**Section 1847.5 Civil Penalty Assessment Hearings**

a) Within thirty (30) days after receipt of a proposed civil penalty assessment, the person against whom the proposed penalty was assessed may request a hearing to contest the fact of the violation or the proposed penalty by filing a written request for hearing.

b) The request for hearing shall include:

1) A short and plain statement indicating the reasons why either the amount of the penalty or the fact of the violation is being contested;

2) Identification by number of all violations being contested; and

3) The identifying number of the cashier's check, certified check, bank draft, personal check, or bank money order accompanying the hearing request.

c) The hearing request shall be accompanied by:

1) Full payment of the proposed assessment in the form of a cashier's check, certified check, bank draft, personal check or bank money order made payable to the Illinois Department of Natural Resources, Office of Mines and Minerals to be placed in an escrow account pending final determination of the assessment; and

2) On the face of the payment an identification by number of the violation(s) for which payment is being tendered.

d) Failure to file the proposed penalty assessment with the Department within thirty (30) days after receipt of the proposed penalty assessment shall result in a waiver of all legal rights to contest both the fact of the violation and the amount of the penalty.

e) No extension of time will be granted for full payment of the proposed penalty assessment. If payment is not made within the time period established in this Section, the fact of the violation and the appropriateness of the amount of the penalty shall be deemed admitted, the request for hearing shall be dismissed on motion of the Department in accordance with 62 Ill. Adm. Code 1848.12, and the civil penalty assessment shall become a final administrative decision of the Department.

f) Any party to the hearing may request that a pre-hearing conference be scheduled, in accordance with 62 Ill. Adm. Code 1848.7.

g) The applicant and other interested persons shall be given written notice of the hearing in accordance with 62 Ill. Adm. Code 1848.5 at least five (5) working days prior thereto. Notice of the hearing shall also be posted at the appropriate district or field office, at the mine site, and to the extent possible in a newspaper of general circulation in the area of the mine at least five (5) days prior to the hearing.

h) Settlement agreement.

1) If a settlement agreement is entered into at any stage of the hearing process, the person to whom the notice or order was issued will be deemed to have waived all right to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a waiver clause to this effect.

2) If full payment of the amount specified in the settlement agreement is not received by the Department within the agreed upon period after the date of signing, the Department may enforce the agreement or rescind it and proceed to collect the original face amount of the assessment within thirty (30) days from the date of the rescission.

i) Summary disposition.

1) Where the person against whom the proposed civil penalty is assessed fails to appear at a hearing, that person will be deemed to have waived his right to a hearing and the hearing officer may assume for purposes of the assessment:

A) That each violation listed in the notice of violation or cessation order occurred; and

B) The truth of any facts alleged in such notice or order.

2) In order to issue an order or decision assessing the appropriate penalty when the person against whom the proposed civil penalty was assessed fails to appear at the hearing, the hearing officer shall either conduct an ex parte hearing or require the Department to furnish proposed findings of fact and conclusions of law.

j) Record of hearing. A complete record of the hearing and all testimony shall be made by the Department and recorded stenographically. Such record shall be maintained and shall be available to the public until at least sixty (60) days after the final decision referred to in subsection (n) of this Section has been issued.

k) Burden of proof. In civil penalty review proceedings, the Department shall have the burden of going forward to establish a prima facie case as to the fact of the violation and the amount of the civil penalty and the ultimate burden of persuasion as to the amount of the civil penalty. The person who requested the hearing shall have the ultimate burden of persuasion as to the fact of the violation.

l) Within thirty (30) days after the close of the record, the hearing officer shall issue and serve, by certified mail, each party who participated in the hearing with a proposed decision consisting of proposed written findings of fact, conclusions of law and an order adjudicating the hearing request.

1) If the hearing officer finds that:

A) A violation occurred or that the fact of the violation is uncontested, he shall establish the amount of the penalty giving due weight to the Department's proposed civil penalty assessment amount;

B) No violation occurred, he shall issue an order that the proposed assessment be returned to the petitioner.

2) If the hearing officer reduces the amount of the civil penalty below that of the Department's proposed assessment, the Department shall within thirty (30) days remit the appropriate amount to the person who made the payment, with interest at the rate of six (6) percent, or at the prevailing United States Department of Treasury rate, whichever is greater.

3) If the hearing officer increases the amount of the civil penalty above that of the Department's proposed assessment, the hearing officer shall order payment of the appropriate amount within thirty (30) days after receipt of the decision.

m) Within ten (10) days after service of the hearing officer's proposed decision, each party to the hearing may file with the hearing officer written exceptions to the hearing officer's proposed decision, stating how and why such decision should be modified or vacated. All parties shall have ten (10) days after service of written exceptions to file a response thereto with the hearing officer. Failure to file written exceptions or a response thereto is not a failure to exhaust administrative remedies and does not affect a party's right to judicial review.

n) If no written exceptions are filed, the hearing officer's proposed decision shall become final ten (10) days after service of such decision. If written exceptions are filed, the hearing officer shall within fifteen (15) days following the time for filing a response thereto either issue his final administrative decision affirming or modifying his proposed decision, or shall vacate the decision and remand the proceeding for rehearing.

o) Judicial review. Following service of the Department's final administrative decision, the permittee or any affected person may request judicial review of that decision in accordance with the Administrative Review Law [735 ILCS 5/Art. III].

(Source: Amended at 20 Ill. Reg. 1919, effective January 19, 1996)