**Section 245.270 Public Hearings**

a) *Participation*

1) *When a permit application to conduct high volume horizontal hydraulic fracturing operations for the first time at a particular well* *site* is received by the Department, *any person having an interest that is or may be adversely affected, any government agency that is or may be affected, or the county board of a county to be affected under a proposed permit, may file* a written *request for public hearing* (Section 1-50(a) of the Act).

2) The request for hearing shall be served by electronic mail or certified mail, return receipt requested, upon the Hearing Officer, the Department, and the applicant. All requests for hearing shall be received by the Department before 5 p.m. on the last day of the initial public comment period established under Section 245.260(a).

3) *The request for hearing shall contain a short and plain statement:*

A) stating the permit review number and acknowledging the date, time and location of the hearing;

B) *identifying the person*, government agency or county *and*:

i) if a person, *stating facts demonstrating that the person has an interest that is or may be adversely affected* (Section 1-50(a) of the Act);

ii) if a government agency, stating facts demonstrating that the government agency is or may be affected by the proposed permit; and

iii) if a county, stating facts demonstrating that it will be affected by the proposed permit;

C) identifying each objection to, or concern with, the permit application and, to the extent possible, explaining the specific fact or facts upon which each objection or concern is based;

D) referencing any statute, Section and/or regulation upon which each objection or concern is based;

E) hearing requestors are encouraged, in addition, to list:

i) known witnesses that will or may be called at the hearing, including, if possible, their name, address and phone number, and a summary of their expected testimony and, if any witness will be used as an expert, documentation (e.g., a curriculum vitae) or statement of that witness' relevant qualifications; and

ii) if known at the time of the request for hearing, any documents supporting any objection or concern. The disclosure of witnesses and documents is not required to request a hearing, but the Department, to facilitate the orderly presentation of facts, will provide optional space for that information on the Department prescribed hearing request form.

4) All requests for hearing should include copies of any documents referenced in subsection (a)(3)(E)(ii).

5) *The Department shall hold a public hearing upon a request* for hearing *under this subsection* (a)*, unless the request is determined by the* Hearing Officer *to*:

A) *lack an adequate factual statement* for finding *that the person is or may be adversely affected,* that the government agency is or may be affected, or that the county is affected by the proposed permit; or

B) *be frivolous* by presenting grounds that are readily recognizable as devoid in merit. (Section 1-50(a) of the Act)

6) *Prior to*, but not less than 2 business days before, *the commencement of a public hearing under this Section, any person who could have requested the hearing under subsection (a)*(1) *may petition the Department to participate in the hearing in the same manner as the party requesting the hearing. The petition* shall be in writing and *meet the requirements for requests for hearing set forth in subsection (a)*(3). *The petitioner shall serve the petition* by electronic mail or certified mail, return receipt requested, *upon the Department*, the Hearing Officer, and the applicant. The *petitioner shall be allowed to participate in the hearing in the same manner as the party requesting the hearing* if the petition meets the requirements set forth in subsection (a)(3). (Section 1-50(b) of the Act)

b) Public Hearing Procedures and Location

1) *The public hearing to be conducted under this Section shall comply with the contested case requirements of the Illinois Administrative Procedure Act* [5 ILCS 100] and this Section. (Section 1-50(c) of the Act)

2) All public hearings under this Part will be held in the county where the well site is located or such other local venue as the Department deems necessary and available, but in no event more than 30 miles outside the county where the proposed well site is to be located.

c) Hearing Officer

1) All public hearings shall be conducted by a Hearing Officer designated by the Director. Hearing Officers shall be licensed to practice law in the State of Illinois with at least 5 years' experience. Hearing Officers may be employees of the Department or work for the Department pursuant to contract.

2) The Hearing Officer shall take all necessary action and shall have all powers necessary to render a decision on requests for public hearings and on petitions for participation, to avoid delay, to maintain order, to develop a clear and complete record, and to conduct a fair hearing, including the following:

A) To administer oaths and affirmations;

B) To receive relevant evidence;

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

D) To consider and rule upon procedural requests;

E) 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; and

F) To require the production of documents or subpoena the appearance of witnesses, either on the Hearing Officer's own motion or for good cause shown on motion of any party of record. The Hearing Officer may require that relevant documents be provided to any party of record on his or her own motion or for good cause shown on motion of any party of record.

3) Ex parte contacts between the parties and the Hearing Officer concerning the merits of a proceeding are prohibited except upon notice and opportunity for all parties to participate. This Section does not prohibit communications concerning case status or advice concerning compliance with procedural requirements unless the area of inquiry is an area of controversy in the proceeding.

d) Disqualification of Hearing Officer

1) A Hearing Officer, on his or her own motion or that of a party, may be disqualified in a proceeding due to bias or conflict of interest. However, the fact that a Hearing Officer is an employee of or under contract with the Department does not alone serve as a basis for conflict of interest.

2) A motion for disqualification filed pursuant to this Section shall:

A) be in writing;

B) contain a statement of supporting grounds;

C) be filed with the Director and served upon all parties and the Hearing Officer; and

D) be filed not less than 2 business days before the scheduled date of the public hearing.

3) Unless the Director orders otherwise, the Hearing Officer and any party to a proceeding in which a motion is filed under this Section may file a response.

