

**TITLE 62: MINING**  
**CHAPTER I: DEPARTMENT OF NATURAL RESOURCES**

**PART 1847**  
**ADMINISTRATIVE AND JUDICIAL REVIEW**

Section

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**AUTHORITY:** Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

**SOURCE:** Adopted at 17 Ill. Reg. 10887, effective July 1, 1993; amended at 20 Ill. Reg. 1919, effective January 19, 1996; amended at 22 Ill. Reg. 20144, effective November 5, 1998; emergency amendment at 23 Ill. Reg. 12484, effective September 23, 1999, for a maximum of 150 days; emergency expired February 19, 2000; amended at 24 Ill. Reg. 5892, effective March 21, 2000; amended at 26 Ill. Reg. 4189, effective March 6, 2002; amended at 27 Ill. Reg. 4703, effective February 26, 2003.

Section 1847.1            Scope

Proceedings under this Part are subject to the general rules relating to procedure and practice at 62 Ill. Adm. Code 1848 and to Article 10 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1991, ch. 127, pars. 1010-5 et seq., including P.A. 87-823, effective July 1, 1992 (5 ILCS 100/10)).

Section 1847.2            Construction

These rules shall be construed to achieve the just, timely and inexpensive determination of all proceedings consistent with adequate consideration of the issues involved.

Section 1847.3            Permit and Related Administrative Hearings

- a) Within 30 days after an applicant is mailed written notice of the Department's final decision concerning an application for approval of exploration required under 62 Ill. Adm. Code 1772, a permit for surface coal mining and reclamation

operations, a permit revision, a permit renewal, a permit rescission or a transfer, assignment, or sale of permit rights, the applicant, or any person with an interest which is or may be adversely affected, may file a written request for a hearing to contest the decision. The procedures outlined in this Section apply to conflict of interest hearings requested under 62 Ill. Adm. Code 1705.21, review of valid existing right determinations under 62 Ill. Adm. Code 1761.12(g), review of exemption determinations under 62 Ill. Adm. Code 1702.11(f) and 1702.17(c)(2), formal review of decisions not to inspect or enforce under 62 Ill. Adm. Code 1840.17, review of a permit issued pursuant to 62 Ill. Adm. Code 1785.23, review of bond release decisions under Section 1847.9(i) of this Part and review of bond adjustment determinations under 62 Ill. Adm. Code 1800.15. Failure to file a request for hearing within this 30 day time period shall result in a waiver of the right to such hearing; requests for hearing filed after the expiration of the 30 day time period shall be dismissed on motion of the Department in accordance with 62 Ill. Adm. Code 1848.12. A request for hearing is deemed filed the day it is received by the Department.

- b) The hearing request shall state:
  - 1) The petitioner's name and address;
  - 2) A clear statement of the facts entitling the petitioner to relief, including the petitioner's interests which is or may be adversely affected by the Department's final decision;
  - 3) How the Department's final decision may or will adversely affect the interests specified;
  - 4) An explanation of each specific alleged error in the Department's final decision, including reference to the statutory and/or regulatory provisions allegedly violated;
  - 5) The specific relief sought from the Department; and
  - 6) Any other relevant information.
- c) Any party to the hearing may request that a pre-hearing conference be scheduled, in accordance with 62 Ill. Adm. Code 1848.7.
- d) Unless a pre-hearing conference has been scheduled or unless the person requesting the hearing waives the 30 day time limit, the Department shall start the hearing within 30 days after the hearing request. The hearing shall be on the record and adjudicatory in nature. No person who presided at an informal conference under 62 Ill. Adm. Code 1773.13(c) or a public hearing under 62 Ill.

Adm. Code 1773.14 shall either preside at the hearing or participate in the decision following the hearing.

