



COALEX STATE INQUIRY REPORT - 163

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TOPIC: ATTORNEYS' FEES

INQUIRY: Can an applicant for attorneys' fees rely on work done in prior proceedings (in which the applicant lost) in seeking attorneys' fees in a subsequent case where the record from the prior case has merely been transferred? Please locate any relevant case law.

SEARCH RESULTS: Research was conducted using the COALEX Library and other materials available on LEXIS, as well as existing COALEX Reports. No opinions were identified that discuss the specific issues of this inquiry; however, an existing COALEX Report on attorneys' fees and two additional cases, attached, will provide information on related decisions.

COALEX STATE INQUIRY REPORT - 120, "Attorneys' Fees" (1989).

This Report includes federal and state court cases and administrative decisions which discuss the following three issues:

1. Award of attorneys' fees to surface mining operators as a result of a challenge to a permit decision;
2. Recovery of attorneys' fees by litigants against a governmental agency;
3. Discuss Sec. 525(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) or 43 CFR 4.2190 et seq.

Cases of particular interest from this Report are the following:

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".

UTAH INTERNATIONAL INC. v DEPT. 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".

NATURAL RESOURCES DEFENSE COUNCIL, et al. v OSM, WEST ELK COAL, INTERVENOR, STATE OF COLORADO, INTERVENOR, 107 IBLA 339, IBLA 87-200 (1989).

Petition for award of costs and expenses, including attorneys' fees approved in part; information requested.

The Board's rulings include the following:

1. The provision for the awarding of attorneys' fees in Sec. 525(e) of SMCRA is applicable to permit review proceedings.
2. To be entitled to an award, 43 CFR 4.1294(b) requires that the record show that the person made a substantial contribution to a full and fair determination of the issues.
3. A person challenging issuance of a permit to mine will be deemed eligible for an award where the person achieved at least some degree of success on the merits.
4. Where a person is determined to be eligible for an award, a further determination must be made of what issues are compensable.
5. A person challenging issuance of a permit to mine may receive an award for work performed in preparing and filing the petition for review of the permit; however, the award will not include compensation for work performed in state proceedings involving the same minesite and related state permitting process.
6. A person may receive an award for work performed with respect to procedural victories which contributed to the person achieving some degree of success on the merits.
7. A person is not entitled to an award for work performed on unsuccessful settlement negotiations unless the hours claimed are limited to those issues upon which petitioner is ultimately successful.

HONDA v MITCHELL, 417 F 2d 324 (DC Cir 1969).

"[T]he mere fact that the administrative determination was not at first favorable to any of the claimants does not affect the fact that appellants performed an obvious service for [claimants of related litigations] by building the administrative record upon which each was later to succeed."

ATTACHMENTS

1. COALEX STATE INQUIRY REPORT - 120, "Attorneys' Fees" (1989).



OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
U.S. Department of the Interior

- 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 DEPT. 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).
- 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).
2. NATURAL RESOURCES DEFENSE COUNCIL, et al. v OSM, WEST ELK COAL, INTERVENOR, STATE OF COLORADO, INTERVENOR, 107 IBLA 339, IBLA 87-200 (1989).
3. HONDA v MITCHELL, 417 F 2d 324 (DC Cir 1969).