**Section 300.70 Departmental Consideration of Reclamation Plans**

a) Approval of Plans

The Department shall approve a conservation and reclamation plan if the plan complies with the Act and this Part, and if the completion of the plan will in fact accomplish every duty required of the operator. The Department's approval of a plan shall be based on the advice of technically trained foresters, agronomists, economists, engineers, planners and other relevant experts having experience in reclaiming surface mined lands. The Department shall consider the view filed by the county board in writing with the Department. The Department shall consider the short and long term impact of the proposed mining on:

1) vegetation;

2) wildlife;

3) fish;

4) land use;

5) land values;

6) local tax base;

7) economy of the region and of the State;

8) employment opportunities;

9) air pollution;

10) water pollution;

11) soil contamination;

12) noise pollution;

13) drainage.

b) Alternative Land Uses

The Department may consider feasible alternative land uses for which reclamation might prepare the affected land and may analyze the relative costs and effects of those alternatives.

c) Notice

The Department shall send notice of any hearing to be held pursuant to Section 5 of the Act to the applicant, the county board, all interested persons who have requested, in writing, notice with respect to that particular parcel of land to be affected by the application and plan, and to the principal newspapers, television and radio stations serving the area. The Department will publish notice of the hearing in a newspaper of general circulation within the county. The notice will be sent not less than 10 nor more than 35 days prior to the date fixed for the hearing.

d) Hearing Officer

1) The Department will appoint a hearing officer to conduct the hearing. The hearing officer shall not reside or have an office within the county and shall be either a State employee or a licensed attorney. The hearing officer shall conduct a fair hearing and shall take all necessary action to avoid delay, to maintain order, and to develop a clear and complete record.

2) He shall have all powers necessary to these ends, including but not limited to the power to:

A) Rule upon motions and requests consistent with the law and this Part;

B) Change the time and place of the hearing and adjourn the hearing from time to time or from place to place within the county of the affected lands and to give due notice of such action consistent with the notice requirement of subsection (c) of this Section;

C) Administer oaths;

D) Examine and cross-examine witnesses and direct witnesses to testify;

E) Admit or exclude evidence on the issues;

F) Hear oral argument on the facts or the law; and

G) Require prior submission of expert testimony in writing, require prior submission of exhibits, and make such orders as appropriate to preserve the right of cross-examination with respect thereto.

e) Prehearing Conferences

1) The hearing officer, on his own motion, or on the motion of any applicant or interested party, the Department or the county board, or representatives of same, may direct all such entities or their representatives to appear at a specified time and place for a conference for:

A) The simplification of the issues;

B) Obtaining stipulations and admissions of fact;

C) The identification and, if practicable, the scheduling of witnesses to be called;

D) If appropriate, the advance submission at the prehearing conference by any applicant or interested person, the Department or county board of documentary evidence to be marked for identification. All evidence thus submitted shall be marked for identification. When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts thereof, adequately identified, and shall supply copies of such excerpts together with the original document to the hearing officer for examination and study by all other parties;

E) Such other matters as may aid in the fair, orderly and expeditious disposition of the proceeding.

2) The hearing officer may, following a prehearing conference, issue an order setting forth the agreements reached by the parties or representatives, the schedule of witnesses, and a statement of issues for the hearing. Such order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order. Notwithstanding any provision of this subsection, witnesses may present testimony and other material may be introduced and received as evidence at the hearing, so long as such testimony or other evidence is otherwise admissible under the Act and this Part.

f) Hearing Procedures

1) The applicant shall appear at any hearing held pursuant to a request of the county board. The Department through its representatives shall appear at any such hearing.

2) Any applicant, the Department or interested persons may be represented by an authorized officer, employee, or other representative. All such entities and the county board shall have the right to be represented by counsel.

3) The hearing officer may allow the county board, the applicant, and any interested persons to make an opening statement or closing argument. The county board, the applicant, the Department, and any interested persons shall have the right to cross-examine witnesses.

