TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1848
GENERAL RULES RELATING TO PROCEDURE AND PRACTICE

Section

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

SOURCE: Adopted at 17 Ill. Reg. 10973, effective July 1, 1993; amended at 20 Ill. Reg. 1989, effective January 19, 1996; recodified from the Department of Mines and Minerals to the Department of Natural Resources at 22 Ill. Reg. 7712.

Section 1848.1 Scope and Purpose

a) In the interest of establishing and maintaining uniformity to the extent feasible, this Part set forth, unless otherwise noted, general rules applicable to hearings conducted under 62 Ill. Adm. Code 1847.

b) As used in this Part and unless otherwise specified, "hearing" shall be deemed to include the various types of hearing set forth in 62 Ill. Adm. Code 1847.

Section 1848.2 Documents

a) Filing of documents. The effective filing date for documents shall be the date of receipt by the Department's Springfield, Illinois office.

b) Service. A copy of each document filed in a review proceeding under 62 Ill. Adm. Code 1847 must be served by the filing party on the other party or parties to the proceeding. In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the case on behalf of his client, and service of any document relating to the proceeding shall be made upon such attorney in addition to any other service specifically required by law. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

c) Retention of documents. All documents, books, records, papers, etc., received in evidence in a hearing or submitted for the record in any proceeding will be retained with the official record of the proceeding.

d) Record address. Every person who files a document for the record or requests notice in connection with a proceeding conducted under 62 Ill. Adm. Code 1847 shall at the time of his initial filing in the matter state his address. If a person fails to furnish a record address as required herein he will not be entitled to notice in connection with the proceedings.

e) Computation of time. Computation of any period of time prescribed herein shall be done in accordance with 62 Ill. Adm. Code 1700.15.

f) Extensions of time.

1) Upon a showing of just cause, the time for filing or serving any document may be extended by the hearing officer before whom the proceeding is pending except where such extension is contrary to law or regulation.

2) A request for an extension of time must be filed within the time allowed for the filing or serving the document.

g) Petitions for review and requests for hearing. Petitions for review and requests for hearing under 62 Ill. Adm. Code 1847 shall be filed with the Illinois Department of Natural Resources, Office of Mines and Minerals, Land Reclamation Division, 524 S. Second Street, Springfield, Illinois 62701-1787.

Section 1848.3 Transcript of Hearings

A verbatim transcript of any hearing held under 62 Ill. Adm. Code 1847 shall be provided to the Department 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.

Section 1848.5 Notice of Hearing

The hearing officer shall give written notice of hearing to the parties. Such notice shall include:

a) A statement of the time, place and nature of the hearing;

b) A statement of the legal authority and jurisdiction under which the hearing is to be held;

c) A reference to the particular section of the substantive and procedural statutes and rules involved;

d) A short and plain statement of the matters asserted, the consequences of a failure to respond and the official file or other reference number or name;

e) The names and mailing addresses of the hearing officer and all parties and other persons to whom notice of the hearing is given.;

f) Permit hearing notices. If the hearing concerns review of a permit decision under 62 Ill. Adm. Code 1847.3, a notice containing the information set forth in subsections (a) and (b) above shall be published in a newspaper of general circulation published in each county in which any part of the area of the affected land is located. The notice shall appear no more than fourteen (14) days nor less than seven (7) days prior to the date of the hearing. The notice shall be no less than one eighth page in size, and the smallest type used shall be twelve point and shall be enclosed in a black border no less than 1/4 inch wide. The notice shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear.

(Source: Amended at 20 Ill. Reg. 1989, effective January 19, 1996)

Section 1848.6 Ex Parte Contacts

Ex parte contacts between the parties and the hearing officer concerning the merits of a proceeding are prohibited except upon notice and opportunity for all parties to participate. This Section does not prohibit communications concerning case status or advice concerning compliance with procedural requirements unless the area of inquiry is in fact an area of controversy in the proceeding.

Section 1848.7 Pre-Hearing Conferences

At the request of any party to a hearing, a pre-hearing conference shall be scheduled by the hearing officer:

a) To define the factual and legal issues to be litigated at the hearing;

b) To set a discovery schedule for the hearing, in accordance with 62 Ill. Adm. Code 1848.9;

c) To schedule a date for the hearing; and

d) To arrive at an equitable settlement of the hearing request, if possible.

