

STATE ACT

Sec. 2.11. Procedures for Approval. (225 ILCS 720/2.11)

(a) If a hearing has been held under Section 2.04, the Department shall within 60 days after the last such hearing make its decision on the application and shall promptly furnish the applicant, local government officials in the area of the affected land, and persons who are parties to the administrative proceedings, with the written findings of the Department and stating the specific reasons for its decision.

(b) If no hearing has been held under Section 2.04, the Department shall make its decision on the application within 120 days after receipt by the Department of a complete application and shall promptly notify the applicant, local government officials in the area of the affected land, and persons who have submitted written comments on the application of the Department's decision with the written findings of the Department and stating the specific reasons for its decision.

(c) Within 30 days after the applicant is notified of the final decision of the Department on the permit application, the applicant or any person with an interest that is or may be adversely affected may request a hearing on the reasons for the final determination. The Department shall hold a hearing within 30 days after this request and notify all interested parties at the time that the applicant is notified. The notice shall be published in a newspaper of general circulation published in each county in which any part of the area of the affected land is located. The notice shall appear no more than 14 days nor less than 7 days prior to the date of the hearing. The notice shall be no less than one eighth page in size, and the smallest type used shall be twelve point and shall be enclosed in a black border no less than 1/4 inch wide. The notice shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The hearing shall be of record and adjudicatory in nature. No person who presided at a hearing under Section 2.04 shall either preside at the hearing or participate in the decision on the hearing. Once a hearing has started, the hearing officer may issue interim orders allowing the Department or the applicant to correct or alter the permit or application. Within 30 days after the hearing, the Department shall issue, and furnish the applicant, local government officials in the area of the affected land, and all persons who participated in the hearing, its written decision granting or denying the permit in whole or in part and stating the reasons for its decision. No party to a formal adjudicatory hearing under this subsection may seek judicial review of the Department's final decision on the permit application until after the issuance of the hearing officer's written decision granting or denying the permit.

(d) If the application is approved under either subsection (a) or (b) of this Section, the permit shall be issued.

(e) If a hearing is requested under subsection (c) of this Section, the Department may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if all parties to the

proceedings have been notified and given an opportunity to be heard on a request for temporary relief, the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding, and such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(f) If final action on an application does not occur within the times prescribed in subsections (a) or (b) of this Section, whichever applies, the applicant may deem the application denied, and such denial shall constitute final action. The applicant may waive these time limits.

(g) For the purpose of hearings under this Section, the Department may administer oaths, subpoena witnesses or written or printed materials, compel attendance of the witnesses or production of the materials, and take evidence including but not limited to site inspections of the land to be affected and other mining operations carried on by the applicant in the general vicinity of the proposed operation. A verbatim record of each hearing under this Section shall be made, and a transcript shall be made available on the motion of any party or by order of the Department.

(Source: P.A. 97-934, eff. 8-10-12.)

DEPARTMENT'S REGULATIONS

Section 1847.3 Permit and Related Administrative Hearings (62 Ill. Admin. Code 1847.3)

a) Within 30 days after an applicant is mailed written notice of the Department's final decision concerning an application for approval of exploration required under 62 Ill. Adm. Code 1772, a permit for surface coal mining and reclamation operations, a permit revision, a permit renewal, a permit rescission or a transfer, assignment, or sale of permit rights, the applicant, or any person with an interest which is or may be adversely affected, may file a written request for a hearing to contest the decision. The procedures outlined in this Section apply to conflict of interest hearings requested under 62 Ill. Adm. Code 1705.21, review of valid existing right determinations under 62 Ill. Adm. Code 1761.12(g), review of exemption determinations under 62 Ill. Adm. Code 1702.11(f) and 1702.17(c)(2), formal review of decisions not to inspect or enforce under 62 Ill. Adm. Code 1840.17, review of a permit issued pursuant to 62 Ill. Adm. Code 1785.23, review of bond release decisions under Section 1847.9(i) of this Part and review of bond adjustment determinations under 62 Ill. Adm. Code 1800.15. Failure to file a request for hearing within this 30 day time period shall result in a waiver of the right to such hearing; requests for hearing filed after the expiration of the 30 day time period shall be dismissed on motion of the Department in accordance with 62 Ill. Adm. Code 1848.12. A request for hearing is deemed filed the day it is received by the Department.

b) The hearing request shall state:

1) The petitioner's name and address;

2) A clear statement of the facts entitling the petitioner to relief, including the petitioner's interests which is or may be adversely affected by the Department's final decision;

3) How the Department's final decision may or will adversely affect the interests specified;

4) An explanation of each specific alleged error in the Department's final decision, including reference to the statutory and/or regulatory provisions allegedly violated;

5) The specific relief sought from the Department; and

6) Any other relevant information.

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

Section 1848.2 Documents (62 Ill. Admin. Code 1848.2)

a) Filing of documents. The effective filing date for documents shall be the date of receipt by the Department's Springfield, Illinois office.

b) Service. A copy of each document filed in a review proceeding under 62 Ill. Adm. Code 1847 must be served by the filing party on the other party or parties to the proceeding. In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the case on behalf of his client, and service of any document relating to the proceeding shall be made upon such attorney in addition to any other service specifically required by law. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

c) Retention of documents. All documents, books, records, papers, etc., received in evidence in a hearing or submitted for the record in any proceeding will be retained with the official record of the proceeding.

d) Record address. Every person who files a document for the record or requests notice in connection with a proceeding conducted under 62 Ill. Adm. Code 1847 shall at the time of his initial filing in the matter state his address. If a person fails to furnish a

record address as required herein he will not be entitled to notice in connection with the proceedings.

e) Computation of time. Computation of any period of time prescribed herein shall be done in accordance with 62 Ill. Adm. Code 1700.15.

f) Extensions of time.

1) Upon a showing of just cause, the time for filing or serving any document may be extended by the hearing officer before whom the proceeding is pending except where such extension is contrary to law or regulation.

2) A request for an extension of time must be filed within the time allowed for the filing or serving the document.

g) Petitions for review and requests for hearing. Petitions for review and requests for hearing under 62 Ill. Adm. Code 1847 shall be filed with the Illinois Department of Natural Resources, Office of Mines and Minerals, Land Reclamation Division, 524 S. Second Street, Springfield, Illinois 62701-1787.¹

62 Ill. Admin. Code 1701.APPENDIX A. DEFINITIONS.

"Person having an interest which is or may be adversely affected" or "Person with a valid legal interest" shall include any person:

Who uses any resources of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Department; or

Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Department.

¹ The Department's regulations have not been updated for many years. The address of the Department has changed and is located on the State Fair Grounds.