

ENVIRONMENTAL RESOURCES (27 PA.C.S.) - AMEND
Act of Dec. 20, 2000, P.L. 980, No. 138
Session of 2000
No. 2000-138

Cl. 27

HB 393

AN ACT

Amending Title 27 (Environmental Resources) of the Pennsylvania Consolidated Statutes, providing for participation in environmental law or regulation and for costs in mining proceedings.

The General Assembly finds and declares as follows:

(1) It is contrary to the public interest to allow lawsuits, known as Strategic Lawsuits Against Public Participation (SLAPP), to be brought primarily to chill the valid exercise by citizens of their constitutional right to freedom of speech and to petition the government for the redress of grievances.

(2) It is in the public interest to empower citizens to bring a swift end to retaliatory lawsuits seeking to undermine their participation in the establishment of State and local environmental policy and in the implementation and enforcement of environmental law and regulations.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Part VI of Title 27 of the Pennsylvania Consolidated Statutes is amended by adding a subpart and a chapter to read:

SUBPART A
GENERAL PROVISIONS

Chapter

77. Costs and Fees

CHAPTER 77
COSTS AND FEES

Sec.

7707. Participation in environmental law or regulation.

7708. Costs for mining proceedings.

§ 7707. Participation in environmental law or regulation.

A person that successfully defends against an action under Chapter 83 (relating to participation in environmental law or regulation) shall be awarded reasonable attorney fees and the costs of litigation. If the person prevails in part, the court may make a full award or a proportionate award.

§ 7708. Costs for mining proceedings.

(a) Purpose.--This section establishes costs and fees available in proceedings involving coal mining activities. The purpose of this section is to provide costs and fees to the same extent of section 525(e) of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1201 et

seq.) and the regulations promulgated pursuant thereto. It is hereby determined that it is in the public interest for the Commonwealth to maintain primary jurisdiction over the enforcement and administration of the Surface Mining Control and Reclamation Act of 1977 and that the purpose of this section is to maintain primary jurisdiction over coal mining in this Commonwealth but in no event to authorize standards which are more stringent than Federal standards for the award of costs and fees.

(b) General rule.--Any party may file a petition for award of costs and fees reasonably incurred as a result of that party's participation in any proceeding involving coal mining activities which results in a final adjudication being issued by the Environmental Hearing Board or a final order being issued by an appellate court.

(c) Recipients of awards.--Appropriate costs and fees incurred for a proceeding concerning coal mining activities may be awarded:

(1) To any party from the permittee if:

(i) The party initiates or participates in any proceeding reviewing enforcement actions upon a finding that a violation of a Commonwealth coal mining act, regulation or permit has occurred or that an imminent hazard existed.

(ii) The Environmental Hearing Board determines that the party made a substantial contribution to the full and fair determination of the issues.

except that the contribution of a party who did not initiate a proceeding shall be separate and distinct from the contribution made by a party initiating the proceeding.

(2) To any party, other than a permittee or his representative, from the department if that party:

(i) Initiates or participates in any proceeding concerning coal mining activities.

(ii) Prevails in whole or in part, achieving at least some degree of success on the merits.

upon a finding that the party made a substantial contribution to a full and fair determination of the issues.

(3) To a permittee from the department when the permittee demonstrates that the department in a matter concerning coal mining activities issued an order of cessation, a compliance order 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.

(4) To a permittee from any party where the permittee demonstrates that the party, in bad faith and for the purpose of harassing or embarrassing the permittee:

(i) initiated a proceeding under one or more of the coal mining acts or the regulations promulgated pursuant to any of those acts concerning coal mining activities; or

(ii) participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee.

(d) Time for filing.--The petition for an award of costs and

fees shall be filed with the Environmental Hearing Board within 30 days of the date an adjudication of the Environmental Hearing Board becomes final.

(e) Contents of petition.--A petition filed under this section shall include the name of the party from whom costs and fees are sought, and the following shall be submitted in support of the petition:

(1) An affidavit setting forth in detail all reasonable costs and fees reasonably incurred for or in connection with the party's participation in the proceeding.

(2) Receipts or other evidence of such costs and fees.

(3) Where attorney fees are claimed, 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 or individuals performing the services.

(f) Answer.--Any party shall have 30 days from service of the petition within which to file an answer to such petition.

(g) Exclusive remedy.--Except for section 601 of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, section 18.3 of the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, section 13 of the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act, and section 13 of the act of September 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act, this section shall be the exclusive remedy for the awarding of costs and fees in proceedings involving coal mining activities.

