



COALEX STATE INQUIRY REPORT - 266

October 1993

Karen Jacobs, Esquire
Illinois Department of Mines and Minerals
300 West Jefferson Street - Suite 300
P.O. Box 10137
Springfield, Illinois 62791-0137

TOPIC: ATTORNEYS' FEES (Updates: 120, 163, 180 & 220)

INQUIRY: Please locate any administrative or judicial review cases where the operator or the state regulatory authority sought costs and attorneys' fees under Section 525(e) of SMCRA or the state counterpart, after prevailing at an administrative or judicial proceeding brought under SMCRA or the state counterpart.

SEARCH RESULTS: Four existing COALEX Reports address various aspects of the topic "attorneys' fees": Reports 120, 163, 180 and 220. Copies of the COALEX Reports, without attachments, are enclosed. Using COALEX and LEXIS, two recent decisions were identified. These are discussed below and copies are attached

ADDITIONAL DECISIONS

BIG B MINING CO. (BIG B) v DEPT. OF ENVIRONMENTAL RESOURCES (DER), 624 A 2d 713 (Pa COMMW CT 1993). BIG B MINING CO. v DEPT. OF ENVIRONMENTAL RESOURCES, 142 Pa Commw 215, 597 A 2d 202 (Pa Commw Ct 1991).

Big B appealed the Pennsylvania Environmental Hearing Board's (EHB) denial of its petition for counsel fees, costs and expenses incurred while successfully challenging DER's denial of its application for a surface mining permit. The court reversed EHB's denial of costs and expenses stating:

"Federal SMCRA and its implementing regulations do not provide for any recovery of attorney's fees and expenses by permittees for a successful challenge of a surface mining permit denial. However, in Big B I, we specifically held that Section 4(b) of [Pa]SMCRA does allow such recovery.... The EHB borrowed [the federal] standard [for recovery of costs in cases other than permit challenge cases], which not only lacks a basis in Pennsylvania law, but which we held to be contrary to Pennsylvania law...."



"Big B prevailed on each objective criteria the EHB established for eligibility for attorney's fees in Section 4(b) cases.... Section 4(b) of [Pa]SMCRA does not make a distinction between permittees and other parties in awarding fees and costs."

[Section 4(b) of PaSMCRA is attached.]

COALEX REPORTS

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.

COALEX STATE INQUIRY REPORT - 163, "Attorneys' fees" (1990).

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?

COALEX STATE INQUIRY REPORT - 180, "Attorneys' fees in non-enforcement, non-adversarial proceedings" (1991).

INQUIRY: Are attorneys who speak during informal conferences, held as a means of gathering data on a pending permit, entitled to an award of costs, expenses and attorneys' fees for their appearance?

COALEX STATE INQUIRY REPORT - 220, "Petitions for costs, expenses and attorney's fees" (1992).

This Report consists of a listing of all administrative decisions which rule on the award of costs, expenses and attorney's fees. In particular, "cost petition" cases that seek awards under SMCRA Secs. 520(d) [30 USC 1270(d)] and 525(e) [30 USC 1275(e)].

ATTACHMENTS

- A. BIG B MINING CO. (BIG B) v DEPT. OF ENVIRONMENTAL RESOURCES (DER), 624 A 2d 713 (Pa Commw Ct 1993).
- B. BIG B MINING CO. v DEPT. OF ENVIRONMENTAL RESOURCES, 142 Pa Commw 215, 597 A 2d 202 (Pa Commw Ct 1991).



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

- C. COALEX STATE INQUIRY REPORT - 120, "Attorneys' fees" (1989) [without attachments].
- D. COALEX STATE INQUIRY REPORT - 163, "Attorneys' fees" (1990) [without attachments].
- E. COALEX STATE INQUIRY REPORT - 180, "Attorneys' fees in non-enforcement, non-adversarial proceedings" (1991) [without attachments].
- F. COALEX STATE INQUIRY REPORT - 220, "Petitions for costs, expenses and attorney's fees" (1992) [without attachments].