**Section 240.1610 Plugging Leaking or Abandoned Wells**

a) If the Department finds, upon inspection, that a well drilled for the exploration, development, storage or production of oil or gas, or for injection, saltwater disposal, saltwater source, observation, and geological or structure test may be abandoned or leaking saltwater, oil, gas or other deleterious substances into any freshwater formation or onto the surface of the land, the Department may schedule a hearing pursuant to Section 19.1 of the Act to order the well plugged if abandoned or repaired or plugged if leaking.

b) Hearings

1) Notice of Hearing

Whenever the Department holds a hearing pursuant to Section 19.1 of the Act, the Department shall give written notice to the permittee personally or by certified mail sent to the permittee's last known address. The notice shall include the date, time, place and nature of the hearing and the name and address of the Hearing Officer. The notice shall be mailed at least 14 days prior to the scheduled hearing date.

2) Permittee Right to Counsel; Appearance

A) Right to Counsel

Any party may appear and be heard through an attorney authorized to practice in the State of Illinois.

B) Appearance of Attorney

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.

3) Burden and Standard of Proof

The Department shall have the burden of proof at the hearing. The standard for decision shall be a preponderance of the evidence.

4) Hearing Officer; Powers and Duties

A) The Hearing Officer designated to preside over a hearing 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, including the following:

i) To administer oaths and affirmations;

ii) To receive relevant evidence;

iii) To regulate the course of the hearing and the conduct of the parties and their counsel;

iv) To consider and rule upon procedural requests;

v) To hold conferences for the settlement or simplification of the issues; and

vi) To 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.

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

5) 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.

6) Pre-Hearing Conferences

A) Upon the motion of either party, the Hearing Officer shall schedule a conference in order to:

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

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

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

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

B) Pre-hearing conferences may be held by telephone conference if that procedure is acceptable to all of the parties.

7) Postponement or Continuance of Hearing

A hearing may be postponed or continued for due cause by the Hearing Officer 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 at least 3 business days prior to the scheduled hearing date. All parties involved in a hearing shall avoid undue delay caused by repetitive postponements or continuance so that the subject matter of the hearing may be resolved expeditiously.

8) Default

If a party, after proper service of notice, fails to appear at a pre-hearing conference or at a hearing, and if no continuance is granted, the Department may then proceed and make its decision in the absence of that party. If the failure to appear at the pre-hearing conference or hearing is due to 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 (b)(7). Emergency situations include sudden unavailability of counsel, sudden illness of a party or his or her representative, or similar situations beyond the parties' control.

9) Within 30 days after the close of the hearing record, the Hearing Officer shall issue proposed findings of fact, conclusions of law and recommendations as to the disposition of the case.

10) 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. The Director shall then issue the Department's final administrative decision affirming, vacating or modifying the Hearing Officer's decision.

c) Upon the issuance of a final administrative decision that finds that a well has been abandoned or is leaking saltwater, oil, gas or other deleterious substances into any freshwater formation or onto the surface of the land, the permittee shall, within 30 days, properly plug, replug or repair the well so as to remedy the situation.

d) If the permittee fails to remedy the situation within 30 days from the date of the order, the well shall be placed in the PRF Program. A well in the PRF Program shall not be operated unless the Department has approved a transfer of the well or unless the permittee has complied with Section 240.1650 or Section 240.1660.

e) The Department may authorize any person to enter upon the land and plug, replug, or repair the well and restore the well site. The Department may dispose of all well site equipment and hydrocarbons in accordance with Section 19.6 of the Act as follows: public sale, auction, private sale, or by assignment or quit claim deed to a third party to offset plugging costs.

f) Proceeds from any public sale, auction or private sale shall be deposited into the PRF in accordance with Section 6(19) of the Act or used to offset plugging costs.

g) The cost of all work completed under this Section shall be paid from the Annual Well Fee portion of the PRF.

(Source: Amended at 35 Ill. Reg. 13281, effective July 26, 2011)