**Section 1847.8 Individual Civil Penalty Hearings**

a) Scope. These regulations govern administrative review of proposed individual civil penalty assessments under Section 8.04(f) of the State Act against a director, officer or agent of a corporation. An individual served a notice of proposed individual civil penalty assessment under 62 Ill. Adm. Code 1846 may file a petition for review with the Department in accordance with this Section.

b) Time for filing.

1) A petition for review of a notice of proposed individual civil penalty assessment must be filed within thirty (30) days of its service on the individual.

2) No extension of time will be granted for filing a petition for review of a notice of proposed individual civil penalty assessment. Failure to file a petition for review within the time period provided in subsection (b)(1) shall be deemed an admission of liability by the individual and the notice of proposed assessment shall become a final administrative decision of the Department.

c) Contents of petition. An individual filing a petition for review of a notice of proposed individual civil penalty assessment shall provide a concise statement of the facts entitling the individual to relief.

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 hearing officer shall give notice of the hearing in accordance with 62 Ill. Adm. Code 1848.5 to all interested parties at least five (5) working days prior thereto.

f) Settlement agreement. If a settlement agreement is entered into at any stage of the hearing process, the person against whom the individual civil penalty was proposed to be assessed will be deemed to have waived all right to further review of the proposed assessment, 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 against whom the individual civil penalty was proposed to be assessed 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 notice of proposed individual penalty assessment.

h) 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 Director's decision referred to in subsection (1) is issued.

i) Elements; burdens of proof.

1) The Department shall have the burden of going forward with evidence to establish a prima facie case that the individual was a corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal under 62 Ill. Adm. Code 1846. A showing that the Department served the individual with a notice of proposed individual civil penalty assessment in accordance with 62 Ill. Adm. Code 1846.17, that at the time of such service the individual was a director, officer or agent of the corporate permittee and that a violation that was the subject of the cessation order issued to the corporate permittee has not been abated is sufficient to establish the Department's prima facie case.

2) The individual shall have the ultimate burden of persuasion by a preponderance of the evidence as to the elements set forth in subsection (i)(1).

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 on each of the elements set forth in subsection (i)(1) and an order adjudicating the hearing request.

k) Within fifteen (15) days after service of the hearing officer's proposed decision, each party to the hearing may file with the Director written exceptions to the hearing officer's proposed decision, stating how and why such decision should be modified or vacated. All parties shall have fifteen (15) days after service of written exceptions to file a response thereto with the Director. 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 fifteen (15) days after service of such decision. If written exceptions are filed, the Director shall within fifteen (15) days following the time for filing a response thereto either issue the Department's final administrative decision affirming or modifying the hearing officer's decision or shall vacate the hearing officer's decision and remand the proceeding to the hearing officer for further action.

m) Judicial review. The Department's final administrative decision shall be appealed in accordance with the Administrative Review Law (Ill. Rev. Stat. 1991, ch. 110, pars. 3-101 through 3-112) [735 ILCS 5/3].