**Section 240.134 Lease Validation Petitions**

a) The following definitions are applicable to this Subpart:

"Current Permittee" means the permittee of record for wells located within the prior oil and gas leases.

"New Oil and Gas Leases" means recorded operative oil and gas lease instruments or assignments of those oil and gas leases or recorded after the prior oil and gas leases, submitted by the proposed permittee in support of an application for a permit to operate, drill, deepen, transfer, amend or convert to a well subject to this Part and describing all or a portion of the lands described in the prior oil and gas leases.

"Prior Oil and Gas Leases" means recorded oil and gas lease instruments or assignments of those oil and gas leases in place when the Department granted the current permittee a permit to operate, drill, deepen, transfer, amend or convert to a well subject to this Part on the lands covered by the prior oil and gas leases.

"Proposed Permittee" means the person seeking to obtain a new permit to operate, drill, deepen, transfer, amend or convert to a well subject to this Part that is located on lands covered by prior oil and gas leases upon which a current permittee was previously granted a permit by the Department.

b) Petition

A proposed permittee seeking a permit to operate, drill, deepen, transfer, amend or convert to a well subject to this Part that is located on lands subject to a prior oil and gas lease or leases under which the current permittee was previously granted a permit by the Department may submit a petition requesting the Department to determine whether the new oil and gas leases submitted by the proposed permittee in support of the permit application are operative on the basis that the prior oil and gas leases covering the same lands have terminated due to nondevelopment or nonproduction.

c) Contents of the petition shall include:

1) the name and address of the proposed permittee;

2) the proposed permittee's reason for requesting a determination from the Department;

3) a copy of prior oil and gas leases at issue;

4) a copy of new oil and gas leases at issue; and

5) a copy of an *affidavit of nondevelopment or nonproduction* signed by the mineral owners or other *knowledgeable individuals familiar with the history of development and production of oil or gas as to* the *lands* (Section 6.2 of the Act) covered by the prior oil and gas leases, and properly recorded in the county where the lands subject to the new oil and gas leases are located.

d) Execution and Filing

1) The petition to validate the new oil and gas leases in accordance with this Section shall be sent to the Department offices located at One Natural Resources Way, Springfield IL 62702.

2) Every petition shall be signed by the proposed permittee or his or her representative and the proposed permittee's address shall be stated on the petition. The signature of the proposed permittee or his or her representative constitutes a certificate by him or her that he or she has read the petition and that, to the best of his or her knowledge, information and belief, there are good grounds to support the petition. The petition shall be accompanied by a *nonrefundable* application *fee* in the amount *of $1,000* (Section 6.2 of the Act).

3) If the Department finds the petition deficient relative to the requirements of subsection (b) or (c), the petition shall not be accepted and the Department shall return the petition to the proposed permittee with a statement of the deficiencies. The Department shall return any unaccepted petition within 30 days after its receipt. The proposed permittee shall have 60 days to remedy the deficiencies and resubmit the petition to the Department. If the proposed permittee does not respond to the Department within 60 days, the petition shall be dismissed.

e) Review of Petition; Rebuttable Presumption

1) Within 14 days after receipt of the petition, the Department shall review the petition and determine if it creates a rebuttable presumption that the prior oil and gas leases have terminated due to nondevelopment or nonproduction and are of no further force and effect and that the new oil and gas leases are operative and effective.

2) *To create a rebuttable presumption, affidavits of nondevelopment or nonproduction from knowledgeable individuals familiar with the history of development and production of oil or gas* from those *lands, together with other evidence provided to or available from the Department, shall reasonably indicate that there has been no development or production of oil and gas on the lands described in the prior oil and gas leases for at least 24 consecutive months subsequent to the expiration of the primary term or any extension of the primary term as set forth in the leases.* (Section 6.2 of the Act)

3) Upon a determination of a rebuttable presumption that the prior oil and gas leases are terminated, the Department shall notify the proposed permittee of the finding and send notice to the current permittee as set forth in subsection (f).

