

CR 84-134

RULES CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPT. OF INDUSTRY,)
LABOR & HUMAN RELATIONS)

RECEIVED

JUN 4 1985
10:20am
Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Howard S. Bellman, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to Mining Damage Claims were duly approved and adopted by this department on 6/3/85.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 9:00 am in the city of Madison, this 3rd day of June A.D. 1985.

Howard S. Bellman
Secretary

ORDER OF ADOPTION

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 107.31(1), Stats., the Department of Industry, Labor and Human Relations hereby creates; amends; repeals and recreates; and repeals and adopts rules of Wisconsin Administrative Code chapter(s):

Ind. 82 Mining Damage Claims
(Number) (Title)

The attached rules shall take effect on the first day of the month
following the date of publication in the administrative register, pursuant to section 227.026, Stats.

Adopted at Madison, Wisconsin, this 3rd
day of June, A.D., 1985.

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

Howard S. Bellman
Secretary

ORDER OF THE
DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS
Creating ch. Ind 82, Wis. Adm. Code,
relating to rules concerning:

Mining Damage Claims

Plain Language Analysis
by the
Department of Industry, Labor and Human Relations

Chapter 353, Laws of 1979, created ss. 107.30 to 107.35, Stats., to enable people to file claims for damages caused by mining. Administration of the program was placed with the Department. The law also provides for an occupational tax on mining, 4% of which goes to the Mining Damage Reserve Accumulation to pay awards under the program. The law also requires adoption of rules for submission, review, settlement and determination of claims against the appropriation. Settlements may be reached before formal hearings and determinations.

Ind 82.02 provides that a claimant shall submit a claim form available from the Worker's Compensation Division along with written documentation of specific items of injury or damage, the amount of damage and documentation that the injury or damage is mining-related as defined in the law.

Ind 82.03 explains the process for investigation and seeking settlement of a claim. Depending on the nature of the claim, the Department will designate the appropriate investigator. Under a process for settling claims prior to a formal hearing, the claimant has 30 days to accept a settlement offered by the Department. If it is not accepted, a hearing will be held. No person involved in the investigation or settlement offer may serve as the hearing examiner.

Ind 82.05 explains hearing procedures. The Secretary will designate the hearing examiner and decide if a proposed or final order will be prepared. The parties have the right of counsel at the hearing. After the hearing, the findings and order are submitted to the Secretary. If it is a proposed order, the parties have 21 days to file objections to the Secretary. The Secretary then will determine if oral arguments will be held on the claim.

Ind 82.06 provides the method of prorating awards if the Mining Damage Reserve Accumulation falls below \$500,000 in a fiscal year. If this occurs, the Department will delay payment of all claims until the end of the fiscal year to determine if year-end funds are sufficient to pay all claims. If not, a percentage will be paid on all claims and will be considered full payment of the award.

Ind 82.07 provides that discovery procedures similar to those used in lawsuits may be used in hearings under this chapter. Ind 82.09 provides that information may be given confidential treatment in accordance with the state laws on public records and trade secrets.

Pursuant to the authority vested in the department of industry, labor and human relations by s. 107.31(1) Stats., the department of industry, labor and human relations hereby adopts rules interpreting ss. 107.30 to 107.355, Stats., as follows:

SECTION 1. Chapter Ind 82 is created to read:

CHAPTER IND 82

MINING DAMAGE CLAIMS

Ind 82.01 Definitions. In addition to the definitions found in s. 107.30, Stats.:

(1) "Claimant" means the person who files a claim to recover payment for a mining-related injury.

(2) "Party" or "parties" means the claimant, the department, and the mining company if it chooses to become a party under s. 107.31(2)(6), Stats.

Ind 82.02 Filing a Claim. (1) Any person who wishes to make a claim against the mining damage reserve accumulation to recover payment for a mining-related injury, as defined in s. 107.30(13), Stats., shall complete a form supplied by the department requesting the following information:

(a) The name of the person claiming to have incurred injury or damage;

(b) The amount of damages incurred;

(c) The name of the mining company or person, if known, alleged to have caused the injury or damage;

(d) The specific nature of the injury or damage; and

(e) Whether any other claims have been made by the claimant based upon the injury or damage, whether these other claims have been settled or are pending, the amount of the settlement, if any, and the forum in which these claims were made.

(2) The claimant shall also submit, along with the claim form, written documentation of the specific items of injury or damage, the amount of the damage and documentation that the injury or damage is mining-related as defined in the act. The department may require the claimant to submit additional documentation as may be relevant to the claim.

(3) Whenever a claim is filed under this chapter, the department shall give the notice required in s. 107.31(2)(b) Stats.

(Note: Forms can be obtained from the Director of the Bureau of Program Support, Worker's Compensation Division, P.O. Box 7901, Madison, WI 53707).

Ind 82.03 Investigations and offers of settlement. (1) The department shall investigate any claim made under this chapter.

(2) At any time prior to a final decision on the claim at the conclusion of a hearing on the matter, the department may make a written offer of settlement of the claim.

(3) If an offer of settlement is made, it shall be based upon the department's investigation and any other evidence available at the time the

offer is made. An offer of settlement shall take into account and specify any possible necessity of proration as required by s. 107.31(5)(b), Stats. and limitations as required by s. 107.31(4), Stats. In making the offer of settlement, the department may consult with the department of justice. Any offer of settlement by the department which has not been accepted in writing by the claimant and received by the department within 30 days of the date that the offer was personally served or mailed to the claimant shall lapse.

(4) Settlement payments shall be made in the same manner as payments of awards.

Ind 82.04 Scheduling of the hearing. (1) If the claim is not settled, the department shall schedule an adjudicatory hearing on the matter.

(2) At least 30 days notice of the hearing shall be given by the department to all parties of interest. The date of the notice is the date of mailing or the date of personal service.