Section 1848.8 Intervention

a) Any person may petition for leave to intervene at any stage of a proceeding under 62 Ill. Adm. Code 1847.

b) A petitioner for leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and, if he had a statutory right to initiate the proceeding, a showing of why his interest is or may be adversely affected.

c) The Department or the hearing officer shall grant the petition to intervene where the petitioner:

1) Had a statutory right to initiate the proceeding in which he wishes to intervene; or

2) Has an interest which is or may be adversely affected by the outcome of the proceeding.

d) If neither subsection (c)(1) nor (c)(2) above apply, the hearing officer or the Department shall consider the following in determining whether intervention is appropriate:

1) The nature of the issues;

2) The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

3) The ability of the petitioner to present relevant evidence and argument; and

4) The effect of intervention on the agency's implementation of its statutory mandate.

e) Any person granted leave to intervene in a proceeding shall participate in such proceeding as a full party or, if permitted by the Department or the hearing officer, in a capacity less than that of a full party. If an intervener wishes to participate in a limited capacity, the extent and the terms or the hearing officer shall be defined by the Department or the hearing officer.

Section 1848.9 Discovery

a) Discovery methods. Parties may obtain discovery by one or more of the following methods:

1) Depositions upon oral examination or upon written questions;

2) Written interrogatories;

3) Production of documents or things or permission to enter upon land or other property, for inspection and other purposes; or

4) Requests for admission.

b) Time for discovery. A party desiring to initiate discovery shall request a pre-hearing conference for purposes of setting a discovery schedule. At such pre-hearing conference, th requesting party shall present the hearing officer and other parties with a proposed discovery plan and schedule. Any discovery approved by the hearing office shall be conducted in accordance with this Section.

c) Scope of discovery.

1) Unless otherwise limited by order of the hearing officer in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. To the extent that any aspect of discovery is not addressed in this Section, the rules of discovery as applied in civil cases in the circuit courts of Illinois shall be followed. In the case of conflict between this Section and the rules of discovery as applied in civil cases in the circuit courts of Illinois, the latter shall govern.

2) Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the hearing officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

A) The discovery may not be had;

B) The discovery may be had only on specified terms and conditions, including a designation of the time or place;

C) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

D) Certain matters not relevant may not be inquired into, or the scope of discovery shall be limited to certain matters;

E) Discovery shall be conducted with no one present except persons designated by the hearing officer; or

F) A trade secret or other confidential research, development, or commercial information may not be disclosed or shall be disclosed only in a designated way.

d) Sequence and timing of discovery. Unless the hearing office upon motion, for the convenience of parties and witnesses and in the interest of justice, orders others, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

e) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

1) A party is under a duty to timely supplement his response with respect to any question directly addressed to:

A) The identity and location of persons having knowledge of discoverable matters; and

B) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify and the substance of his testimony.

2) A party is under a duty to timely amend a prior response if he later obtains information upon the basis of which:

A) He knows the response was incorrect when made; or

B) He knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

3) A duty to supplement responses may be imposed by order of the hearing officer or agreement of the parties.

f) Stipulations. If the parties so stipulate, depositions and discovery may take place before any person, for any purpose, at any time or place and in any manner.

g) Effect of discovery disclosure. Disclosure of any matter obtianed by discovery is not conclusive, but may be contradicted by other evidence.

h) Reasonable attempt to resolve differences required. Every motion with respect to discovery shall incorporate a statement that after personal consultation and reasonable attempts to resolve differences, the parties have been able to reach an accord. The hearing officer may order that reasonable costs, including attorney's fees, be assessed against a party or his attorney who unreasonably fails to facilitate discovery under this provision.

i) Depositions upon oral examination or upon written questions.

1) Any party may take the testimony of any party or person by deposition upon oral examination or written questions for the purpose of discovery or for use as evidence in the action. Any party desiring to take the testimony of any other party or other person by deposition upon oral examination shall, without leave of the hearing officer, give reasonable notice in writing to every other party, to the person to be examined and to the hearing officer, of:

A) The proposed time and place of taking the deposition;

B) The name and address of each person to be examined, if known, or if the name is not known, a general description sufficient to identify him or the particular group or class to which he belongs;

C) The matter upon which each person will be examined;

D) Whether the deposition is to be a discovery deposition or an evidence deposition. In the absence of specification the deposition shall be a discovery deposition only; and

E) The name or descriptive title and address of the officer before whom the deposition is to be taken.

2) A deposition upon oral examination may be taken before any officer authorized to administer oaths by the laws of Illinois.

3) Scope and manner of examination and cross-examination.

A) The deponent in a discovery deposition may be examined regarding any matter subject to discovery under these rules. He may be questioned by any party as if under cross-examination.

