

62 Ill. Adm. Code 240.460

240.460 Modified Drilling Unit

a) The Department shall schedule a hearing to consider a petition for modification of the location of the standard drilling unit described in Section 240.410, based on geologic or engineering characteristics of the reservoir, relative to the land survey system specified in Section 240.410 and well density specified in Section 240.465.

b) Upon petition of any person having an interest in oil or gas in a lease or drilling unit, when the proposed unit does not fit within divisions created by the official United States Public Land Survey described in Section 240.410, the Department shall initiate a review of the petition to determine whether the petition will be accepted. If the permit is accepted, a public hearing will be scheduled pursuant to subsection (e).

c) Contents of petition shall include:

- 1) the name and address of the petitioner;
- 2) a legal land description of the drilling unit sought to be established;
- 3) a description of the petitioner's interest in oil or gas in the drilling unit at issue; and
- 4) the petitioner's geologic or engineering reason for requesting a modified drilling unit.

d) Execution and Filing

1) The petition to modify a drilling unit in accordance with this Section or establish a special drilling unit in accordance with Section 240.465 shall be sent to the Department offices located in Springfield, Illinois.

2) Every petition shall be signed by the petitioner or his or her representative and the petitioner's address shall be stated on the petition. The signature of the petitioner or his or her representative constitutes a certificate by him or her that he or she has read the petition and that to the best of his or her knowledge, information and belief there is good ground to support the petition. The *petition shall be accompanied by a non-refundable application fee in the amount of \$1,500.* [225 ILCS 725/21.1(b-2)]

3) A petition shall not be accepted if:

A) the petitioner *has falsified or otherwise misstated any information on or relative to the petition;*

B) *the petitioner has failed to abate a violation of the Act specified in a final administrative decision of the Department;*

C) *an officer, director, agency, power of attorney or partner in the petitioner, or a person with an interest*

in the petitioner exceeding 5% was or is an officer, director, partner, agent, power of attorney or person with an interest exceeding 5% in another entity that failed to abate a violation of the Act specified in a final administrative decision of the Department;

D) *the petitioner was or is an officer, director, agent, power of attorney, partner, or person with an interest exceeding 5% in another entity that has failed to abate a violation of the Act specified in a final administrative decision of the Department [225 ILCS 725/8(a)];*

E) *funds have been expended and remain outstanding from the PRF to plug wells, under Subpart P, for which the petitioner:*

i) was a previous permittee;

ii) was or is an officer, director, agent, power of attorney, partner or person with an interest exceeding 5% in a permittee for which funds were expended; or

iii) an officer, director, agent, power of attorney or partner in the petitioner, or a person with an interest in the petitioner exceeding 5% was or is an officer, director, agent, power of attorney, partner or person with an interest exceeding 5% in a permittee for which funds were expended; or

F) *the petitioner is delinquent in the payment of Annual Well Fees; or the petitioner was or is an officer, director, agent, power of attorney, partner or person with an interest exceeding 5% in another permittee who is delinquent in payment of Annual Well Fees; or an officer, director, agent, power of attorney or partner in the petitioner, or person with an interest in the applicant exceeding 5%, in a permittee who is delinquent in payment of Annual Well Fees.*

4) *If the Department finds the petition deficient relative to the requirements of subsection (c)(2) or (3), the petition shall not be accepted and the Department shall issue a written deficiency notice to the petitioner within 10 business days after its receipt. If the petitioner does not respond to the deficiencies within 60 days, the petition will be deemed denied.*

5) *If the Department finds the petition deficient relative to the requirements of subsections (a) or (b), the Department shall issue a written deficiency notice to the petitioner within 10 business days after the receipt date. If the petitioner does not respond to the deficiencies within 60 days, the petition will be deemed denied. Within 60 days after receipt of any deficiency notice under this subsection (d)(5), the petitioner may request, in writing, that the petition be accepted and a public hearing be held, in lieu of responding to the deficiency.*

