**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.

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.

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) Summary 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.

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)