**Section 100.90 Hearings**

a) Public Hearings; Notice and Place

 All hearings conducted in any proceeding shall be open to the public. The time and place of all such hearings shall be set by the Board or the Director of the Office of Mines and Minerals. Notice of such hearing, the number of days' notice, the service of such notice, and the manner of such shall be in accordance with the following provisions:

1) Adjudicatory Proceedings

 Within fifteen (15) days from the filing with the Board of a formal complaint or petition, notice of the time and place for an adjudicatory hearing on the matter shall be served on all parties. Notice shall include a copy of the complaint or petition. Such notice shall be sent not less than fifteen (15) days prior to the date fixed for said hearing. Service of such notice shall be in accordance with Section 100.70(b) (3) of this Part. Upon written agreement by all parties, the notice provisions of this sub-paragraph may be waived by the Board.

2) Rule-making Proceedings

 The Director of the Office of Mines and Minerals shall give written notice of the intention of the Board to adopt, amend, or repeal any Health and Safety Rules. The notice shall contain the time, date, and place of a hearing where interested persons may present their views and either a statement of the terms or substance of the intended action, including, when appropriate, a specific reference to the Rule or Rules involved a description of the subject matter and issues involved in the intended action. Such notice shall be served on all interested persons as defined in these Rules of Procedure, published in the official State newspaper not less than thirty (30) nor more than forty-five (45) days prior to the date fixed for said hearing. Service of said notice on all interested parties shall be in accordance with Section 100.70(b) (3) of this Part.

b) Default in Adjudicatory Proceedings

 In the event of failure to appear or answer, after notice served as herein provided, a hearing may be held ex parte immediately in the direction of the Board.

c) Mining Board: Powers and Duties

1) Subject as herein provided and particularly, but without limitation, subject to sub-paragraph (5) of this Section, all hearings involving any complaint, petition, application, or other proceedings shall be heard by the Mining Board. No less than four (4) members of the Mining Board plus the Director of the Office of Mines and Minerals, as the Board's executive officer, shall constitute a quorum. Only in the case of the tie vote shall the Director of the Office of Mines and Minerals, as executive officer, have the right to vote.

2) The Director may, if the Board so recommends and if the Department makes funds available for such purpose, designate any attorney duly licensed to practice law in the State of Illinois, and not regularly engaged in the representation of parties before the Board, as counsel for the Board in any matter pending before it.

3) The Board's counsel may, at the discretion of the Board, examine witnesses and afford the Board such legal counsel as the Board may require, whether before, at or after any hearing, with respect to the law applicable to all or any of the following:

A) The subject matter of the proceedings;

B) The pleadings therein and any other papers or memoranda filed by the parties, or any of them, in the proceedings;

C) The evidence presented or sought to be presented at the hearing or at any other time in the proceedings;

D) Procedural or other matters or questions which may be involved in or raised at such hearing or at any other time in the proceedings;

E) Arguments of any of the parties or their counsel;

F) The Board's findings and recommendations, and report thereof, to the Director; and

G) Decision, order, ruling, determination or action proposed to be made or taken by the Board or the Director of the Office of Mines and Minerals or both; and

H) In no event shall such legal counsel have any vote in any recommendation made by the Board. All hearings and conferences shall at all times be under the control of the Board, except as provided in (5) below.

4) Without in any way limiting of the powers of the Board under any applicable statute, said Board in any hearing before it shall have full authority to:

A) Rule upon all motions made in the course of the hearing;

B) Rule upon all other matters arising in the course of the hearing, such as, but not limited to, admissibility of evidence or amendments to pleadings;

C) Direct parties to enter their respective appearances of record;

D) Determine at which stage of any hearing an intervenor may be permitted to offer evidence;

E) Require upon reasonable notice, any party, including without limitation, the Department, at any stage of any hearing or after all parties have completed the presentation of their evidence, to present further material or relevant evidence upon any issue including, but not limited to, the production of any and all documents, books, papers, and accounts, the Board reasonably deems material or relevant to any issue pending before it; and

F) To administer oaths to all persons appearing before it.

5) If the respondent in an adjudicatory proceeding shall believe the members of the Board are prejudiced against such respondent, he shall petition the Director in writing, at least ten (10) days prior to the date set for hearing, to appoint a Special Committee of the Board to hear the matter. Such petition shall be accompanied by an affidavit setting forth the facts upon which such claim of prejudice is based signed by the respondent. The Director shall make a determination based on such evidence as he deems sufficient whether such prejudice exists, and may remove any or all such Board members he finds prejudiced. If he removes all such members, then the Director may designate any attorney duly licensed to practice law in the State of Illinois to serve as the Special Committee of the Board with the same powers as the Board.

6) The following shall be the order of proceedings at all hearings, subject to modification by the Board before which such hearing is scheduled, for good cause:

A) Adjudicatory Hearings

i) Presentation, argument, and disposition of all preliminary motions;

ii) Presentation of opening statements;

iii) Case in chief of the Department and any intervenor, or case in chief of any petition, as the case may be;

iv) Respondent's case in chief;

v) Rebuttal if allowed by the Board;

vi) Surrebuttal if allowed by the Board;

vii) Statements from interested persons if allowed by the Board;

viii) Summation, which may include legal argument by the Department, intervenor or any petitioner, as the case may be;

ix) Respondent's summation, which may include legal argument;

x) Rebuttal statement by the Department; and

xi) Presentation and argument of all motions prior to final order.