(h) Definitions.--The following words and phrases when used in this section shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Coal mining activities." The extraction of coal from the earth, waste or stockpiles, pits or banks by removing the strata or material which overlies or is above or between them or otherwise exposing and retrieving them from the surface, including, but not limited to, strip mining, auger mining, dredging, quarrying and leaching and all surface activity connected with surface or underground coal mining, including, but not limited to, exploration, site preparation, coal processing or cleaning, coal refuse disposal, entry, tunnel, drift, slope, shaft and borehole drilling and construction, road construction, use, maintenance and reclamation, water supply restoration or replacement, repair or compensation for damages to structures caused by underground coal mining and all activities related thereto.

"Coal mining acts." The provisions of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act, and the act of September 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act, which govern coal mining or activities related to coal mining.

"Costs and fees." All reasonable costs and expenses, including attorney fees and expert witness fees, reasonably incurred as a result of participation in a proceeding involving coal mining activities.

"Department." The Department of Environmental Protection of the Commonwealth.

"Proceeding." Appeals of final Department of Environmental Protection actions before the Environmental Hearing Board and judicial review of Environmental Hearing Board adjudications.

CHAPTER 83

PARTICIPATION IN ENVIRONMENTAL LAW OR REGULATION

Sec.

8301. Definitions.

8302. Immunity.

8303. Right to a hearing.

8304. Intervention.

8305. Construction.

§ 8301. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Communication to the government." A written or oral statement or writing made:

(1) before a legislative, executive or judicial proceeding or any other official proceeding authorized by law;

(2) in connection with an issue under consideration or review by a legislative, executive or judicial body or any other official proceeding authorized by law; or

(3) to a government agency in connection with the implementation and enforcement of environmental law and regulations.

"Enforcement of environmental law and regulation." Activity relating to the identification and elimination of violations of environmental laws and regulations, including investigations of alleged violations, inspections of activities subject to regulation under environmental law and regulations and responses taken to produce correction of the violations.

"Government agency." The Federal Government, the Commonwealth and any of the Commonwealth's departments, commissions, boards, agencies, authorities, political subdivisions or their departments, commissions, boards, agencies or authorities.

"Implementation of environmental law and regulation." Activity relating to the development and administration of environmental programs developed under environmental law and regulations.

§ 8302. Immunity.

(a) General rule.--Except as provided in subsection (b), a person that, pursuant to Federal or State law, files an action in the courts of this Commonwealth to enforce an environmental law or regulation or that makes an oral or written communication to a government agency relating to enforcement or implementation of an environmental law or regulation shall be immune from civil liability in any resulting legal proceeding for damages where

the action or communication is aimed at procuring favorable governmental action.

(b) Exceptions.--A person shall not be immune under this section if the allegation in the action or any communication to the government is not relevant or material to the enforcement or implementation of an environmental law or regulation and:

(1) the allegation in the action or communication is knowingly false, deliberately misleading or made with malicious and reckless disregard for the truth or falsity;

(2) the allegation in the action or communication is made for the sole purpose of interfering with existing or proposed business relationships; or

(3) the oral or written communication to a government agency relating to enforcement or implementation of an environmental law or regulation is later determined to be a wrongful use of process or an abuse of process.

§ 8303. Right to a hearing.

A person who wishes to raise the defense of immunity from civil liability under this chapter may file a motion with the court requesting the court to conduct a hearing to determine the preliminary issue of immunity. If a motion is filed, the court shall then conduct a hearing and if the motion is denied, the moving party shall have an interlocutory appeal of right to the Commonwealth Court, during which time all discovery shall be stayed.

§ 8304. Intervention.

A government agency has the right to petition to intervene or otherwise participate as an amicus curiae in the action involving public petition and participation.

§ 8305. Construction.

Nothing in this chapter shall be construed to limit any constitutional, statutory or common law protections of defendants to actions involving public petition and participation.

Section 2. (a) The following acts or parts of acts are repealed:

The fifth sentence of section 4(b) and section 4.2 (f) (5) of the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act.

The last sentence of section 5(g) of the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act.

The last sentence of section 5(i) of the act of September 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act.

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 3. The addition of 27 Pa.C.S. § 7708 shall apply to all proceedings and petitions for costs and fees filed after the effective date of this act.

Section 4. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) The addition of 27 Pa.C.S. § 7708.

(ii) This section.

(2) The remainder of this act shall take effect in 60 days.

APPROVED--The 20th day of December, A. D. 2000.

THOMAS J. RIDGE