



COALEX STATE INQUIRY REPORT – 120
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TOPIC: ATTORNEYS' FEES

INQUIRY: Are there any federal or state cases on the following: 1) award of attorneys' fees to surface mining operators as a result of a challenge to a permit decision; 2) address recovery of attorneys' fees by litigants against a governmental agency; or 3) discuss Sec. 525(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) or 43 CFR 4.2190 et seq.?

SEARCH RESULTS: Research was conducted using the COALEX Library and the federal and state caselaw materials on LEXIS. The decisions retrieved as a result of the research are listed below. Copies are attached.

FEDERAL JUDICIAL DECISIONS

ANNOTATION, "Award of Attorneys' Fees Pursuant to Sec. 520(d), 520(f), 525(e), or 703(c) of Surface Mining Control and Reclamation Act of 1977 (30 USCS Sec. 1270(d), 1270(f), 1275(e), 1293(c)", 89 A.L.R. Fed. 170 (1988).

RUCKELSHAUS v SIERRA CLUB, 463 U.S. 680 (1983).

By its ruling on Sec. 307(f) of the Clean Air Act, the Court modified the traditional definition of "such award is appropriate" to mean that "some degree of success on the merits be obtained before a party becomes eligible for a fee award". The traditional rule had been that a "fee claimant must 'prevail' before it may recover attorney's fees."

PENNSYLVANIA v DELAWARE VALLEY CITIZENS' COUNCIL FOR CLEAN AIR, 478 U.S. 546 (1986).

Sec. 304(d) of the Clean Act authorizes attorney's fees for "any action". The Court determined that (1) participation in administrative proceedings are included under 304(d); and (2) the "lodestar" figure provided a "reasonable fee award reflecting the quality of representation", without the need for additional "enhancement".

BLUM v STENSON, 104 S.Ct. 1541 (1984).

The Supreme Court held: "(1) 'reasonable fees' in federal civil rights action are to be calculated according to prevailing market rates in relevant community...; (2) court is



authorized...to allow prevailing party upward adjustment in attorney fees in cases of exceptional success...."

COPELAND v MARSHALL, 641 F.2d 880 (D.C. Cir. 1980).

The court determined that: "(1) attorneys should be compensated for market value of services rendered rather than on a 'cost-plus' basis [this is 'lodestar': the number of hours reasonably expended multiplied by a reasonable hourly rate]...; (2) fees should be calculated no differently when the government rather than a private party is the losing defendant...."

UTAH INTERNATIONAL INC. v DEPARTMENT OF INTERIOR, 643 F.Supp. 810 (D. Utah 1986).

In UTAH INTERNATIONAL, the court ruled that "groups were not entitled to award for those claims on which they were aligned with government". Environmental groups that were successful as defendants could recover attorney's fees, based on rates charged by attorneys at the time "of government's remand motion", for work performed in conjunction with those claims. Environmental groups could not recover attorney fees for "work done in conjunction with nonenforcement, nonadversarial administrative proceedings which led to unsuitability designation". Finally, the court held that groups "which had received an award under SMCRA were not entitled to award of fees pursuant to Equal Access to Justice Act".

STATE JUDICIAL DECISIONS

HARDY v COMMONWEALTH OF PENNSYLVANIA, 101 Pa. Commw. 1 (1986).

The denial of petitioners' application for attorney's fees by the Environmental Hearing Board was affirmed. The court concluded that: "the Costs Act has no application to the Department [of Environmental Resources]'s denial of a private request for revision of an official sewage disposal plan because the Department in no fair way can be said to have initiated such action."

FEDERAL ADMINISTRATIVE DECISIONS

The Interior Administrative Law Judge (ALJ), Board of Surface Mining Appeals (IBSMA) and Board of Land Appeals (IBLA) decisions listed here apply the federal case findings described above to federal administrative proceedings.

VIRGINIA CITIZENS FOR BETTER RECLAMATION, 88 IBLA 126, IBLA 84-838 (1985).