B) Rule-Making Hearings

i) Presentation of the intended action and the basis for such intended action, including all evidence, testimony, and data relied on by the Department;

ii) Presentation of applicant's case in chief, oral, and written in support of intended Rule-making, if application was made;

iii) Presentation of other oral and written testimony in support of the intended Rule-making;

iv) Presentation of oral and written testimony in opposition to the intended Rulemaking; and

v) Closing statement by the Department, which may include rebuttal of statements made in opposition to the Rule-making action.

d) Rules of Evidence

1) The technical rules of evidence shall not apply at any hearing.

2) The burden of proof in any adjudicatory proceeding shall be upon the Department, or petitioner, as the case may be, therein, except that, in the case of any new matter introduced in any affirmative defense or in any kind of intervening petition, or otherwise, the burden of proof with respect thereto shall be upon the party, petitioner, or intervenor who, or which, alleges such new matter.

3) Any evidence having probative value and force, relevant and material to facts in issue, shall be admitted in the proceedings, subject only to objections to the weight thereof as distinguished from admissibility, per se. Immaterial, irrelevant, and unduly repetitious evidence shall be excluded. When the admissibility of evidence is in dispute and depends upon fairly arguable interpretations of law, such evidence shall be admitted.

e) Examination of Witnesses

1) Any party may, upon request, conduct examinations or cross-examinations without rigid adherence to formal rules of evidence, provided the examination or cross-examination does not descend to sheer abuse or harassment of a witness and the examination or cross-examination can be shown to be necessary to a full and fair disclosure of facts bearing upon matters in issue.

2) Each member of the Board may, in his discretion, examine all or any of the witnesses at any hearing.

f) Special Rules for Adjudicatory Hearings

1) If the Board determines that a witness is hostile or unresponsive, the Board may authorize the examination by the party calling him as if under cross-examination.

2) The Department may call any adverse party as a witness without vouching for his credibility and proceed to examine such adverse party as if under cross-examination. Any party calling a witness, upon a showing that he called the witness in good faith and is surprised by his testimony, may impeach that witness by evidence of prior inconsistent statements.

g) Stipulations in Adjudicatory Hearings

 Parties may by stipulation agree upon any facts involved in the proceeding. The facts stipulated shall be considered as evidence in the proceeding, provided that the Board may require proof of any fact by evidence where matters of public interest are involved. At any stage of the hearing, or after all parties have completed the presentation of their evidence, the Board may call upon any party or the Department for further material or relevant evidence upon any issue.

h) Court Reporter

 The Department will designate a licensed court reporter to make a stenographic record of hearings in all proceedings in which a recording is required by the Act or upon request of any party, provided that all costs of such stenographic record shall be borne by the party so requesting said record. The Department will arrange for the reporter to provide for such copies of the transcript as any other party may request and at such time as it may request same, for its own purposes, provided that such other party shall pay directly to such reporter the payment for the cost of the transcript including one (1) copy thereof to be furnished the Department for its use in any proceeding for Administrative Review as hereinafter provided, or otherwise.

i) Corrections to Transcript

 Suggested corrections to the transcript of record may be offered within ten (10) days after the transcript is filed in the proceeding, unless the Board permits suggested corrections to be offered thereafter. Suggested corrections shall be served upon, or brought to the attention of, each party whose appearance is of record or his attorney, the official reporter and the Board. If suggested corrections are not objected to, the Board will direct the corrections to be made and the manner of making them. In case the parties disagree on suggested corrections, they may be heard by the Board, which shall then determine the manner in which the record shall be changed, if at all.

j) Additional Hearings

 Motions for a further hearing in any proceeding at any time before final order of the Board shall be made in writing to the Board and shall state specifically the reasons therefor. If such motion seeks leave to introduce further or newly discovered evidence, the nature and purpose of the evidence to be adduced shall be stated and supported by affidavit, and it must appear that such evidence is relevant and material, was not reasonably available at the time of the hearings and is not merely cumulative. The Board shall rule on such motion and shall give notice of its decision to all parties in accordance with Section 100.70(b) (3) of this Part.

k) Motions for Rehearing - Adjudicatory Proceedings

 Motions to the Board for rehearing or for reconsideration of the recommendations of the Board on the record made or for modification thereof shall be made in writing pursuant to governing statutes and shall state specifically the grounds relied upon. If rehearing is sought on the ground of new evidence, the nature and purpose of such evidence shall be stated, supported by affidavit showing why evidence was not available at the time of the hearings. The Board shall rule on such motion and shall give notice of its decision to all parties in accordance with Section 100.40(b) (3) of this Part.

l) Postponement or Continuance of Hearing

 A hearing may, at any time or from time to time, be postponed or continued for due cause shown by the Board upon its own motion or upon motion of any party to the proceeding. Notice of any motion for postponement or continuance shall be given in writing to all parties to the hearing within a reasonable time in advance of the previously scheduled hearing date, but in no event less than three (3) business days prior to the previously scheduled hearing date (in absence of a bona fide emergency). All parties involved in a hearing shall avoid undue delay caused by repetitive postponements or continuances so that the subject matter of the hearing may be resolved expeditiously.