- e) Notice of hearing. The petitioner and other interested persons shall be given written notice of the hearing in accordance with 62 Ill. Adm. Code 1848.5 at least 5 working days prior to the hearing. Notice of the hearing shall also be posted at the appropriate district or field office.
- f) Record of hearing. A complete record of the hearing and all testimony shall be made by the Department and recorded stenographically. Such record shall be maintained and shall be available to the public until at least 60 days after the final decision referred to in subsection (j) is issued.
- g) Burden of proof.
  - 1) In a proceeding to review a decision on an application for a new permit:
    - A) If the permit applicant is seeking review, the Department shall have the burden of going forward to establish a prima facie case as to the failure to comply with the applicable requirements of the State Act or regulations or as to the appropriateness of the permit terms and conditions, and the permit applicant shall have the ultimate burden of persuasion as to entitlement to the permit or as to the inappropriateness of the permit terms and conditions.
    - B) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion by a preponderance of the evidence that the permit application fails in some manner to comply with the applicable requirements of the State Act or regulations.
  - 2) In all other proceedings held under this Section, the party seeking to reverse the Department's decision shall have the burden of proving by a preponderance of evidence that the Department's decision is in error.
- h) Within 30 days after the close of the record, the hearing officer shall issue and serve, by certified mail, each party who participated in the hearing with a proposed decision consisting of proposed written findings of fact, conclusions of law and an order adjudicating the hearing request.
- i) Within 10 days after service of the hearing officer's proposed decision, each party to the hearing may file with the hearing officer written exceptions to the hearing officer's proposed decision, stating how and why such decision should be modified or vacated. All parties shall have 10 days after service of written

exceptions to file a response with the hearing officer. Failure to file written exceptions or a response is not a failure to exhaust administrative remedies and does not affect a party's right to judicial review.

- j) If no written exceptions are filed, the hearing officer's proposed decision shall become final 10 days after service of such decision. If written exceptions are filed, the hearing officer shall within 15 days following the time for filing a response either issue his final administrative decision affirming or modifying his proposed decision, or shall vacate the decision and remand the proceeding for rehearing.
- k) Request for temporary relief.
  - 1) Any party may file a request for temporary relief at any time prior to a decision by the hearing officer, so long as the relief sought is not the issuance of a permit where a permit application has been disapproved in whole or in part. The request for temporary relief shall include:
    - A) A detailed written statement setting forth the reasons why relief should be granted;
    - B) A statement of the specific relief requested;
    - C) A showing that there is substantial likelihood that the person seeking relief will prevail on the merits of the final determination of the proceeding; and
    - D) A showing that the relief sought will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air or water resources.
  - 2) The hearing officer may hold a hearing on any issue raised by the request for temporary relief.
  - 3) Within 15 days after the close of the record on the request for temporary relief, the hearing officer shall issue an order or decision granting or denying such temporary relief. Temporary relief may be granted only if:
    - A) All parties to the proceeding have been notified and given an opportunity to be heard on the request for temporary relief;
    - B) The person requesting such relief shows a substantial likelihood of prevailing on the merits of the final determination of the proceeding;

- C) Such relief will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air or water resources; and
  - D) The relief sought is not the issuance of a permit where a permit has been denied by the Department, in whole or in part, except that continuation under an existing permit shall be allowed where the applicant has a valid permit issued pursuant to 62 Ill. Adm. Code 300.
- l) Judicial review.
- 1) Following service of the Department's final administrative decision, any person with an interest which is or may be adversely affected and who has participated in the administrative hearing under this Section may request judicial review of that decision in accordance with the Administrative Review Law [735 ILCS 5/Art. III], if:
    - A) The person is aggrieved by the Department's final administrative decision; or
    - B) The hearing officer or Department failed to act within the time limits specified in the Surface Mining Control and Reclamation Act of 1977 (30 USC 1201 et seq.), the Surface Coal Mining Land Conservation and Reclamation Act (State Act) [225 ILCS 720] or this Section.
  - 2) Review under this subsection (1) shall not be construed to limit rights established in Section 8.05 of the State Act [225 ILCS 720/8.05]

(Source: Amended at 26 Ill. Reg. 4189, effective March 6, 2002)

Section 1847.4 Citation Hearings

- a) A person issued a notice of violation or cessation order under 62 Ill. Adm. Code 1843.11 or 1843.12, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice of violation or cessation order, may request review of that action by filing a request for hearing within thirty (30) days after receiving notice of the action. No extension of time will be granted for filing a request for hearing.
- b) Failure to file a request for hearing in accordance with subsection (a) shall not preclude challenging the fact of violation during a civil penalty review proceeding pursuant to 62 Ill. Adm. Code 1847.5.

