

CHAPTER V

PETITIONS FOR AWARD OF COSTS AND EXPENSES UNDER W.S. 35-11-437(f)

Section 1. Petition and Answer.

(a) As described in W.S. 35-11-437(f), any person may file a petition for award of costs and expenses within forty five (45) days of receipt of a final order from the Council. Any person served with a copy of the petition shall have thirty (30) days from service within which to file an answer to the petition. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

(b) The petition shall contain the petitioner's name and a detailed accounting, including receipts, of all costs and expenses authorized under W.S. 35-11-437(f). Where attorneys' fees are claimed, the petition shall include evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual(s) performing the services.

Section 2. Who May Receive an Award.

(a) Appropriate costs and expenses including attorneys' fees may be awarded:

(i) From the permittee to any person if he initiates or participates in any administrative proceeding reviewing enforcement actions, but only if the Council finds that:

(A) A violation of the Act, regulations or permit has occurred, or that an imminent hazard existed; and

(B) The petitioner substantially contributed to a full and fair determination of the issues.

(ii) To a permittee from any person, but only if the Council finds that:

(A) The person initiated or participated in enforcement action in bad faith for the purpose of harassing or embarrassing the permittee.

(iii) To any person, other than a permittee or his representative, from the Department if the person initiates or participates in any contested case proceeding under the Act as it provides for regulation of surface coal mining and reclamation operations in accordance with P.L. 95-87, who prevails in whole or part, achieving at least some degree of success on the merits and the Council finds that the person substantially contributed to a full and fair determination of the issues.

(iv) To a permittee from the Department when the Council finds that the Department issued an order of cessation, a notice of violation or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee.

(v) To the Department where it demonstrates that a person initiated or participated in reviewing of any enforcement action in bad faith for the purpose of harassing or embarrassing the Department.

Section 3. Awards.

(a) An award under this chapter may include:

(i) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result or initiation and/or participation in a proceeding under the Act as it provides for regulation of surface coal mining and reclamation operations in accordance with P.L. 95-87.

(ii) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award before the council.