

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 866

Session of
1999

INTRODUCED BY S. H. SMITH, BELFANTI, CLARK, HENNESSEY, MICOZZIE,
ROSS, SAYLOR, SEYFERT, STABACK, TRELLO, TULLI, YOUNGBLOOD,
MAHER, COLAFELLA AND FARGO, MARCH 10, 1999

AS REPORTED FROM COMMITTEE ON ENVIRONMENTAL RESOURCES AND
ENERGY, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 8, 1999

AN ACT

1 Providing for the award of costs, expenses and attorney fees in
2 cases involving coal mining activities.

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

5 Section 1. Short title.

6 This act shall be known and may be cited as the Costs for
7 Coal Mining Act.

8 Section 2. Purpose.

9 This act establishes costs and fees available in proceedings
10 involving coal mining activities. The purpose of this act is to
11 provide costs and fees to the same extent of section 525(e) of
12 the Surface Mining Control and Reclamation Act of 1977 (Public
13 Law 95-87, 30 U.S.C. § 1201 et seq.) and the regulations
14 promulgated pursuant thereto. It is hereby determined that it is
15 in the public interest for the Commonwealth to maintain primary
16 jurisdiction over the enforcement and administration of the
17 Surface Mining Control and Reclamation Act of 1977 and that the

1 purpose of this act is to maintain primary jurisdiction over
2 coal mining in this Commonwealth but in no event to authorize
3 standards which are more stringent than Federal standards for
4 the award of costs and fees.

5 Section 3. Definitions.

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

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

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

1 mining.

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

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

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

11 Section 4. Who may file and receive an award of costs and fees.

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

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

21 (1) To any party from the permittee, if:

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

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

30 except that the contribution of a party who did not initiate

1 a proceeding shall be separate and distinct from the
2 contribution made by a party initiating the proceeding.

3 (2) ~~From the department to~~ TO any party, other than a <—
4 permittee or his representative, ~~who~~ FROM THE DEPARTMENT, IF <—
5 THAT PARTY:

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

8 (ii) Prevails in whole or in part, achieving at
9 least some degree of success on the merits.
10 upon a finding that the party made a substantial contribution
11 to a full and fair determination of the issues.

12 (3) To a permittee from the department when the
13 permittee demonstrates that the department in a matter
14 concerning coal mining activities issued an order of
15 cessation, a compliance order or an order to show cause why a
16 permit should not be suspended or revoked, in bad faith and
17 for the purpose of harassing or embarrassing the permittee.

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

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

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

28 ~~(5) To the department where it demonstrates that:~~ <—
29 ~~(i) any party, in bad faith and for the purpose of~~
30 ~~harassing or embarrassing the government, applied for~~

~~review of a final department action concerning coal
mining activities; or~~

~~(ii) any person who participated in a proceeding in
bad faith and for the purpose of harassing or
embarrassing the government.~~

~~The department shall file a petition for the award of costs and
fees incurred as a result of the department's participation in a
proceeding involving coal mining activities where the department
determines that a party, in bad faith and for the purpose of
harassing or embarrassing the government, applied for review of
a department action concerning coal mining activities or that a
person participated in such a proceeding in bad faith and for
the purpose of harassing or embarrassing the government.~~

Section 5. 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.

Section 6. Contents of petition.

A petition filed under this act 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

1 performing the services.

2 Section 7. Answer.

3 Any party shall have 30 days from service of the petition
4 within which to file an answer to such petition.

5 Section 8. Exclusive remedy.

6 Except for section 601 of the act of June 22, 1937 (P.L.1987,
7 No.394), known as The Clean Streams Law, section 18.3 of the act
8 of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining
9 Conservation and Reclamation Act, section 13 of the act of April
10 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous
11 Mine Subsidence and Land Conservation Act and section 13 of the
12 act of September 24, 1968 (P.L.1040, No.318), known as the Coal
13 Refuse Disposal Control Act, this act shall be the exclusive
14 remedy for the awarding of costs and fees in proceedings
15 involving coal mining activities.

16 Section 9. Repeals.

17 The following acts or parts of acts are repealed:

18 The fifth sentence of subsection (b) of section 307 of the
19 act of June 22, 1937 (P.L.1987, No.394), known as The Clean
20 Streams Law.

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

24 The last sentence of section 5(g) of the act of April 27,
25 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine
26 Subsidence and Land Conservation Act.

27 The last sentence of section 5(i) of the act of September 24,
28 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal
29 Control Act.

30 Section 10. Severability clause.

1 The provisions of this act are severable. If any provision of
2 this act or its application to any person or circumstance is
3 held invalid, the invalidity shall not affect other provisions
4 or applications of this act which can be given effect without
5 the invalid provision or application.

6 Section 11. Applicability.

7 ~~This act shall apply to all proceedings and to all costs and~~ <—
8 ~~fees cases pending on the effective date of this act which~~
9 ~~involve coal mining activities.~~

10 THE PROVISIONS OF THIS ACT SHALL APPLY TO ALL PROCEEDINGS AND <—
11 PETITIONS FOR COSTS AND FEES FILED AFTER THE EFFECTIVE DATE OF
12 THIS ACT.

13 Section 12. Effective date.

14 This act shall take effect immediately.