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- c) If a hearing has been requested and a civil penalty is subsequently assessed for the notice of violation or cessation order for which the hearing was requested, the proposed penalty assessment must be forwarded to the Department, in accordance with Section 1847.5(c), within thirty (30) days after receipt of the proposed assessment, for placement in escrow, in order to continue the review proceedings. Failure to forward the money to the Department within thirty (30) days after receipt of the proposed penalty assessment shall result in a waiver of all legal rights to contest both the fact of the violation and the amount of the penalty; requests for hearing filed after the expiration of the thirty (30) day time period shall be dismissed on motion of the Department in accordance with 62 Ill. Adm. Code 1848.12.
- d) Contents of request. The hearing request shall include:
- 1) A statement of facts entitling the person to relief;
  - 2) A statement indicating the reasons why the fact of the violation is being contested.
  - 3) A statement of the specific relief requested; and
  - 4) Any other relevant information.
- e) Any party to the hearing may request that a pre-hearing conference be scheduled, in accordance with 62 Ill. Adm. Code 1848.7.
- f) Notice of hearing. The applicant and other interested persons shall be given written notice of the hearing in accordance with 62 Ill. Adm. Code 1848.5 at least five (5) working days prior thereto. Notice of the hearing shall also be posted at the appropriate district or field office, at the mine site, and to the extent possible in a newspaper of general circulation in the area of the mine at least five (5) days prior to the hearing.
- g) Record of hearing. A complete record of the hearing and all testimony shall be made by the Department and recorded stenographically. Such record shall be maintained and shall be available to the public until at least sixty (60) days after the final decision referred to in subsection (k) is issued.
- h) Burden of proof.
- 1) In citation hearing proceedings conducted under this Section, the Department shall have the burden of going forward to establish a prima facie case as to the validity of the notice, order, or modification, vacation or termination thereof.

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- 2) The ultimate burden of persuasion shall rest with the person who requested the hearing.
  - i) Within thirty (30) days after the close of the record, the hearing officer shall issue and serve, by certified mail, each party who participated in the hearing with a proposed decision consisting of proposed written findings of fact, conclusions of law and an order adjudicating the hearing request.
  - j) Within ten (10) days after service of the hearing officer's proposed decision, each party to the hearing may file with the hearing officer written exceptions to the hearing officer's proposed decision, stating how and why such decision should be modified or vacated. All parties shall have ten (10) days after service of written exceptions to file a response thereto with the hearing officer. Failure to file written exceptions or a response thereto is not a failure to exhaust administrative remedies and does not affect a party's right to judicial review.
  - k) If no written exceptions are filed, the hearing officer's proposed decision shall become final ten (10) days after service of such decision. If written exceptions are filed, the hearing officer shall within fifteen (15) days following the time for filing a response thereto either issue his final administrative decision affirming or modifying his proposed decision, or shall vacate the decision and remand the proceeding for rehearing.
  - l) The filing of a request for a hearing under this Section shall not operate as a stay of any notice or order, or of any modification, termination, or vacation of any notice or order.
  - m) Settlement agreement.
    - 1) If a settlement agreement is entered into at any stage of the hearing process, the person to whom the notice or order was issued will be deemed to have waived all right to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a waiver clause to this effect.
    - 2) If full payment of the amount specified in the settlement agreement is not received by the Department within the agreed upon period after the date of signing, the Department may enforce the agreement or rescind it and proceed to collect the original face amount of the assessment within thirty (30) days from the date of the rescission.
  - n) Summay disposition. Where the person against whom the notice of violation or cessation order was issued fails to appear at a hearing requested by him, that

person will be deemed to have waived his right to a hearing and the hearing officer may assume for purposes of the proceeding:

- 1) That each violation listed in the notice of violation or cessation order occurred; and
  - 2) The truth of any facts alleged in such notice or order.
- o) Temporary relief.
- 1) Pending completion of a hearing held under this Section, the applicant may file with the Department a written request for temporary relief from any notice or order issued under Section 8.06 of the State Act. The applicant shall not apply to the courts for immediate injunctive relief until a written order or decision granting or denying temporary relief is issued by the hearing officer.
  - 2) When to file. An application for temporary relief may be filed by any party to a proceeding under this Section at any time prior to a decision by the hearing officer.
  - 3) Contents of application. The application for temporary relief shall include:
    - A) A detailed written statement setting forth the reasons why relief should be granted;
    - B) A showing that there is a substantial likelihood that the findings of the Department will be favorable to the applicant;
    - C) A statement that the relief sought will not adversely affect the health and safety of the public or cause significant, imminent environmental harm to land, air or water resources;
    - D) If the application relates to an order of cessation issued pursuant to Section 8.06(b) or (c) of the State Act, a statement of whether the requirement of Section 8.07(d) of the State Act for decision on the request within five (5) days is waived; and
    - E) A statement of the specific relief requested.
  - 4) Response to application. Except as provided in subsection (o)(5)(B) below, all parties to the proceeding to which the application relates shall have five (5) days from the date of receipt of the application to file a written response.