B) In an evidence deposition the examination and cross-examination shall be the same as though the deponent were testifying at the hearing.

4) Taking of the deposition. The actual taking of the deposition upon oral examination shall proceed as follows:

A) The deposition shall be on the record;

B) The officer before whom the deposition is to be taken shall put the witness under oath or affirmation;

C) Examination and cross-examination shall proceed as at a hearing;

D) Objections made at the time of the examination shall be included in the deposition. The officer before whom the deposition is taken shall not rule on objections to the evidence; evidence objected to shall be taken subject to the objection.

E) In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written questions to the officer, who shall propound them to the witness and record the answers verbatim.

5) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature, unless examination and signature are waived by the deponent. The officer shall certify within the deposition that the deponent was duly sworn by him and that the

deposition is a true record of the testimony given by the deponent. If the deposition is not signed by the deponent, the officer shall certify the deposition and state the reason for the omission of the signature. A certified deposition requires no further proof of authenticity.

6) Fees and charges. The party at whose instance the deposition is taken shall pay the fees of the witness and of the officer and the charges of the recorder or stenographer for attending.

7) Depositions on written questions.

A) Where the deposition is to be taken upon written questions, the party taking the deposition shall serve a copy of the questions, showing each question separately and consecutively numbered, on every other party with a notice stating the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be taken. Within fourteen (14) days after service, any other party may serve cross questions. Within seven (7) days after being served with cross questions a party may likewise serve redirect questions. Within seven (7) days after being served with redirect questions, a party may likewise serve recross questions.

B) The party at whose instance the deposition is taken shall transmit a copy of the notice and copies of the initial and subsequent questions served to the officer designated in the notice who shall proceed promptly to take the testimony of the deponent in response to the questions and to prepare, certify, and mail the deposition, attaching thereto the coyp of the notice and the questions received by him. No party, attorney or person interested in the event of the action (unless he is the deponent) shall be present during the taking of the deposition or dictate, write or draw up any answers to the questions.

8) Use of depositions.

A) Purpose for which discovery depositions may be used. Discovery depositions taken under the provisions of this Section may be used only:

i) For the purpose of impeaching the testimony of the deponent as a witness;

ii) As an admission made by a party or by an officer or agent of a party;

iii) If otherwise admissible as an exception to the hearsay rule; or

iv) For any purpose for which an affidavit may be used.

B) Use of evidence depositions. Evidence depositions may be used for any purpose for which a discovery deposition may be used, and may be used by any party for any purpose if the hearing officer finds that at the time of the hearing:

i) The deponent is dead or unable to attend or testify because of age, sickness, infirmity or imprisonment;

ii) The deponent is out of the county, unless it appears that the absence was procured by the party offering the deposition, provided that a party who is not a resident of this state may introduce his own deposition if he is absent from the county; or

iii) The party offering the deposition has exercised reasonable diligence but has been unable to procure the attendance of the deponent by subpoena; or finds, upon notice and motion in advance of the hearing, that exceptional circumstances exist which make it desirable, in the interest of justice and with due regard for the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

C) Partial use. If only a part of a deposition is read or used at the hearing by a party, any other party at that time read or use or require him to read any other part of the deposition which ought in fairness be considered in connection with the part read or used.

j) Written interrogatories to parties.

1) Directing interrogatories. A party may direct written interrogatories to any other party. One (1) copy of the interrogatories shall be filed with the hearing officer with proof of service on all other parties entitled to notice. Written interrogatories shall be reasonably spaced so as to permit the answering party to make his answer on the interrogatories served upon

him. The answering party may attach an addendum to the copies if the space provided is insufficient.

2) Duty of attorney. It is the duty of an attorney directing interrogatories to restrict them to the subject matter of the particular case, to avoid undue detail, and to avoid the imposition of any unnecessary burden or expense on the answering party.

3) Answers and objections. Within twenty-eight (28) days after service of the interrogatories upon the party to whom they are directed, he shall file a sworn answer or an objection to each interrogatory, with proof of service upon all other parties entitled to notice. If an interrogatory is objected to, the reasons for objection shall be stated in lieu of the answer. Any objection to an answer or to the refusal to answer an interrogatory shall be heard by the hearing officer upon prompt notice and motion of the party propounding the interrogatory. The answering party shall set forth in full each interrogatory being answered immediately preceding the answer. Sworn answers to interrogatories directed to a public or private corporation or a partnership, association or governmental agency shall be made by an officer, partner or agent, who shall furnish such information as is available to the party.

