WEST VIRGINIA CODE: §22-3-36

§22-3-36. Claims process for blasting.

(a) The Division of Mining and Reclamation shall establish and manage a process for the filing, administration and resolution of claims related to blasting.

(b) Claims which may be filed and determined under the provisions of this section shall be those arising from both of the following:

(1) Damage to property arising from blasting activities conducted pursuant to a permit granted under article three of this chapter; and

(2) The damage is incurred by a claimant who is the owner or occupant of the property.

(c) The claims process established by the Division of Mining and Reclamation shall include the following:

(1) An initial determination by the Division of Mining and Reclamation of the merit of the claim; and

(2) An arbitration process whereby the claim can be determined and resolved by an arbitrator in a manner which is inexpensive, prompt and fair to all parties.

(d) If the operator disagrees with the initial determination made by the Division of Mining and Reclamation and requests arbitration, then the following shall apply:

(1) Any party may be represented by a representative of their choice;

(2) At the request of the claimant, the Division of Mining and Reclamation shall provide the claimant with representation in the arbitration process, which representation shall not necessarily be an attorney-at-law; and

(3) If the claim is upheld, in whole or in part, then the operator shall pay the costs of the proceeding, as well as reasonable representation fees and costs of the claimant, in an amount not to exceed $1,000.

(e) Participation in the claims process created by this section shall be voluntary for the claimant. However, once the claimant has submitted a claim for determination under the provisions of this section, it is intended that the finding of the Division of Mining and Reclamation, if not taken to arbitration, shall be final. If arbitration is requested, it is intended that the results of such arbitration shall be final. The Division of Mining and Reclamation shall provide written notification to the claimant of the provisions of this subsection and shall secure a written acknowledgment from the claimant prior to processing a claim pursuant to the provisions of this section.

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(f) The operator shall pay any claim for which the operator is adjudged liable within thirty days of a final determination. If the claim is not paid within thirty days, the secretary shall issue a cessation order pursuant to section sixteen, article three of this chapter for all sites operated by the operator.

(g) No permit to mine coal shall be granted unless the permit applicant agrees to be subject to the terms of this section.

(h) To fulfill its responsibilities pursuant to this section, the Division of Mining and Reclamation may retain the services of inspectors, experts and other persons or firms as may be necessary.

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