4) Where necessary in order to prevent undue prolongation of the hearing, the hearing officer may limit the number of times any witness may testify, may limit repetitious or cumulative testimony, and may establish reasonable limits on the amount of time each witness may testify. The hearing officer shall establish a time period during which members of the public shall be heard. Every effort will be made to allow all such persons who wish to make a statement to do so within the discretion of the hearing officer.

5) A verbatim transcript of the hearing shall be maintained by a reporter appointed by the Department, and shall constitute a part of the record. Copies of the transcript shall be furnished upon request at cost.

6) If an applicant, county board or interested person objects to the admission or rejection of any evidence or to any other ruling of the hearing officer during the hearing, he shall state briefly the grounds of such objection. The transcript shall not include argument or debate on an objection except as ordered by the hearing officer. The ruling of the hearing officer on any objection shall be a part of the record. No interlocutory appeal may be taken from any ruling of the hearing officer.

7) The record shall remain open for rebuttal statements for 10 days following the close of the hearing, or for such other reasonable time as the hearing officer may direct.

g) Admission of Evidence

1) The hearing officer may, insofar as practicable, exclude evidence which is immaterial, irrelevant, or unduly repetitious.

2) If relevant and material evidence is contained in a report or document containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the hearing officer.

3) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief statement or affidavit, or an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Department decides that the hearing officer's ruling in excluding the evidence was erroneous.

4) Any relevant and material documentary evidence shall be received in evidence, including affidavits, published scientific articles, and official documents, regardless of whether or not the affiant, author, or maker is available for cross-examination. Where any such evidence is admitted without cross-examination, or where cross-examination is limited for any purpose by the hearing officer, the Department shall consider the extent to which an opportunity for cross-examination was provided in determining the weight to be accorded evidence appearing in the record.

5) If the Department relies on any report or other document in its consideration of the application, not admitted into evidence at a hearing, nor submitted to the Department pursuant to the Act and this Part in a situation where no hearing is held, the Department will include a copy of such document in the record.

h) Decision of the Department

1) The Department shall approve a reclamation plan and issue the permit applied for, if it determines that such plan best complies with the Act and this Part in all respects. The Department's decision with respect to such plan shall be based upon the record. Nothing in the Act or in this Part shall be construed as preventing the Department or its representatives or any hearing officer appointed pursuant to the Act and this Part from taking administrative notice of any fact, law, rules or regulations commonly known, but not formally introduced or otherwise made a part of the record with respect to such plan.

2) Whenever the Department does not approve the applicant's plan, or whenever the plan approved by the Department does not conform to the views of the county board expressed in accordance with Section 5(f) of the Act, the Department will issue a statement of its reasons for its determination and will make such statement public. A copy of this decision and statement shall be mailed by the Department to the applicant and to the county clerk of each county containing land to be affected by registered mail return receipt requested. The county clerk shall forward such decision and statement to the presiding officer of such county board by registered mail return receipt requested. The Department's action with respect to any plan and permit application shall be deemed to occur on the day the Department mails such decision and statement to the applicant and county clerk.

i) Modification of a Reclamation Plan After Denial of an Application For Permit Under Subsection (h)

If an application for permit is denied pursuant to subsection (h), the applicant may submit a modified reclamation plan as part of its original application within 10 days after the Department's issuance of its decision and statement of its reasons for such decision. Such modified plan shall be submitted in writing to the county board of each county containing land to be affected, as provided for in the Act and in Section 300.60(a) of this Part. The county board shall have 10 days from the date of the filing of such modified plan with the Department to direct written testimony and documentary evidence regarding such modified plan to the Department. If the Department determines that the modified plan best complies with the Act, this Part and the terms of the previous decision and statement on the original plan, it shall approve the reclamation plan and issue the permit applied for to the applicant. The Department's decision with respect to such modified plan shall be based on the original record of the hearing on the plan and on the written submissions allowed for under this subsection.

(Source: Amended at 26 Ill. Reg. 4372, effective March 11, 2002)