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- 5) Determination on application.
- A) If the five (5) day requirement of Section 8.07(d) of the State Act is waived, the hearing officer shall expeditiously conduct a hearing and render a decision on the application for temporary relief.
  - B) If there is no waiver of the five (5) day requirement of Section 8.07(d) of the State Act, the following special rules shall apply:
    - i) The five (5) day time for decision shall not begin to run until the application is received by the hearing officer.
    - ii) The applicant shall serve all parties with a copy of the application simultaneously with the filing of the application. If service is accomplished by mail, the applicant shall inform such other parties by telephone at the time of mailing that an application is being filed, the contents of the application and with whom the application was filed.
    - iii) All parties may indicate their objection to the application by communicating such objection to the hearing officer and the applicant by telephone. All parties shall simultaneously reduce their objections to writing. The written objections must be immediately filed with the hearing officer and served upon the applicant.
    - iv) Upon receipt of the application the hearing officer shall immediately schedule a hearing and inform all parties of the time, date and location of the hearing by telephone. The hearing officer shall reduce such communication to writing in the form of a memorandum to the file. Such hearing may be conducted by telephone if all parties are so amenable.
    - v) The hearing officer shall either rule from the bench on the application for temporary relief, orally stating the reasons for his decision, or he shall within twenty-four (24) hours of completion of the hearing issue a written decision.
    - vi) The order or decision of the hearing officer shall be issued within five (5) working days after the receipt of the application for temporary relief.

- vii) If at any time after the initiation of this expedited procedure, the applicant requests a delay or acts in a manner so as to frustrate the expeditious nature of this proceeding or fails to supply the information required by subsection (o)(3), such action shall constitute a waiver of the five (5) day requirement of Section 8.07(d) of the State Act.
- 6) Temporary relief may be granted under such conditions as the hearing officer may prescribe, if:
- A) Unless waived, a hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;
  - B) The applicant shows that there is substantial likelihood that the finding of the Department will be favorable to him; and
  - C) Such relief will not adversely affect the health and safety of the public or cause significant, imminent environmental harm to land, air or water resources.
- p) Judicial review. Following service of the Department's final administrative decision, the permittee or any affected person may request judicial review of that decision in accordance with the Administrative Review Law [735 ILCS 5/Art. III].

(Source: Amended at 20 Ill. Reg. 1919, effective January 19, 1996)

Section 1847.5 Civil Penalty Assessment Hearings

- a) Within thirty (30) days after receipt of a proposed civil penalty assessment, the person against whom the proposed penalty was assessed may request a hearing to contest the fact of the violation or the proposed penalty by filing a written request for hearing.
- b) The request for hearing shall include:
  - 1) A short and plain statement indicating the reasons why either the amount of the penalty or the fact of the violation is being contested;
  - 2) Identification by number of all violations being contested; and

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- 3) The identifying number of the cashier's check, certified check, bank draft, personal check, or bank money order accompanying the hearing request.
- c) The hearing request shall be accompanied by:
    - 1) Full payment of the proposed assessment in the form of a cashier's check, certified check, bank draft, personal check or bank money order made payable to the Illinois Department of Natural Resources, Office of Mines and Minerals to be placed in an escrow account pending final determination of the assessment; and
    - 2) On the face of the payment an identification by number of the violation(s) for which payment is being tendered.
  - d) Failure to file the proposed penalty assessment with the Department within thirty (30) days after receipt of the proposed penalty assessment shall result in a waiver of all legal rights to contest both the fact of the violation and the amount of the penalty.
  - e) No extension of time will be granted for full payment of the proposed penalty assessment. If payment is not made within the time period established in this Section, the fact of the violation and the appropriateness of the amount of the penalty shall be deemed admitted, the request for hearing shall be dismissed on motion of the Department in accordance with 62 Ill. Adm. Code 1848.12, and the civil penalty assessment shall become a final administrative decision of the Department.
  - f) Any party to the hearing may request that a pre-hearing conference be scheduled, in accordance with 62 Ill. Adm. Code 1848.7
  - g) The applicant and other interested persons shall be given written notice of the hearing in accordance with 62 Ill. Adm. Code 1848.5 at least five (5) working days prior thereto. Notice of the hearing shall also be posted at the appropriate district or field office, at the mine site, and to the extent possible in a newspaper of general circulation in the area of the mine at least five (5) days prior to the hearing.
  - h) Settlement agreement.
    - 1) If a settlement agreement is entered into at any stage of the hearing process, the person to whom the notice or order was issued will be deemed to have waived all right to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement

agreement. The settlement agreement shall contain a waiver clause to this effect.

