**Section 240.1858 Enforcement Hearings**

a) *The person charged in the applicable notice of probable violation shall have 30 days from the date of service of the notice of probable violation to request a hearing*. (Section 35 of the Act) A gas storage operator seeking to contest any notice of probable violation 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 gas storage operator 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. 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, subject to Section 10-50 of the Administrative Review Law [5 ILCS 100/Art. III].

2) If a settlement agreement is entered into at any stage of the hearing process, the person to whom the notice of probable violation 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 DNR Director 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. All hearings under this Section shall be conducted in the Department's offices located in Springfield, Illinois. However, the Department may conduct a hearing under this Section at a site located closer than Springfield to the production and/or injection/disposal well identified in the Director's decision being contested if facilities are available, convenient and satisfactory to the Department.

4) At the hearing, the Department shall have the burden of proving the facts of the violation alleged in the notice of probable 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.

5) 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 of the time to request a hearing, the Director shall issue a final administrative decision.

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 notice of probable violation, including the amount of any civil penalty*. (Section 35 of the Act)

d) If, at the expiration of the period of time originally fixed in the notice of probable violation 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 abatement of the operations or the portions of the operation relevant to the violations.

(Source: Added at 43 Ill. Reg. 11524, effective September 24, 2019)