**Section 240.1898 Waiver**

a) Subject to 49 USC 60118(d), the Department, upon application by any gas storage operator, may waive, in whole or in part, compliance with any standard established under this Subpart or the Act if the Department determines that the waiver is consistent with the safety of the underground natural gas storage facility and the protection of the environment and natural resources of the State of Illinois.

b) All waiver requests shall be made by the gas storage operator on Department created waiver forms and shall include all information requested in the forms.

c) The waiver forms shall include:

1) name of the underground natural gas storage facility;

2) if the waiver is related to a well, an underground gas storage field map of the natural gas storage facility and a brief statement of the purpose of the well and a schematic of the well;

3) a description of the waiver that is being requested;

4) written technical justifications as to why compliance with a provision of this Subpart or the Act is not practicable and not necessary for safety with respect to specified underground storage facilities or equipment. The justifications for any deviation from any provision of this Subpart or the Act must be technically reviewed and documented by a subject matter expert to ensure there will be no adverse impact on design, construction, operations, maintenance, integrity, emergency preparedness, the environment, response, and overall safety and must be dated and approved by a senior executive officer, vice president, or higher office with responsibility for the underground natural gas storage facility;

5) a full description of any safety and environmental protection procedures that will be implemented or modified if the waiver is granted;

6) certification, under penalty of perjury, that the applicant has the right, pursuant to valid and subsisting oil and gas leases, documents or memoranda of public record and/or any statute or regulation, to drill or operate an underground natural gas storage facility on the lands and formations, as set forth in Subpart D;

7) a statement as to whether the underground natural gas storage facility is located within the limits of any incorporated city, town or village (and a certified copy of the official consent of the municipal authorities if the underground natural gas storage facility is within the corporate limits);

8) a statement as to whether the underground natural gas storage facility is located over an active mine or temporarily abandoned mine, or within the undeveloped limits of a mine, and whether the coal rights are owned by someone other than the lessor under the oil and gas lease; and

9) if the waiver is related to a well, the proposed depth of the well and the name of the lowest geologic formation that is to be, or is, penetrated.

d) The gas storage operator must provide the Department with any additional information the Department requires to ensure that the requirements of this Subpart are met. If the application does not contain all the required information documents, or there is other information that the Department requests, the Department shall notify the applicant in writing. The notification shall specify the additional information or documents necessary to an evaluation of the application and shall advise the applicant that the application will be deemed denied unless the information or documents are submitted within 60 days following the date of notification.

e) All waiver requests submitted to the Department will be reviewed by the Department. The Department may issue such a waiver at its sole discretion. The waiver request will be denied if the purpose of the waiver is outweighed by safety or environmental contamination concerns, as determined at the sole discretion of the Department.

f) No waiver may be granted if:

1) the gas storage operator, or any corporate or business entity of which the gas storage operator is a part, has active or pending violations, or has unpaid fines or penalties as a result of any violation, of the Illinois Oil and Gas Act, or the Act;

2) the applicant has falsified or otherwise misstated any information on, or relative to, the permit application;

3) the applicant has failed to abate a violation of the Illinois Oil and Gas Act or the Act specified in a final administrative decision of the Department;

4) an officer, director, agent, power of attorney or partner in the applicant, or a person with an interest in the applicant exceeding 5% was or is an officer, director, partner, agent, power of attorney or person with an interest exceeding 5% in another entity that failed to abate a violation of the Illinois Oil and Gas Act or the Act specified in a final administrative decision of the Department;

5) the applicant was or is an officer, director, agent, power of attorney, partner, or person with an interest exceeding 5% in another entity that has failed to abate a violation of the Illinois Oil and Gas Act or the Act specified in a final administrative decision of the Department;

6) funds have been expended and remain outstanding from the PRF to plug wells (see Subpart P) for which the applicant was a previous permittee; or the applicant was or is an officer, director, agent, power of attorney, partner, or person with an interest exceeding 5% in a permittee for which funds were expended; or an officer, director, agent, power of attorney or partner in the applicant, or a person with an interest in the applicant exceeding 5% was or is an officer, director, agent, power of attorney, partner or person with an interest exceeding 5% in a permittee for which funds were expended; or

7) the applicant is delinquent in the payment of Annual Well Fees; or the applicant was or is an officer, director, agent, power of attorney, partner, or person with an interest exceeding 5% in another permittee who is delinquent in payment of Annual Well Fees; or an officer, director, agent, power of attorney or partner in the applicant, or person with an interest in the applicant exceeding 5% was or is an officer, director, agent, power of attorney, partner or person with an interest exceeding 5% in a permittee who is delinquent in payment of Annual Well Fees.

g) A waiver may be granted by the Department upon review of the waiver form and any additional information requested by the Department.

h) Waivers are valid for one year from the date of issuance. A waiver may be renewed upon application by the applicant and subject to the requirements of this Section.

i) The Department shall give the Secretary of Transportation written notice of any issued waiver at least 60 days before the effective date of the waiver and any such waiver issued by the Department is subject to 49 USC 60118(d). Any waiver granted shall take effect 61 days after notice of approval by the Department is issued to the gas storage operator.

j) An operator must discontinue use of any waiver if the Department determines, at any time, and provides written notice that the waiver adversely impacts design, construction, operations, maintenance, integrity, emergency preparedness and response, the environment, or overall safety. An operator must discontinue the use of the waiver listed in the Department's written notice within 14 days after receipt of the notice. The written notice shall be served by certified mail or by personal service.

(Source: Added at 43 Ill. Reg. 11524, effective September 24, 2019)