6) *If the Department does not timely respond to any petition or the submission of additional information or documentation after initial submission within 10 business days after receipt, then the petition shall be deemed to be in sufficient form for acceptance and filing and the Department shall proceed with the scheduling of a public hearing. [225 ILCS 725/21.1(f)]*

e) *A public hearing on the petition shall be scheduled not less than 30 days, but not more than 60 days, after the acceptance of the petition by the Department. [225 ILCS 725/21.1(f)] Notice of hearing shall be given by the petitioner to all mineral owners within the boundaries set forth in the petition, and to all permittees whose wells or leases are within ¼ mile of the boundaries of the lease or drilling unit, by U.S. Postal Service certified mail, return receipt requested, and by publication in a newspaper of general circulation in each county in which any portion of the proposed*

lease or drilling unit or units is located, at least 10 days prior to the hearing. The notice shall include:

- 1) the name and address of the petitioner;
- 2) the date of the hearing;
- 3) the legal land description of the drilling unit sought to be established;
- 4) the geologic name and depth of the proposed production ~~formations~~ pools;
- 5) the address and telephone number for the Office of Oil and Gas Resource Management of the Department
- 6) As to the notice to be mailed, a statement that the recipient has 14 days from the date of mailing the notice, as stated in the notice, to comment on the petition and that comments must be made in writing to the Office; and
- 7) As to the newspaper publication notice, a statement that the public has 10 days from the date of the publication of the notice, as stated in the public notice, to comment on the petition and that comments must be made in writing to the Office.

f) Pre-Hearing Conferences

- 1) Upon his or her own motion or the motion of a party, the Hearing Officer shall direct the parties or their counsel to meet for a conference in order to:
 - A) Simplify the factual and legal issues presented by the hearing request;
 - B) Receive stipulations and admissions of fact and of the contents and authenticity of documents;
 - C) Exchange lists of witnesses the parties intend to have testify and copies of all documents the parties intend to introduce into evidence at the hearing; and
 - D) Discuss and resolve such other matters as may tend to expedite the disposition of the hearing request and to assure a just.
- 2) Pre-hearing conferences may be held by telephone conference, video conference or other electronic means if that procedure is acceptable to all parties.

g) Hearing

- 1) Hearing Officer: Every hearing shall be conducted by a Hearing Officer designated by the Director. The Hearing Officer shall take all necessary action to avoid delay, to maintain order and to develop a clear and complete record, and shall have all powers necessary and appropriate to conduct a fair hearing and to render a

decision on the petition, including the following:

A) To administer oaths and affirmations;

B) To receive relevant evidence;

C) To regulate the course of the hearing and the conduct of the parties and their counsel;

D) To consider and rule upon procedural requests;

E) To examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitive or cumulative testimony and set reasonable limits on the amount of time each witness may testify;

F) To require the production of documents or subpoena the appearance of witnesses, either on the Hearing Officer's own motion or for good cause shown on motion of any party of record.

2) All hearings are open to the public and are held in compliance with the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.). The hearings will be held at locations ordered by the Hearing Officer. The Hearing Officer will select hearing locations that comply with any geographic requirements imposed by applicable law and, to the extent feasible, promote the convenience of the parties and the conservation of the Department's resources. All hearings are subject to cancellation without notice. Interested persons may contact the Department or the Hearing Officer for information about the hearing. Parties, participants and members of the public must conduct themselves with decorum at the hearing.

3) Upon the motion of any party, the Hearing Officer may order that a hearing be held by telephone conference, video conference or other electronic means. In deciding whether a hearing should be held by telephone conference, video conference or other electronic means, factors that the Hearing Officer shall consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness.

4) Every interested person wishing to participate at the hearing shall enter an appearance in writing. The Hearing Officer shall determine if the interested person shall be allowed to enter as a party of record. The Hearing Officer shall base that determination on the same standards used to determine parties in Circuit Court.