- 2) If full payment of the amount specified in the settlement agreement is not received by the Department within the agreed upon period after the date of signing, the Department may enforce the agreement or rescind it and proceed to collect the original face amount of the assessment within thirty (30) days from the date of the rescission.
- i) Summay disposition.
    - 1) Where the person against whom the proposed civil penalty is assessed fails to appear at a hearing, that person will be deemed to have waived his right to a hearing and the hearing officer may assume for purposes of the assessment:
      - A) That each violation listed in the notice of violation or cessation order occurred; and
      - B) The truth of any facts alleged in such notice or order.
    - 2) In order to issue an order or decision assessing the appropriate penalty when the person against whom the proposed civil penalty was assessed fails to appear at the hearing, the hearing officer shall either conduct an ex parte hearing or require the Department to furnish proposed findings of fact and conclusions of law.
  - j) Record of hearing. A complete record of the hearing and all testimony shall be made by the Department and recorded stenographically. Such record shall be maintained and shall be available to the public until at least sixty (60) days after the final decision referred to in subsection (n) of this Section has been issued.
  - k) Burden of proof. In civil penalty review proceedings, the Department shall have the burden of going forward to establish a prima facie case as to the fact of the violation and the amount of the civil penalty and the ultimate burden of persuasion as to the amount of the civil penalty. The person who requested the hearing shall have the ultimate burden of persuasion as to the fact of the violation.
  - l) Within thirty (30) days after the close of the record, the hearing officer shall issue and serve, by certified mail, each party who participated in the hearing with a proposed decision consisting of proposed written findings of fact, conclusions of law and an order adjudicating the hearing request.
    - 1) If the hearing officer finds that:

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- A) A violation occurred or that the fact of the violation is uncontested, he shall establish the amount of the penalty giving due weight to the Department's proposed civil penalty assessment amount;
  - B) No violation occurred, he shall issue an order that the proposed assessment be returned to the petitioner.
- 2) If the hearing officer reduces the amount of the civil penalty below that of the Department's proposed assessment, the Department shall within thirty (30) days remit the appropriate amount to the person who made the payment, with interest at the rate of six (6) percent, or at the prevailing United States Department of Treasury rate, whichever is greater.
  - 3) If the hearing officer increases the amount of the civil penalty above that of the Department's proposed assessment, the hearing officer shall order payment of the appropriate amount within thirty (30) days after receipt of the decision.
- m) Within ten (10) days after service of the hearing officer's proposed decision, each party to the hearing may file with the hearing officer written exceptions to the hearing officer's proposed decision, stating how and why such decision should be modified or vacated. All parties shall have ten (10) days after service of written exceptions to file a response thereto with the hearing officer. Failure to file written exceptions or a response thereto is not a failure to exhaust administrative remedies and does not affect a party's right to judicial review.
  - n) If no written exceptions are filed, the hearing officer's proposed decision shall become final ten (10) days after service of such decision. If written exceptions are filed, the hearing officer shall within fifteen (15) days following the time for filing a response thereto either issue his final administrative decision affirming or modifying his proposed decision, or shall vacate the decision and remand the proceeding for rehearing.
  - o) Judicial review. Following service of the Department's final administrative decision, the permittee or any affected person may request judicial review of that decision in accordance with the Administrative Review Law [735 ILCS 5/Art. III].