4) Interrogatories may relate to any matters which can be inquired into under subsection (c). An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the hearing officer may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-hearing conference or other later time.

5) Option to produce documents. When the answer to an interrogatory may be obtained from documents in the possession or control of the party on whom the interrogatory was served, it shall be a sufficient answer to the interrogatory to specify those documents and to afford the party serving the interrogatory a reasonable opportunity to inspect the documents and to make copies thereof or compilations, abstracts, or summaries therefrom.

6) Use of answers to interrogatories. Anwers to interrogatories may be used in evidence to the same extent as a discovery deposition.

k) Discovery of documents, objects and tangible things; inspection of real estate.

1) Scope. Any party may by written request direct any other party to produce for inspection, copying, reproduction, photographing, testing or sampling

specified documents, objects, or tangible things, or to permit access to real estate for the purpose of making surface or subsurface inspections or surveys or photographs, or tests or taking samples, or todisclose information calculated to lead to the discovery of the whereabouts of any of these items, whenever the nature, contents, or condition of such documents, objects, tangible things, or real estate is relevant to the subject matter of the action.

2) The request shall specify a reasonable time, which shall not be less than twenty-eight (28) days except by agreement or by order of the hearing officer, and the place and manner of making the inspection and performing the related acts. One copy of the request shall be filed with the proof of service on all other parties entitled to notice.

3) A party served with the written request shall:

A) Comply with the request within the time specified; or

B) Serve upon the party who made the request written objections on the ground that the request is improper in whole or in part. If written objections to a party of the request are made, the remainder of the request shall be complied with. Any objection to the request or the refusal to respond shall be heard by the hearing officer upon prompt notice and motion of the party submitting the request. If the party claims that the item is not in his possession or control or that he does not have information calculated to lead to the discovery of its whereabouts, he may be ordered to submit to examination in open hearing or by deposition regarding such claim. If requested, the party producing documents shall furnish an affidavit stating whether the production is complete in accordance with the request.

l) Admissions.

1) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter or fact.

2) Each matter of which an admission is requested is admitted unless, within twenty-eight (28) days after service of the request or such shorter or longer time as the hearing officer may allow, the party to whom the request is directed serves on the requesting party:

A) A sworn statement denying specifically the relevant matters of which an admission is requested;

B) A sworn statement setting forth in detail the reasons why he can neither truthfully admit or deny them; or

C) Written objections on the grounds that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. Any objection to a request or to an answer shall be heard by the hearing officer upon prompt notice and motion of th eparty making the request.

3) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.

4) The party who has requested the admission may move to determine the sufficiency of the answer or objection. Unless the hearing officer determines that an objection is justified, he shall order that an answer be served. If the hearing officer determines that an answer does not comply with the requirement of subsection (1)(2), he may order either that the matter is admitted or that an amended answer be served. The hearing officer may, in lieu of these orders, determine that final deposition of the request be made at a pre-hearing conference or at a designated time prior to hearing.

5) Any matter admitted under this subsection is conclusively established unless the hearing officer on motion permits withdrawal or amendment of the admission.

6) Any admission made by a party under this subsection is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

m) Failure to comply with rules or orders relating to discovery.

1) If a deponent fails to answer a question propounded, or a party upon whom a request is made pursuant to subsectoin (k), or a party upon whom answers to interrogatories are served fails to adequately respond or objects to the request, or any part thereof, or fails to permit inspection as

requested, the discovering party may move the hearing officer for an order compelling a response or inspection in accordance with the request.

A) The motion shall set forth:

i) The nature of the questions or request;

ii) The response or objection of the party upon whom the request was served; and

iii) Arguments in support of the motion.

B) If the motion arose out of a failure to answer questions at a deposition, the motion shall be accompanied by a certified copy of the deposition transcript or a certified copy of that portion of the transcript containing the questions and responses.

2) For purposes of this subsection, an evasive answer or incomplete answer or response shall be treated as a failure to answer or respond.

3) In ruling on a motion made pursuant to this subsection, the hearing officer may issue a protective order, if authorized pursuant to subsection (c)(2).

n) Failure to comply with orders compelling discovery. If a party or an officer, director, or other agent of a party fails to obey an order to provide or permit discovery, the hearing officer before whom the action is pending may make such orders in regard to the failure as are just, including but not limited to the following:

1) An order that the matters sought to be discovered or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of th eparty obtaining the order;

2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters into evidence; or

3) An order striking pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any party thereof, or rendering a judgment by default against the disobedient party.

Section 1848.11 Expert Witnesses

a) Definitions.