(3) The hearing may be postponed if the department determines that a claimant has failed to submit the required documentation.

Ind 82.05 Conduct of the hearing. (1) Hearings held pursuant to this chapter shall be conducted as specified under ss. 107.30 to 107.35 Stats., and this chapter and not as provided in Ch. 227, Stats.

(2) The hearing shall be conducted by a hearing examiner designated by the secretary of the department. The secretary may delegate to the examiner either the authority to enter a final order or the authority to prepare a proposed order for submission to the secretary.

(3) No person who participates in an investigation of a claim or in an offer of settlement may serve as a hearing examiner on that claim.

(4) The hearing shall be conducted in such manner as to receive the testimony and evidence in as direct and simple a manner as possible.

(5) The parties shall have the right to be represented by an attorney and to cross-examine.

(6) Claims arising in the same area based on similar circumstances may be joined for hearing at the discretion of the department.

(7) At the conclusion of the hearing, the hearing examiner shall make written findings of fact and conclusions of law and issue a proposed or final order as designated by the secretary. The findings and order shall be served upon the parties.

(8) In the event that the hearing examiner issues a proposed decision, the parties shall have 21 days from the date of the proposed decision to file written objections to the proposed finding and order with the secretary.

(9) Oral argument on a proposed decision shall be allowed only when specifically authorized by the secretary.

Ind 82.06 Reserve Accumulation Proration. (1) If the balance of the mining damage reserve accumulation is less than \$500,000 at the beginning of a fiscal year or falls below that amount at any time, the department shall delay the payment of all mining damage awards during the fiscal year until after the

close of the fiscal year to determine the sufficiency of the mining damage reserve accumulation.

(2) If action under sub. (1) is required, the following procedure shall apply:

(a) If the sum of all awards during the fiscal year is less than or equal to the mining damage reserve accumulation at the end of the year, all awards shall be paid in full.

(b) If the sum of all awards pending for payment during the fiscal year is greater than the mining damage reserve accumulation, the total in the mining damage reserve accumulation at the end of the fiscal year shall be divided by the sum of the awards issued during the year. The resulting percentage shall be multiplied against each such award to determine the actual prorated amount to be paid. Any amounts paid under the proration shall satisfy the award in full.

Ind 82.07 Discovery.

(1) When an adjudicatory hearing is held pursuant to s. 107.31(3)(a), Stats., each party shall have the right to take and preserve evidence in the manner prescribed by ch. 804, Stats., unless otherwise modified, quashed or conditioned by the hearing examiner pursuant to (3) or (4) below. Subpoenas shall only be issued by the hearing examiner upon application by a party.

(2) Discovery sought must be reasonably related to the claimed "mining-related injury" as that term is defined in s. 107.30(13)., Stats.

(3) In the event the hearing examiner shall, after consideration of all of the circumstances, determine that the subpoena sought is or may be unreasonable, oppressive, excessive in scope or breadth, or unduly burdensome, the examiner may refuse to allow issuance of the subpoena, or allow issuance only upon such conditions as fairness requires.

(4) After issuance of a discovery request by a party or a subpoena by the hearing examiner, the person to whom the discovery request or subpoena is directed may object to the validity, scope or breadth, reasonableness, fairness of, or need for the subpoena or the discovery sought. In the case of a subpoena any party may object on these grounds. The objecting person or party may request the hearing examiner to quash, modify or condition the discovery request or subpoena. The examiner may, upon notice to the party who issued the discovery request or requested the subpoena to be issued, and opportunity for reply:

(a) Quash, condition or modify the same, or

(b) Condition denial of the request to quash or modify by limiting the discovery to just and reasonable requirements, including in the case of a subpoena duces tecum, a requirement that the party on whose behalf the subpoena was issued advance the reasonable cost of transporting documents or other tangible evidence to the designated place of discovery.

Ind 82.08 Ex parte contacts. (1) When an adjudicatory hearing is held pursuant to s. 107.31(3)(a), Stats., the provisions of s. 227.13., Stats., shall apply in regard to ex parte contacts.

(2) Any staff memoranda and data submitted to the hearing examiner must be served on all of the parties and the parties given a chance to rebut the same. Furthermore, all evidence which the hearing examiner considers must be offered and made part of the record with opportunity for the parties to rebut.

Ind 82.09 Confidential information. (1) Any party or person may request that certain information be given confidential treatment by the department. Such requests shall be decided under ss. 19.31 to 19.39, Stats., s. 943.205, Stats., and any other applicable law.

(2) The hearing examiner presiding at a hearing may order such protective measures as are necessary to protect information determined to be confidential.

SECTION 2. EFFECTIVE DATE. Pursuant to s. 227.026(1)(intro.), Stats., this rule shall take effect on the first day of the month following the date of publication in the administrative register.

(End)

The Wisconsin Department of Industry, Labor and Human Relations

June 3, 1985

Office of the Secretary
201 E. Washington Avenue
P.O. Box 7946
Madison, Wisconsin 53707
Telephone 608/266-7552

✓ Gary Poulson
Assistant Revisor of Statutes
for Administrative Rules
411 West, State Capitol
Madison, Wisconsin

Douglas LaFollette
Secretary of State
Room 271, GEF-1
201 East Washington Avenue
Madison, Wisconsin

RECEIVED

JUN 4 1985

Revisor of Statutes
Bureau

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 83-134

RULE NO. Ind 82

RELATING TO: Mining Damage Claims

Pursuant to section 227.023, Stats., agencies are required to file a certified copy of every rule adopted by the agency in the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you.

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.016 (6), Stats., a summary of the final regulatory flexibility analysis is also included.

Respectfully submitted,



Howard S. Bellman
Secretary

cc: Agency Contact Person