**Section 1847.6 Show Cause Hearings**

a) Whenever a show cause order is issued under 62 Ill. Adm. Code 1843.13, the permittee shall have thirty (30) days from the completion of service of the show cause order in which to file an answer and request a hearing.

b) Contents of answer. The permittee's answer to a show cause order shall contain a statement setting forth:

1) A detailed explanation as to why a pattern of violations does not exist or has not existed, including all reasons for contesting:

A) The fact of any of the violations alleged by the Department as constituting a pattern of violations;

B) The willfulness of such violations; or

C) Whether such violations were caused by the unwarranted failure of the permittee;

2) All mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

3) Any other alleged relevant facts; and

4) Whether a hearing on the show cause order is desired.

c) Show cause hearings shall be held at the Department's Springfield, Illinois office.

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

e) Notice of hearing. The Department shall give written notice of the hearing in accordance with 62 Ill. Adm. Code 1848.5 to all parties. The Department shall publish the notice, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operation, and shall post it at the Department's office closest to the operation.

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

g) Summary disposition. Where the person to whom the show cause order was issued fails to appear at the hearing, that person will be deemed to have waived his right to a hearing and the hearing officer may assume the truth of any facts alleged in the show cause order.

h) Burden of proof. In proceedings to suspend or revoke a permit, the Department shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

i) 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 (1) is issued.

j) 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. The hearing officer's proposed decision shall include a determination as to whether a pattern of violations exists and, if appropriate, a proposed order suspending or revoking the permit. Permit suspension shall be imposed if the hearing officer determines that this remedy creates less potential harm to the environment and to the health and safety of the public than permit revocation.

k) 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.

l) 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.

m) Failure to file a timely answer or request for hearing on a show cause order upon which service is deemed complete under 62 Ill. Adm. Code 1843.14 shall, upon motion of the Department in accordance with 62 Ill. Adm. Code 1848.12, result in the Department's issuance of an order suspending or revoking the permit and the permittee's right to mine, which shall constitute the Department's final administrative decision in the matter.

n) Judicial review. Following service of the Department's final administrative decision, the permittee 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)