**Section 300.248 Hearings**

a) An operator shall have 30 days from the date of service of the Office of Mines and Minerals Decision to request a hearing. All requests for hearing shall be mailed or delivered to the Illinois Department of Natural Resources, Office of Mines and Minerals, Explosives and Aggregate Division, One Natural Resources Way, Springfield, Illinois 62702.

b) Upon receipt of a request for hearing submitted in accordance with subsection (a), the Department shall provide an opportunity for a formal hearing upon not less than 5 days after written notice mailed to the operator submitting the hearing request. The hearing shall be conducted by a hearing officer designated by the Director and shall be conducted in accordance with the following procedures:

1) Pre-hearing conferences:

A) Shall be scheduled within 30 days after the request for hearing:

i) to define the factual and legal issues to be litigated at the administrative hearing;

ii) to determine the timing and scope of discovery available to the parties;

iii) to set a date for the parties to exchange all documents they intend to introduce into evidence during the hearing, a list of all witnesses the parties intend to have testify and a summary of the testimony of each such witness;

iv) to schedule a date for the administrative hearing; and

v) to arrive at an equitable settlement of the hearing request, if possible.

B) May be conducted via telephone conference if such procedure is acceptable to all parties to the hearing. In the event that a telephone conference is not acceptable to all parties, the pre-hearing conference shall be conducted at a place designated by the hearing officer.

2) Either party may file motions for default judgment, motions for summary judgment, motions for protective orders and motions for orders compelling discovery. The Department's hearing officer shall grant or deny such motions within 15 days after service. Any order granting a motion for default judgment or a motion for summary judgment shall constitute the Department's final administrative decision as to the Office of Mines and Minerals Decision or cessation order being contested.

3) If a settlement agreement is entered into at any stage of the hearing process, the operator to whom the notice of violation or cessation order was issued will be deemed to have waived all right to further review of the violation or civil penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a waiver clause to this effect. All settlement agreements shall be executed by the hearing officer and shall constitute the Department's final administrative decision as to the Office of Mines and Minerals Decision or cessation order being contested.

4) All hearings under this Section shall be conducted in accordance with the contested case provisions set forth in Article 10 of the Illinois Administrative Procedure Act [5 ILCS 100/Art 10]. All hearings under this Section shall be conducted in Springfield, Illinois.

5) At the hearing the Department shall have the burden of proving the facts of the violation alleged in the notice of violation or cessation order at issue. The amount of any civil penalty assessed shall be presumed to be proper; however, the operator may offer evidence to rebut this presumption. The standard of proof shall be a preponderance of the evidence. The operator shall have the right to challenge the hearing officer if the operator believes the hearing officer is prejudiced against the operator or has a conflict of interest. If the hearing officer disqualifies himself, the Director of the Department of Natural Resources shall designate a new hearing officer. The hearing officer shall conduct the hearing, hear the evidence and at the conclusion of the hearing render recommended findings of fact, recommended conclusions of law and recommendations as to the disposition of the case.

c) The Director of the Department of Natural Resources shall review the administrative record in a contested case, in conjunction with the hearing officer's recommended findings of fact, recommended conclusions of law and recommendations as to the disposition of the case. The Director of the Department of Natural Resources shall then issue the final administrative decision affirming, vacating or modifying the hearing officer's decision.

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

(Source: Amended at 48 Ill. Reg. 9650, effective June 24, 2024)