1) Definition of expert witness. An expert is a person who, because of education, training or experience, possesses knowledge of a specialized nature beyond that of the average person on a factual matter material to a claim or defense in pending litigation and who may be expected to render an opinion within his expertise at hearing. He may be an employee of a party, a party or an independent contractor.

2) Consulting expert. A consulting expert is a person who possesses the same qualifications as an expert witness and who has been retained or specially employed in anticipation of litigation or preparation for hearing but who is not to be called at hearing to render opinions within his area of expertise.

b) Disclosure.

1) Expert witnesses. Where the testimony of experts is reasonably contemplated, the parties shall act in good faith to seasonably:

A) Ascertain the identity of such witnesses; and

B) Obtain from them the opinions upon which they may be requested to testify.

2) The hearing officer shall enter an order scheduling the dates upon which all expert witnesses shall be disclosed. Upon disclosure, the expert's opinion may be the subject of discovery as provided in subsection (c). Failure to make the disclosure required by the hearing officer or to comply with the discovery contemplated in this subsection will result in disqualification of the expert as a witness.

3) Consulting expert. Except as provided in subsection (c)(5), a party need not disclose the identity of a consulting expert.

c) Discovery.

1) Upon interrogatory propounded for that purpose, the party retaining or employing an expert witness shall be required to state:

A) The subject matter on which the expert is expected to testify;

B) His conclusions and opinions and the bases therefore; and

C) His qualifications.

2) The party answering such interrogatories may respond by submitting the signed report of the expert containing the required information.

3) A party shall be required to seasonably supplement his answers to interrogatories propounded under this Section as additional information becomes known to the party or his counsel.

4) The provisions of subsections (c) and (d) also apply to a party or an employee of a party who will render an opinion within his expertise at the time of hearing. However, the provisions of subsections (c) and (d) do not apply to parties or employees of entities whose professional acts or omissions are the subject of the litigation. The opinions of these latter persons may be the subject of disclosure by deposition only.

5) The identity, opinions and work product of consulting experts are discoverable only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject matter by other means. However, documents, objects and tangible things which are in the possession of a consulting expert and which do not contain his opinions may be obtained by a request for that purpose served upon the party retaining him.

6) Unless manifest injustice would result, each party shall bear the expense of all fees charged by his expert witness or witnesses.

d) Scope of testimony. To the extent that the facts known or opinions held by an expert have been developed in discovery proceedings through interrogatories, deposition, or requests to produce, his direct testimony at hearing may not be inconsistent with nor go beyond the fair scope of the facts known or opinions disclosed in such discovery proceedings. However, he shall not be prevented from testifying as to facts or opinions on matters regarding which inquirey was not made in the discovery proceedings.

Section 1848.12 Motions

a) Except for oral motions made in proceedings on the record, or where the hearing officer otherwise directs, each motion shall:

1) Be in writing;

2) State whether the movant wishes to argue the motion orally;

3) Contain a concise statement of supporting grounds; and

4) Be accompanied by a proposed order for entry by the hearing officer.

b) Unless the hearing officer orders otherwise, any party to a proceeding in which a motion is filed under subsection (a) shall have fifteen (15) days from service of the motion to file a statement in response.

c) Failure to make a timely motion or to file a statement in response may be construed as a waiver of objection.

d) The hearing officer shall rule on all motions as expeditiously as possible.

Section 1848.13 Consolidation of Proceedings

When proceedings involving a common question of law or fact are pending before a hearing officer, such proceedings are subject to consolidation pursuant to a motion by a party or at the initiative of the hearing officer.

Section 1848.15 Rules of Evidence; Official Notice

a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the circuit courts of Illinois shall be followed. Evidence not admissible under those rules of evidence may be admitted, however, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.

b) Subject to the evidentiary requirements of subsection (a) above, a party may conduct cross-examination required for a full and fair disclosure of the facts.

c) Official notice may be taken of the public records of the Department and of any matters of which the circuit courts of Illinois may take judicial notice. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge. Parties shall be notified of the material noticed either before or during the hearing, and they shall be afforded an opportunity to contest the material so noticed. The Department's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence.