(Source: Amended at 20 Ill. Reg. 1919, effective January 19, 1996)

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- a) Whenever a show cause order is issued under 62 Ill. Adm. Code 1843.13, the permittee shall have thirty (30) days from the completion of service of the show cause order in which to file an answer and request a hearing.
  - b) Contents of answer. The permittee's answer to a show cause order shall contain a statement setting forth:
    - 1) A detailed explanation as to why a pattern of violations does not exist or has not existed, including all reasons for contesting:
      - A) The fact of any of the violations alleged by the Department as constituting a pattern of violations;
      - B) The willfulness of such violations; or
      - C) Whether such violations were caused by the unwarranted failure of the permittee;
    - 2) All mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;
    - 3) Any other alleged relevant facts; and
    - 4) Whether a hearing on the show cause order is desired.
  - c) Show cause hearings shall be held at the Department's Springfield, Illinois office.
  - d) Any party to the hearing may request that a pre-hearing conference be schedule, in accordance with 62 Ill. Adm. Code 1848.7.
  - e) Notice of hearing. The Department shall give written notice of the hearing in accordance with 62 Ill. Adm. Code 1848.5 to all parties. The Department shall publish the notice, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operation, and shall post it at the Department's office closest to the operation.
  - f) Settlement agreement. If a settlement agreement is entered into at any stage of the hearing process, the person to whom the show cause order was issued will be deemed to have waived all right to further review of the show cause order, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a waiver clause to this effect.
  - g) Summay disposition. Where the person against whom the show cause order was issued fails to appear at a hearing, that person will be deemed to have waived his

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right to a hearing and the hearing officer may assume the truth of any facts alleged in the show cause order.

- h) Burden of proof. In proceedings to suspend or revoke a permit, the Department shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.
- i) Record of hearing. A complete record of the hearing and all testimony shall be made by the Department and recorded stenographically. Such record shall be maintained and shall be available to the public until at least sixty (60) days after the final decision referred to in subsection (l) is issued.
- j) Within thirty (30) days after the close of the record, the hearing officer shall issue and serve, by certified mail, each party who participated in the hearing with a proposed decision consisting of proposed written findings of fact, conclusions of law and an order adjudicating the hearing request. The hearing officer's proposed decision shall include a determination as to whether a pattern of violations exists and, if appropriate, a proposed order suspending or revoking the permit. Permit suspension shall be imposed if the hearing officer determines that this remedy creates less potential harm to the environment and to the health and safety of the public than permit revocation.
- k) Within ten (10) days after service of the hearing officer's proposed decision, each party to the hearing may file with the hearing officer written exceptions to the hearing officer's proposed decision, stating how and why such decision should be modified or vacated. All parties shall have ten (10) days after service of written exceptions to file a response thereto with the hearing officer. Failure to file written exceptions or a response thereto is not a failure to exhaust administrative remedies and does not affect a party's right to judicial review.
- l) If no written exceptions are filed, the hearing officer's proposed decision shall become final ten (10) days after service of such decision. If written exceptions are filed, the hearing officer shall within fifteen (15) days following the time for filing a response thereto either issue his final administrative decision affirming or modifying his proposed decision, or shall vacate the decision and remand the proceeding for rehearing.
- m) Failure to file a timely answer or request for hearing on a show cause order upon which service is deemed complete under 62 Ill. Adm. Code 1843.14 shall, upon motion of the Department in accordance with 62 Ill. Adm. Code 1848.12, result in the Department's issuance of an order suspending or revoking the permit and the permittee's right to mine, which shall constitute the Department's final administrative decision in the matter.

- n) Judicial review. Following service of the Department's final administrative decision, the permittee may request judicial review of that decision in accordance with the Administrative Review Law [735 ILCS 5/Art. III].

(Amended at 20 Ill. Reg. 1919, effective January 19, 1996.)

Section 1847.7      Bond Forfeiture Hearings

- a) Time for request. After receipt of bond forfeiture notification in accordance with 62 Ill. Adm. Code 1800.50(a)(1), the permittee may request a hearing. The hearing must be requested within fifteen (15) days after the permittee's receipt of bond forfeiture notification. If the permittee does not request a hearing within fifteen (15) days after receipt of the bond forfeiture notification, the Department shall issue a final administrative decision ordering forfeiture. The Department's final administrative decision ordering bond forfeiture shall be transmitted to the Attorney General for collection at the expiration of the time to perfect administrative review pursuant to subsection (1).
- b) Bond forfeiture hearings shall be held at the Department's Springfield, Illinois office.
- c) Any party to the hearing may request that a pre-hearing conference be schedule, in accordance with 62 Ill. Adm. Code 1848.7.
- d) Notice of hearing. All parties shall be given written notice of the hearing in accordance with 62 Ill. Adm. Code 1848.5 at least five (5) working days prior thereto. Notices of the hearing shall also be posted at the Department's offices.
- e) Settlement agreement. If a settlement agreement is entered into at any stage of the hearing process, the person to whom the bond forfeiture notification was issued will be deemed to have waived all right to further review of the bond forfeiture notification, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a waiver clause to this effect.
- f) Summay disposition. Where the person against whom the bond forfeiture notification was issued fails to appear at a hearing, that person will be deemed to have waived his right to a hearing and the hearing officer may assume the truth of any facts alleged in the bond forfeiture notification.
- g) Burden of proof. In bond forfeiture proceedings the Department shall have the burden of going forward to establish a prima facie case for bond forfeiture. The ultimate burden of persuasion that the bond should not be forfeited shall rest with the permittee.