4) If the Department previously denied a petition based on prior oil and gas leases that are later subject to a court order or judgment declaring that the prior oil and gas leases are terminated, the proposed permittee shall submit the judgment to the Department. Upon receipt and review of the court order or judgment, the Department will issue a final order declaring the prior oil and gas leases terminated as set forth in subsection (p).

f) Service of Determination on Current Permittee

*Upon the Department's determination of a rebuttable presumption* that the prior oil and gas leases have terminated due to nonproduction or nondevelopment and are of no further force and effect and that the new oil and gas leases are operative and effective, *the Department shall* serve *the current permittee notice* of the determination according to the notice requirements set forth in Section 240.125. The current permittee shall have *30 days* from the receipt of notice *to request a hearing to rebut the presumption* that the prior oil and gas leases have terminated. (Section 6.2 of the Act)

g) Default for Failure to Request Hearing

Failure by the current permittee to request a hearing within 30 days after receipt of the notice of the Department's determination, as set forth in subsection (f), will result in default and issuance of a final order by the Department finding that the prior oil and gas leases have terminated and that the new oil and gas leases are operative and effective as set forth in subsection (p).

h) Scheduling and Notice of Hearing

Following a timely request for hearing by the current permittee, the Department will schedule a hearing at which the current permittee can rebut the presumption that the prior oil and gas leases have terminated. Notice of the hearing shall be served on the current permittee and the proposed permittee by the Department according to Section 240.125 at least 14 days prior to the hearing.

i) Pre-Hearing Conferences

Upon his or her own motion or the motion of a party, the Hearing Officer shall direct the parties or their counsel to meet for a conference in order to:

1) Simplify the factual and legal issues presented by the hearing request;

2) Receive stipulations and admissions of fact and of the contents and authenticity of documents;

3) Exchange lists of witnesses the parties intend to have testify and copies of all documents the parties intend to introduce into evidence at the hearing; and

4) Discuss and resolve other matters that may tend to expedite the disposition of the hearing request and to assure a just conclusion.

j) Hearing

1) Conduct of Hearing

Every hearing shall be conducted by a Hearing Officer designated by the Director. The Hearing Officer shall take all necessary action to avoid delay, to maintain order, and to develop a clear and complete record, and shall have all powers necessary and appropriate to conduct a fair hearing and to render a decision on the petition, including the power to:

A) Administer oaths and affirmations;

B) Receive relevant evidence;

C) Regulate the course of the hearing and the conduct of the parties and their counsel;

D) Consider and rule upon procedural requests;

E) Examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitive or cumulative testimony, and set reasonable limits on the amount of time each witness may testify;

F) Require the production of documents or subpoena the appearance of witnesses, either on the Hearing Officer's own motion or for good cause shown on motion of any party of record.

2) Hearing Location

All hearings under this Subpart shall be conducted in the Department's offices located in Springfield, Illinois. However, the Department may conduct a hearing under this Subpart at a site located closer than Springfield, Illinois to the production and injection/disposal well identified in the Notice of Hearing if facilities are available and satisfactory to the Department.

3) Appearances

Every interested person wishing to participate at the hearing shall enter an appearance in writing. The Hearing Officer shall determine if the interested person will be allowed to enter as a party of record. The Hearing Officer shall base that determination on the same standards used to determine parties in Circuit Court.

4) Right to Counsel

A) All participants in the hearing shall have the right to be represented by counsel.

B) An attorney appearing in a representative capacity in any proceeding under this Subpart shall file a written notice of appearance identifying his or her name, address and telephone number and identifying the party represented.

5) The Hearing Officer shall allow all parties to present statements, testimony, evidence and argument as may be relevant to the proceeding.

6) At least one representative of the Department shall appear at any hearing held under this Section and shall be given the opportunity to question parties or otherwise elicit information necessary to reach a decision on the petition.

7) When applicable, the following shall be addressed prior to receiving evidence:

A) The proposed permittee may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of publication and orders previously entered in the case.

B) Ruling may be made on any pending motions.

C) Any other preliminary matters appropriate for disposition prior to presentation of evidence may be addressed.

k) Evidence

1) Admissibility

A party shall be entitled to present his or her case by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross‑examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence received by the presiding Hearing Officer shall exclude evidence that is irrelevant, immaterial or unduly repetitious. The rules of evidence and privilege applied in civil cases in the courts of the State of Illinois shall be followed; however, evidence not admissible under those rules of evidence may be admitted, except when it would have been precluded by reasonable, prudent men in the conduct of their affairs. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, a Hearing Officer shall allow evidence to be received in written form.

2) Official Notice

Official notice may be taken of any material fact not appearing in evidence in the record if the circuit courts of this State could take judicial notice of that fact. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge.