Section 1848.16 Powers of Hearing Officers

Hearing Officers shall be licensed to practice law in the State of Illinois and not be employed by the Department. Hearing officers may:

a) Administer oaths and affirmations;

b) Issue subpoenas;

c) Issue appropriate orders relating to discovery;

d) Rule on procedural requests or similar matters;

e) Hold conferences for settlement or simplification of the issues;

f) Regulate the course of the hearing;

g) Rule on offers of proof and receive relevant evidence;

h) Where applicable, conduct site inspections of the land to be affected or where the surface coal mining and reclamation operations are located;

i) Enter appropriate orders;

j) Examine witnesses and direct witnesses to testify, limit the number of times any witness may testify and limit repetitive or cumulative testimony;

k) Take other actions authorized by these regulations or by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1991 ch. 96 1/2, par. 7901.01 et seq.) (225 ILCS 720).

Section 1848.17 Disqualification of Hearing Officer

a) A hearing officer, on his own motion or that of a party,, may be disqualified in a proceeding due to bias or conflict of interest.

b) A motion for disqualification filed pursuant to this Sectoin shall:

1) Be in writing;

2) Contain a statement of supporting grounds; and

3) Be filed with the Director and served upon all parties.

c) Unless the Director orders otherwise, the hearing officer and any party to a proceeding in which a motion is filed under this Section shall have ten (10) days from service of the motion to file a response.

d) The Director shall rule on all motions filed pursuant to this Section as expeditiously as possible. If a motion filed under this Section is granted, the Director shall appoint a new hearing officer for the proceeding.

Section 1848.18 Postponement or Continuance of Hearing

A hearing may be postponed or continued for due cause by the hearing officer upon his own motion or upon the motion of a party to the hearing. A motion filed by a party shall be in accordance with Section 1848.12 and shall set forth facts attesting that the request for continuance is not for the purpose of delay. Except in the case of an emergency as defined in Section 1848.22, motions requesting postponement or continuance shall be received by all parties to the hearing at least three (3) business days prior to the scheduled hearing date. Parties shall avoid undue delay caused by repetitive postponements or continuances so that the subject matter of the hearing may be resolved expeditiously.

Section 1848.19 Failure to State a Claim

Upon motion in accordance with Section 1848.12, the hearing officer may dismiss at any time a request for hearing which fails to state a claim upon which administrative relief may be granted.

Section 1848.20 Summary Decision

a) At any time after a proceeding has begun, a party may move for summary decision of the whole or part of a case in accordance with Section 1848.12.

b) The moving party under this Section shall verify any allegation of fact with supporting affidavits, unless the moving party is relying upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.

c) Any affidavit submitted in support of a motion filed under this Section shall comply with Illinois Supreme Court Rule 191.

d) Any party filing a motion for summary decision shall submit along therewith a supporting memorandum of law and a statement of material facts as to which the moving party contends there is no genuine issue. Such statement of facts shall:

1) Consist of numbered paragraphs; and

2) Include within each paragraph specific references to the affidavits, parts of the record or other materials relied upon to support the facts stated in the paragraph.

e) Any party opposing a motion for summary decision shall file a written response thereto within fifteen (15) days after service of the motion for summary decision. Such response shall:

1) Respond to each numbered paragraph of the moving party's statement of material facts; and

2) In the case of any dispute, include within each numbered paragraph specific references to the affidavits, parts of the record or other materials relied upon to support the response.

f) All material facts contained in the moving party's statement will be deemed admitted unless controverted by the opposing party's resposne.

g) The failure of a party who bears the burden of proof with respect to a particular issue to submit evidence on that issue in the course of a summary decision motion shall result in a decision in favor of his opponent as to that issue.

h) The hearing officer may grant a motion under this Section if the record shows that:

1) There is no disputed issue as to any material fact; and

2) The moving party is entitled to summary decision as a matter of law.

i) If a motion for summary decision is not granted for the entire case or for all the relief requested and a hearing is necessary, the hearing officer shall, if practicable, and upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith controverted. He shall thereupon issue an order specifying the facts that appear without substantial controversy and direct such further proceedings as deemed appropriate.

Section 1848.21 Proposed Findings of Fact and Conclusion of Law

The hearing officer shall allow the parties to a proceeding an opportunity to submit proposed findings of fact and conclusions of law together with a supporting brief at a time designated by the hearing officer.

Section 1848.22 Default

If a party, after proper service of notice, fails to appear at a pre-hearing conference or at a hearing, and if no continuance has been granted, the hearing officer may proceed to make his decision in the absence of such party. If the failure to appear is due to an emergency situation beyond the parties' control, and the Department is notified of such situation on or before the

scheduled pre-hearing conference or hearing date, the conference or hearing will be continued or postponed pursuant to Section 1848.18. Emergency situations include sudden unavailability of counsel, sudden illness of a party or his representative or similar situations beyond the parties' control.