4) The Director shall rule on all motions filed pursuant to this Section immediately or as expeditiously as possible. If a motion filed under this Section is granted, the Director shall appoint a new Hearing Officer for the proceeding.

e) Postponement or Continuance of Hearing

A hearing may be postponed or continued for due cause by the Hearing Officer upon his or her own motion or upon the motion of a party to the hearing. A motion filed by a party to the hearing shall set forth facts justifying the request and 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 2 business days prior to the scheduled hearing date. The Hearing Officer shall grant a motion requesting postponement or continuance only upon the most substantial of grounds and the public hearing is to be rescheduled as quickly as possible, taking into consideration that the Department shall have no more than 60 days from the date it receives the permit application to approve or reject the permit application.

f) Failure to Appear at Hearing

If any party, after making a proper request for public hearing, fails to appear at the hearing, absent an emergency situation beyond the party's control, that party's request for public hearing shall be dismissed. If other proper requests for public hearing remain, the public hearing will proceed with any remaining parties. If the party failing to appear is the applicant, the hearing may proceed, at the election of the requestors, for the testimony, evidence or statements that persons present wish to adduce, but absent an emergency situation beyond the applicant's control, the Department will reject the permit application. If the applicant fails to appear but sends a satisfactory written explanation to the Hearing Officer explaining why emergency circumstances out of the applicant's control existed, and the applicant waives the 60 day deadline set forth in Section 245.230(e), the Hearing Officer shall reschedule the public hearing. In such an event, the applicant shall be responsible for payment of all the costs associated with the first hearing.

g) Conduct of Hearing

1) Taking into consideration that the Department shall have no more than 60 days from the date it receives the permit application to approve or reject the permit application, pre-hearing conferences are not expected and will only be scheduled on request of a party if the Hearing Officer determines that good cause is provided to do so and delay of the public hearing will not result. Any pre-hearing conference may be conducted via telephone.

2) Taking into consideration that the Department shall have no more than 60 days from the date it receives the permit application to approve or reject the permit application based upon the information required to be supplied with permit applications, requests for hearing and petitions for participation, discovery will only be allowed for good cause shown after a motion is served on all parties, shall be at the discretion of the Hearing Officer, and shall be limited to requests for production of documents and the presence of witnesses at the public hearing. All motions for discovery are required to be made as early as possible, but in no event less than 2 business days before the scheduled date for the public hearing, and in a manner to avoid delay of the public hearing.

3) Every person, government agency or county filing a request for hearing or petition to participate at the public hearing shall enter an appearance in writing.

4) All parties in the hearing shall have the right to be represented by an attorney. Parties that are individuals do not need to be represented by an attorney. Parties required by Illinois law to be represented by an attorney in the courts of this State must be represented by an attorney at the public hearing.

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

6) The Department shall appear at any hearing held under this Section and shall be given the opportunity to question parties or to provide evidence necessary to reach a decision on the request for hearing or petition to participate. The Department's role shall be to assist in creating a complete and accurate record at the public hearing.

7) Ruling on Participation

The Hearing Officer shall first determine and rule on whether each request for hearing satisfies the requirements of subsection (a)(5), giving due consideration to the sophistication of the petitioner and whether the petitioner is represented by counsel. If there are also petitions to participate, the Hearing Officer shall determine whether each petition to participate satisfies the requirements of subsection (a)(5). *Notice*provided to any person, government agency, or county pursuant to 245.240 or Section 245.250 *shall not constitute standing for purposes of requesting a public hearing* (Section 1-40(e) of the Act). The Hearing Officer shall base this ruling on the standards set forth in subsection (a)(5). Any Hearing Officer decision denying participation to any party under this subsection (g)(7) shall be a final administrative decision by the Department and subject to judicial review under the Administrative Review Law and rules promulgated under that Law.

8) Preliminary Matters

After ruling on participation, the following shall be addressed prior to receiving evidence at the discretion of the Hearing Officer:

A) Parties may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of the notice of hearing, proof of publication and the application at issue.

B) Ruling may be made on any pending motions.

C) Any other preliminary matters appropriate for disposition prior to presentation of evidence may be addressed.

h) Evidence

1) Admissibility

The Illinois Rules of Evidence shall generally apply to these proceedings. However, evidence not admissible under those rules of evidence may be admitted, except when precluded by statute, if it is of a type commonly relied upon by reasonable, prudent persons in the conduct of their affairs. The Hearing Officer shall rule on the admissibility of evidence.

2) Official Notice

Official notice may be taken of any material fact not appearing in evidence in the record if the circuit courts of this State could take judicial notice of that fact. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge.

3) Case Presentation

The parties requesting the public hearing shall present their case first. If there are parties that petitioned to participate in the hearing, they will then present their case. The Hearing Officer will determine whether the Department or the applicant presents additional evidence and in what order. The Hearing Officer will determine whether to allow rebuttal evidence. All witnesses are subject to cross-examination. The Hearing Officer may allow opening statements and closing arguments.

4) Briefs

The Hearing Officer may require or allow parties to submit written briefs to the Hearing Officer within such time as the Hearing Officer shall determine, taking into consideration that the Department shall have no more than 60 days from the date it receives the permit application to approve or reject the permit application.

i) Record of Proceedings; Testimony

*A complete record of the* public *hearings and all testimony shall be made by the Department and recorded stenographically or electronically* (Section 1-50(c) of the Act). Any person testifying shall be required to do so under oath.

j) Recommended Findings

1) After the close of evidence at any public hearing held under this Section, the Hearing Officer shall prepare recommended findings regarding the objections and concerns raised by the parties at the public hearing, and identifying any potential impact on the pending permit application based on the evidence and testimony presented at the hearing.

2) The Hearing Officer shall issue and serve on all parties the recommended findings within 7 days after the close of evidence.

3) The Department shall take into consideration the recommended findings when making a permit decision consistent with Section 245.300.