 is nevertheless clear in stating that '[f]ollowing the hearing the Department shall have the right to modify the reclamation plan' There is no provision, as elsewhere in the Mining Act (§ 63-722), for an appeal from the Department's decision to stay the effective date of the Department's decision until a further decision is rendered by the appellate body. It must therefore be concluded that an appeal does not stay execution of the Department's decision in situations where a reclamation plan is modified. Hence the modification becomes effective and binding on the operator once the Department renders its decision.

CONCLUSION:

Therefore, it is the opinion of this Office that under the terms of the South Carolina Mining Act a decision by the Department regarding modification of a reclamation plan is effective as of the date of the Department's decision.

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