3) Order of Proof

The proposed permittee shall open the proof. Other parties of record shall be heard immediately following the proposed permittee. The Hearing Officer or Department representatives may examine any witnesses. In all cases, the Hearing Officer shall designate the order of proof and may limit the scope of examination or cross-examination.

4) Briefs

The Hearing Officer may require or allow parties to submit written briefs to the Hearing Officer within 10 days after the close of the hearing or within such other time as the Hearing Officer shall determine is consistent with the Department's responsibility for an expeditious decision.

l) Testimony

Any person testifying shall be required to do so under oath. However, relevant unsworn statements, comments and observations by any interested person may be heard and considered by the Department and included in the record.

m) Postponement or Continuance of Hearing

A hearing may be postponed or continued for due cause by the Hearing Officer upon his or her own motion or upon the motion of a party to the hearing. A motion filed by a party to the hearing shall set forth facts attesting that the request for continuance is not for the purpose of delay. Except in the case of an emergency, motions requesting postponement or continuance shall be made in writing and shall be received by all parties to the hearing.

n) Default After Hearing Requested

If a party, after proper service of notice, fails to appear at the pre-hearing conference or at a hearing, and if no continuance is granted, the Department may proceed to make its decision in the absence of that party. If the failure to appear at the pre‑hearing conference or hearing is due to an emergency situation beyond the party's control, and the Department is notified of the situation on or before the scheduled pre‑hearing conference or hearing date, the pre-hearing conference or hearing will be continued or postponed pursuant to subsection (m). Emergency situations include sudden unavailability of counsel, sudden illness of a party or his or her representative, or similar situations beyond the party's control.

o) Hearing Officer Recommended Findings

After the conclusion of the hearing, the Hearing Officer shall render recommended findings of fact, recommended conclusions of law, and recommendations as to the disposition of the case. If the Hearing Officer finds that the affidavits and other evidence provided at the hearing or available to the Department reasonably indicate that there has been no development or production of oil and gas on the lands described in the prior oil and gas leases for at least 24 consecutive months subsequent to the expiration of the primary term or any extension of the primary term as set forth in the prior oil and gas leases, the Hearing Officer shall recommend whether the rebuttable presumption was not overcome and that the prior oil and gas leases have terminated and are of no further force and effect or that the new oil and gas leases are operative and effective.

p) Order – Final Administrative Decision

1) The Director shall review the administrative record in conjunction with the Hearing Officer's recommended findings of fact, recommended conclusions of law, and recommendations as to the disposition of the case.

2) If, after this review, the Director finds that the rebuttable presumption was overcome by the current permittee, the Department shall enter a Final Administrative Order that the prior oil and gas leases are still in force and effect and the new oil and gas leases are not operative and effective.

3) If, after this review, the Director finds that the rebuttable presumption was not overcome by the current permittee, the Department shall enter a Final Administrative Order that the prior oil and gas leases have terminated and are of no further force and effect and that the new oil and gas leases are operative and effective. The Final Administrative Order shall:

A) State that the prior oil and gas leases have terminated and are of no further force and effect and that the new oil and gas leases are operative and effective.

B) Order the *current permittee to properly plug all nonplugged and nontransferred wells within the lease boundaries of the prior leases.* (Section 6.2 of the Act)

C) Order that *if the current permittee fails to properly plug all nonplugged and nontransferred wells within 30 days* after *the issuance of the* Order, *the* remaining nonplugged and nontransferred *wells shall be deemed abandoned and included in the Department's Oil and Gas Well Site Plugging and Restoration Program* (see Subpart K)*.* (Section 6.2 of the Act)

D) The proposed permittee shall have no obligation to acquire the permits of the current permittee as to the lands that are the subject of the petition.

4) In no case shall the Department issue the Order later than *90 days after receipt of a valid* petition. (Section 6.2 of the Act)

5) The Director's Order is a final administrative decision of the Department and is subject to judicial review under the Administrative Review Law [735 ILCS 5/Art. III].

6) *Department determinations under this Section shall not have res judicata or collateral estoppel effect in any judicial proceedings.* (Section 6.2 of the Act)

(Source: Added at 40 Ill. Reg. 7051, effective April 22, 2016; expedited correction at 40 Ill. Reg. 11042, effective April 22, 2016)