- h) Record of hearing. A complete record of the hearing and all testimony shall be made by the Department and recorded stenographically. Such record shall be maintained and shall be available to the public until at least sixty (60) days after the final decision referred to in subsection (k) is issued.
- i) Within thirty (30) days after the close of the record for the bond forfeiture hearing, the hearing officer shall issue and serve, by certified mail, each party who participated in the hearing with a proposed decision consisting of proposed written findings of fact, conclusions of law and an order adjudicating the bond forfeiture determination.
- j) Within ten (10) days after service of the hearing officer's proposed decision, each party to the hearing may file with the hearing officer written exceptions to the hearing officer's proposed decision, stating how and why such decision should be modified or vacated. All parties shall have ten (10) days after service of written exceptions to file a response thereto with the hearing officer. Failure to file written exceptions or a response thereto is not a failure to exhaust administrative remedies and does not affect a party's right to judicial review.
- k) If no written exceptions are filed, the hearing officer's proposed decision shall become final ten (10) days after service of such decision. If written exceptions are filed, the hearing officer shall within fifteen (15) days following the time for filing a response thereto either issue his final administrative decision affirming or modifying his proposed decision, or shall vacate the decision and remand the proceeding for rehearing.
- l) The Department's final administrative decision may be appealed in accordance with the Administrative Review Law [735 ILCS 5/Art. III].

(Source: Amended at 20 Ill. Reg. 1919, effective January 19, 1996)

#### Section 1847.8 Individual Civil Penalty Hearings

- a) Scope. These regulations govern administrative review of proposed individual civil penalty assessments under Section 8.04(f) of the State Act against a director, officer or agent of a corporation. An individual served a notice of proposed individual civil penalty assessment under 62 Ill. Adm. Code 1846 may file a petition for review with the Department in accordance with this Section.
- b) Time for filing.
  - 1) A petition for review of a notice of proposed individual civil penalty assessment must be filed within thirty (30) days of its service on the individual.

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- 2) No extension of time will be granted for filing a petition for review of a notice of proposed individual civil penalty assessment. Failure to file a petition for review within the time period provided in subsection (b)(1) shall be deemed an admission of liability by the individual and the notice of proposed assessment shall become a final administrative decision of the Department.
  - c) Contents of petition. An individual filing a petition for review of a notice of proposed individual civil penalty assessment shall provide a concise statement of the facts entitling the individual to relief.
  - d) Any party to the hearing may request that a pre-hearing conference be schedule, in accordance with 62 Ill. Adm. Code 1848.7.
  - e) Notice of hearing. The hearing officer shall give notice of the hearing in accordance with 62 Ill. Adm. Code 1848.5 to all interested parties at least five (5) working days prior thereto.
  - f) Settlement agreement. If a settlement agreement is entered into at any stage of the hearing process, the person to whom the individual civil penalty was proposed to be assessed will be deemed to have waived all right to further review of the proposed assessment, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a waiver clause to this effect.
  - g) Summay disposition. Where the person against whom the individual civil penalty was proposed to be assessed fails to appear at the hearing, that person will be deemed to have waived his right to a hearing and the hearing officer may assume the truth of any facts alleged in the notice of proposed individual penalty assessment.
  - h) Record of hearing. A complete record of the hearing and all testimony shall be made by the Department and recorded stenographically. Such record shall be maintained and shall be available to the public until at least sixty (60) days after the Director's decision referred to in subsection (k) is issued.
  - i) Elements; burdens of proof.
    - 1) The Department shall have the burden of going forward with evidence to establish prima facie case that the individual was a corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal under 62 Ill. Adm. Code 1846. A showing that the Department served the individual with a notice of proposed individual civil penalty assessment in accordance with 62 Ill. Adm. Code 1846.17, that at the time of such

service the individual was a director, officer or agent of the corporate permittee and that a violation that was the subject of the cessation order issued to the corporate permittee has not been abated is sufficient to establish the Department's prima facie case.