5) All participants in the hearing shall have the right to be represented by counsel.

6) The Hearing Officer shall allow all parties to present statements, testimony, evidence and argument as may be relevant to the proceeding.

7) At least one representative of the Department shall appear at any hearing held under this Section and shall be given the opportunity to question parties or otherwise elicit information necessary to reach a decision on the petition.

8) When applicable, the following shall be addressed prior to receiving evidence:

A) The petitioner may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of publication and orders previously entered in the cause.

B) Ruling may be made on any pending motions.

C) Any other preliminary matters appropriate for disposition prior to presentation of evidence may be addressed.

h) Evidence

1) Admissibility: A party shall be entitled to present his or her case by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence received by the presiding Hearing Officer shall exclude evidence that is irrelevant, immaterial or unduly repetitious. The rules of evidence and privilege applied in civil cases in the courts of the State of Illinois shall be followed; however, evidence not admissible under those rules of evidence may be admitted, except when precluded by reasonable, prudent men in the conduct of their affairs. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, a Hearing Officer shall allow evidence to be received in written form.

2) Official Notice: Official notice may be taken of any material fact not appearing in evidence in the record if the circuit courts of this State could take judicial notice of that fact. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge.

3) Order of Proof: The petitioner shall open the proof. Other parties of record shall be heard immediately following the petitioner. The Hearing Officer or Department representatives may examine any witnesses. In all cases, the Hearing Officer shall designate the order of proof and may limit the scope of examination or cross-examination.

4) Briefs: The Hearing Officer may require or allow parties to submit written briefs to the Hearing Officer within 10 days after the close of the hearing or within such other time as the Hearing Officer shall determine as being consistent with the Department's responsibility for an expeditious decision.

i) Record of Proceedings; Testimony

The Department shall provide at its expense a certified shorthand reporter to take down the testimony and preserve a record of all proceedings at the hearing. Any person testifying shall be required to do so under oath. However, relevant unsworn statements, comments and observations by any interested person may be heard and considered by the Department and included in the record.

j) Postponement or Continuance of Hearing

A hearing may be postponed or continued for due cause by the Hearing Officer upon his or her own motion or upon the motion of a party to the hearing. A motion filed by a party to the hearing shall set forth facts attesting that the request for continuance is not for the purpose of delay. Except in the case of an emergency, motions requesting postponement or continuance shall be made in writing and shall be received by all parties to the hearing.

k) Default

If a party, after proper service of notice, fails to appear at the pre-hearing conference or at a hearing, and if no continuance is granted, the Department may then proceed to make its decision in the absence of that party. If the failure to appear at such pre-hearing conference or hearing is due to an emergency situation beyond the parties' control, and the Department is notified of the situation on or before the scheduled pre-hearing conference or hearing date, the pre-hearing conference or hearing will be continued or postponed pursuant to Section 240.460(i). Emergency situations include sudden unavailability of counsel, sudden illness of a party or his or her representative, or similar situations beyond the parties' control.

l) *The Department, after public hearing, shall either grant or deny the petition within 20 working days after the conclusion of the hearing.* [225 ILCS 725/21.1(f)]

m) If the Department finds, based on the reservoir's geological and engineering characteristics, that a modified drilling unit or units are necessary to prevent waste, to protect correlative rights, and to prevent the unnecessary drilling of wells, the Department shall enter an order establishing the modified drilling unit or units. Each order shall:

1) specify the location of each drilling unit relative to the land survey system; and

2) specify the set back from the drilling unit boundaries for the location of the oil or gas well on each drilling unit; and

3) terminate 1 year from the effective date of the order unless a well has been drilled on the drilling unit within that time. If a well has been drilled within that time, the order shall terminate when the well is plugged.

n) Order -- Final Administrative Decision

The Director's order is a final administrative decision of the Department, pursuant to Section 10 of the Act.