DONALD ST. CLAIR, 84 IBLA 236 (1985).

COUNCIL OF THE SOUTHERN MOUNTAINS, INC. v OSM, 3 IBSMA 44, IBSMA No. 80-34 (1981).

DENNIS R. PATRICK v OSM, 1 IBSMA 248, Appeal No. IBSMA 79-21 (1979).



TURNER BROS., INC. v OSMRE, Docket Nos. TU 6-24-R, TU 6-28-R, TU 6-36-R, TU 6-45-R, TU 6-51-R, TU 6-74-R, TU 6-106-R, TU 7-3-R, TU 7-17-R, TU 7-20-R, TU 7-24-R, TU 7-25-R, TU 7-27-R, TU 7-28-R (1987).

ALTERNATE FUELS, INC. v OSM, Docket No. TU 5-23-R (1985).

DELTA MINING CORP., 3 IBSMA 252, IBSMA 81-60 (1981).

STATE ADMINISTRATIVE DECISIONS

The following decisions from the Pennsylvania Environmental Hearing Board apply the federal judicial and administrative findings to Pennsylvania administrative proceedings.

JAY TOWNSHIP v COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES, EHB Docket No. 82-300-W (1987).

KWALWASSER v COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES, EHB Docket No. 84-108-M (1988).

SHEESLEY v COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES, EHB Docket No. 81-061-H (1982).

ATTACHMENTS

- A. ANNOTATION, "Award of Attorneys' Fees Pursuant to Sec. 520(d), 520(f), 525(e), or 703(c) of Surface Mining Control and Reclamation Act of 1977 (30 USCS Sec. 1270(d), 1270(f), 1275(e), 1293(c)", 89 A.L.R. Fed. 170 (1988).
- B. RUCKELSHAUS v SIERRA CLUB, 463 U.S. 680 (1983).
- C. PENNSYLVANIA v DELAWARE VALLEY CITIZENS' COUNCIL FOR CLEAN AIR, 478 U.S. 546 (1986).
- D. BLUM v STENSON, 104 S.Ct. 1541 (1984).
- E. COPELAND v MARSHALL, 641 F.2d 880 (D.C. Cir. 1980).
- F. UTAH INTERNATIONAL INC. v DEPARTMENT OF INTERIOR, 643 F.Supp. 810 (D. Utah 1986).
- G. HARDY v COMMONWEALTH OF PENNSYLVANIA, 101 Pa. Commw. 1 (1986).
- H. VIRGINIA CITIZENS FOR BETTER RECLAMATION, 88 IBLA 126, IBLA 84-838 (1985).
- I. DONALD ST. CLAIR, 84 IBLA 236 (1985).
- J. COUNCIL OF THE SOUTHERN MOUNTAINS, INC. v OSM, 3 IBSMA 44, IBSMA No. 80-34 (1981).
- K. DENNIS R. PATRICK v OSM, 1 IBSMA 248, Appeal No. IBSMA 79-21 (1979).
- L. Turner Bros., Inc. v OSMRE, Docket Nos. TU 6-24-R, TU 6-28-R, TU 6-36-R, TU 6-45-R, TU 6-51-R, TU 6-74-R, TU 6-106-R, TU 7-3-R, TU 7-17-R, TU 7-20-R, TU 7-24-R, TU 7-25-R, TU 7-27-R, TU 7-28-R (1987).
- M. ALTERNATE FUELS, INC. v OSM, Docket No. TU 5-23-R (1985).



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- N. DELTA MINING CORP., 3 IBSMA 252, IBSMA 81-60 (1981).
- O. JAY TOWNSHIP v COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES, EHB Docket No. 82-300-W (1987).
- P. KWALWASSER v COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES, EHB Docket No. 84-108-M (1988).
- Q. SHEESLEY v COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES, EHB Docket No. 81-061-H (1982).