**Section 1847.3 Permit and Related Administrative** **Hearings**

a) Within 30 days after an applicant is mailed written notice of the Department's final decision concerning an application for approval of exploration required under 62 Ill. Adm. Code 1772, a permit for surface coal mining and reclamation operations, a permit revision, a permit renewal, a permit rescission or a transfer, assignment, or sale of permit rights, the applicant, or any person with an interest which is or may be adversely affected, may file a written request for a hearing to contest the decision. The procedures outlined in this Section apply to conflict of interest hearings requested under 62 Ill. Adm. Code 1705.21, review of valid existing right determinations under 62 Ill. Adm. Code 1761.12(g), review of exemption determinations under 62 Ill. Adm. Code 1702.11(f) and 1702.17(c)(2), formal review of decisions not to inspect or enforce under 62 Ill. Adm. Code 1840.17, review of a permit issued pursuant to 62 Ill. Adm. Code 1785.23, review of bond release decisions under Section 1847.9(i) of this Part and review of bond adjustment determinations under 62 Ill. Adm. Code 1800.15. Failure to file a request for hearing within this 30 day time period shall result in a waiver of the right to such hearing; requests for hearing filed after the expiration of the 30 day time period shall be dismissed on motion of the Department in accordance with 62 Ill. Adm. Code 1848.12. A request for hearing is deemed filed the day it is received by the Department.

b) The hearing request shall state:

1) The petitioner's name and address;

2) A clear statement of the facts entitling the petitioner to relief, including the petitioner's interests which is or may be adversely affected by the Department's final decision;

3) How the Department's final decision may or will adversely affect the interests specified;

4) An explanation of each specific alleged error in the Department's final decision, including reference to the statutory and/or regulatory provisions allegedly violated;

5) The specific relief sought from the Department; and

6) Any other relevant information.

c) Any party to the hearing may request that a pre-hearing conference be scheduled, in accordance with 62 Ill. Adm. Code 1848.7.

d) Unless a pre-hearing conference has been scheduled or unless the person requesting the hearing waives the 30 day time limit, the Department shall start the hearing within 30 days after the hearing request. The hearing shall be on the record and adjudicatory in nature. No person who presided at an informal conference under 62 Ill. Adm. Code 1773.13(c) or a public hearing under 62 Ill. Adm. Code 1773.14 shall either preside at the hearing or participate in the decision following the hearing.

e) Notice of hearing. The petitioner and other interested persons shall be given written notice of the hearing in accordance with 62 Ill. Adm. Code 1848.5 at least 5 working days prior to the hearing. Notice of the hearing shall also be posted at the appropriate district or field office.

f) 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 60 days after the final decision referred to in subsection (j) is issued.

g) Burden of proof.

1) In a proceeding to review a decision on an application for a new permit:

A) If the permit applicant is seeking review, the Department shall have the burden of going forward to establish a prima facie case as to the failure to comply with the applicable requirements of the State Act or regulations or as to the appropriateness of the permit terms and conditions, and the permit applicant shall have the ultimate burden of persuasion as to entitlement to the permit or as to the inappropriateness of the permit terms and conditions.

B) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion by a preponderance of the evidence that the permit application fails in some manner to comply with the applicable requirements of the State Act or regulations.

2) In all other proceedings held under this Section, the party seeking to reverse the Department's decision shall have the burden of proving by a preponderance of evidence that the Department's decision is in error.

h) Within 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.

i) Within 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 10 days after service of written exceptions to file a response with the hearing officer. Failure to file written exceptions or a response is not a failure to exhaust administrative remedies and does not affect a party's right to judicial review.

j) If no written exceptions are filed, the hearing officer's proposed decision shall become final 10 days after service of such decision. If written exceptions are filed, the hearing officer shall within 15 days following the time for filing a response either issue his final administrative decision affirming or modifying his proposed decision, or shall vacate the decision and remand the proceeding for rehearing.

k) Request for temporary relief.

1) Any party may file a request for temporary relief at any time prior to a decision by the hearing officer, so long as the relief sought is not the issuance of a permit where a permit application has been disapproved in whole or in part. The request for temporary relief shall include:

A) A detailed written statement setting forth the reasons why relief should be granted;

B) A statement of the specific relief requested;

C) A showing that there is a substantial likelihood that the person seeking relief will prevail on the merits of the final determination of the proceeding; and

D) A showing that the relief sought will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air or water resources.

2) The hearing officer may hold a hearing on any issue raised by the request for temporary relief.

3) Within 15 days after the close of the record on the request for temporary relief, the hearing officer shall issue an order or decision granting or denying such temporary relief. Temporary relief may be granted only if:

A) All parties to the proceeding have been notified and given an opportunity to be heard on the request for temporary relief;

B) The person requesting such relief shows a substantial likelihood of prevailing on the merits of the final determination of the proceeding;

C) Such relief will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air or water resources; and

D) The relief sought is not the issuance of a permit where a permit has been denied by the Department, in whole or in part, except that continuation under an existing permit shall be allowed where the applicant has a valid permit issued pursuant to 62 Ill. Adm. Code 300.

l) Judicial review.

1) Following service of the Department's final administrative decision, any person with an interest which is or may be adversely affected and who has participated in the administrative hearing under this Section may request judicial review of that decision in accordance with the Administrative Review Law [735 ILCS 5/Art. III], if:

A) The person is aggrieved by the Department's final administrative decision; or

B) The hearing officer or Department failed to act within the time limits specified in the Surface Mining Control and Reclamation Act of 1977 (30 USC 1201 et seq.), the Surface Coal Mining Land Conservation and Reclamation Act (State Act) [225 ILCS 720] or this Section.

2) Review under this subsection (l) shall not be construed to limit rights established in Section 8.05 of the State Act [225 ILCS 720/8.05].

(Source: Amended at 26 Ill. Reg. 4189, effective March 6, 2002)