**Section 240.180 Enforcement Hearings**

a) *A person or permittee shall have 30 days from the date of service of the Director's decision* *to request a hearing.* (Section 8a of the Act) A person or permittee seeking to contest any Director's decision in which a civil penalty has been assessed shall submit the assessed amount to the Department, by cashier's check or money order, together with a timely request for hearing. The assessed amount shall be deposited by the Department pending the outcome of the hearing. The assessed amount shall be refunded to the person or permittee at the conclusion of the hearing if the Department does not prevail. All requests for hearing shall be mailed or delivered to the Department's office located in Springfield, Illinois.

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* written notice mailed to the permittee or person submitting the hearing request. (Section 8a of the Act) 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 Conference

A) A pre-hearing conference 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 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) Pre-hearing conferences under this Section may be conducted via telephone conference if that 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 the place designated by the Hearing Officer.

C) 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 render an order granting or denying motions filed 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 matter being contested.

2) If a settlement agreement is entered into at any stage of the hearing process, the person 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 matter being contested.

3) All hearings under this Section shall be conducted in accordance with Article 10 of the Illinois Administrative Procedure Act [5 ILCS 100/Art. 10].

4) All hearings conducted pursuant to this Section are open to the public and are held in compliance with the Americans With Disabilities Act of 1990 (42 USC 12101 et seq.). The hearings will be held at locations ordered by the Hearing Officer. The Hearing Officer will select hearing locations that comply with any geographic requirements imposed by applicable law and, to the extent feasible, promote the convenience of the parties and the conservation of the Department's resources. All hearings are subject to cancellation without notice. Interested persons may contact the Department or the Hearing Officer for information about the hearing. Parties, participants and members of the public must conduct themselves with decorum at the hearing.

5) Upon the motion of any party, the Hearing Officer may order that a hearing be held by telephone conference, video conference or other electronic means. In deciding whether a hearing should be held by telephone conference, video conference or other electronic means, factors that the Hearing Officer shall consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness.

6) At the hearing the Department shall have the burden of proving the facts of the violation alleged in the notice of violation 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 person or permittee shall have the right to challenge the Hearing Officer if the person or permittee believes the Hearing Officer is prejudiced against him or her or has a conflict of interest. If the Hearing Officer disqualifies himself or herself, the Director 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.

7) 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. *Within 30 days* after *the close of the hearing record or expiration* after *the time to request a hearing, the Department shall issue a final administrative order.* (section 8a of the Act)

c) *Failure of the person or permittee to timely request a hearing or, if a civil penalty has been assessed, to timely tender the assessed civil penalty, shall constitute a waiver of all legal rights to contest the Director's decision, including the amount of any civil penalty.* (Section 8a of the Act)

d) *If, at the expiration of the period of time originally fixed in the Director's decision or at the expiration of any subsequent extension of time granted by the Department, the Department finds that the violation has not been abated, it may immediately order the cessation of operations or the portions thereof relevant to the violations* pursuant to 62 Ill. Adm. Code 240.185. (Section 8(a) of the Act)

(Source: Amended at 43 Ill. Reg. 10459, effective September 6, 2019)