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CHAPTER 5
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), a petition for award of costs and expenses must be filed with the Council within forty-five (45) days of receipt of a final order from the Council, in accordance with Chapter 2, Section 5 of these rules. 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.

(c) Any proceeding to award costs under W.S. 35-11-437(f) shall follow the contested case procedures outlined in Chapter 2 of these rules.

Section 2. Who May Receive an Award.

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

(i) 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.

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

(A) 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.

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

(A) The person initiated or participated in an administrative proceeding reviewing enforcement actions;

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

(C) The person substantially contributed to a full and fair determination of the issues.

(iv) To any person, other than a permittee or its representative, from the Department, but only if the Council finds that:

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(A) The person initiated or participated in a contested case proceeding under the Wyoming Environmental Quality Act as it provides for regulation of surface coal mining and reclamation operations in accordance with P.L. 95-87;

(B) The person prevailed in whole or part, achieving at least some degree of success on the merits;

(C) The person substantially contributed to a full and fair determination of the issues.

(v) To the Department from a person, but only if the Council finds that:

(A) The Department has demonstrated 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 of initiation and/or participation in a proceeding under the Wyoming Environmental Quality 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.