- 2) The individual shall have the ultimate burden of persuasion by a preponderance of the evidence as to the elements set forth in subsection (i)(1).
- j) Within thirty (30) days after the close of the record, the hearing officer shall issue and serve, by certified mail, each party who participated in the hearing with a proposed decision consisting of proposed written findings of fact, conclusions of law on each of the elements set forth in subsection (i)(1) and an order adjudicating the hearing request.
- k) Within fifteen (15) days after service of the hearing officer's proposed decision, each party to the hearing may file with the Director written exceptions to the hearing officer's proposed decision, stating how and why such decision should be modified or vacated. All parties shall have fifteen (15) days after service of written exceptions to file a response thereto with the Director. Failure to file written exceptions or a response thereto is not a failure to exhaust administrative remedies and does not affect a party's right to judicial review.
- l) If no written exceptions are filed, the hearing officer's proposed decision shall become final fifteen (15) days after service of such decision. If written exceptions are filed, the Director shall within fifteen (15) days following the time for filing a response thereto either issue the Department's final administrative decision affirming or modifying the hearing officer's decision, or shall vacate the hearing officer's decision and remand the proceeding to the hearing officer for further action.
- m) Judicial review. The Department's final administrative decision shall be appealed in accordance with the Administrative Review Law (Ill. Rev. Stat. 1991, ch. 110, pars. 3-101 through 3-112) (735 ILCS 5/3).

#### **Section 1847.9 Bond Release Public Hearings**

- a) A hearing requested pursuant to 62 Ill. Adm. Code 1800.40(d) shall be held within 30 days after receipt of the request for hearing.
- b) Bond release public hearings shall be held in the locality of the surface coal mining operation from which bond release is sought, at the location of the Department's office, or at the State capital, at the option of the objector.

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- c) Notice of hearing. All parties shall be given written notice of the hearing at least 5 working days prior to the hearing. The Department shall advertise the date, time and location of the hearing in a newspaper of general circulation in the locality of the surface coal mining operation for 2 consecutive weeks.
  - d) The Department shall appoint a hearing officer to conduct the hearing. The hearing officer shall be a licensed attorney or an employee of the Department. The hearing officer shall conduct a fair hearing and shall take all necessary action to avoid delay, to maintain order, and to develop a clear and complete record. He or she shall have all powers necessary to these ends, including but not limited to the power to change the time and place of the hearing and adjourn the hearing from time to time or from place to place within the county of the surface coal mining and reclamation operation and to give due notice of that action consistent with the notice requirement of subsection (c).
  - e) The hearing shall be informal.
    - 1) All participants in the public hearing shall have the right to be represented by counsel or by some other authorized representative.
    - 2) The hearing officer shall allow the applicant and any interested persons to present data, views or arguments relevant to the bond release application.
    - 3) Where necessary in order to prevent undue prolongation of the hearing, the hearing officer shall establish a time period during which the participants shall be heard. Every effort will be made to allow all persons who wish to make a statement to do so.
    - 4) A verbatim transcript of the hearing shall be maintained by a court reporter appointed by the Department and shall constitute a part of the record. Copies of the transcript shall be furnished, at cost, upon request to the court reporter. The record shall be maintained by the Department and shall be accessible to the public at the Department's Springfield Office until final release of the applicant's reclamation performance bond.
    - 5) The record shall remain open for additional written statements responsive to statements or other documents for 10 days following the close of the hearing, or for such other reasonable time as the hearing officer may direct.
  - f) If the hearing request is withdrawn, the hearing need not be held.

- g) Record of hearing. A complete record of the hearing and all testimony shall be made by the Department and recorded stenographically. The record shall be maintained and shall be available to the public until at least 60 days after the Department's final decision on the bond release application.
- h) The Department shall issue and serve, by certified mail, each party who participated in the hearing with the Department's bond release decision.
- i) Any person with a valid legal interest who either filed written objections to the bond release or were a party to the public hearing may request an administrative hearing on the Department's final decision on the bond release application by filing a request for hearing in accordance with the procedures set forth in Section 1847.3.

(Source: Amended at 27 Ill. Reg. 4703, effective February 26, 2003)