

Kansas Administrative Regulations

Mined-Land Conservation and Reclamation (KDHE)

Article 4.—Public Hearings

47-4-17. Administrative hearings; award of costs and expenses.

(a) Any person may file a petition for award of costs and expenses, including attorney fees, reasonably incurred as a result of that person's participation in any administrative proceeding under the state act which results in a final order being issued by the department or its presiding officer. The petition shall be filed within 45 days of receipt of the order. Failure to make a timely filing of the petition may constitute a waiver of the right to an award.

(b) A petition filed under this section shall include the name of the person from whom costs and expenses are sought, and the following shall be submitted in support of the petition:

(1) an affidavit detailing all costs and expenses, including attorney fees, incurred as a result of participation in the proceeding;

(2) receipts or other evidence of the costs and expenses; and

(3) where attorney fees are claimed, the hours expended on the case, the customary commercial rate of payment for services in the locality, and evidence of the experience, reputation, and ability of the attorney or attorneys.

(c) Any person served with the petition shall have 30 days after the date of service to file an answer.

(d) Appropriate costs and expenses, including attorney fees, may be awarded as follows:

(1) from the permittee, if the person initiates any administrative proceedings, or participates in the proceedings, upon a finding that a violation of the state act, of these regulations, or of the permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding in which such a finding is made if the department or its presiding officer determines that the person made a substantial contribution to the full and fair determination of the issues;

(2) from the department to anyone other than the permittee or permittee's representative, if the person initiates or participates in any proceeding under the act upon a finding that the person made a substantial contribution to a full and fair determination of the issues;

(3) from the department to the permittee when the permittee demonstrates 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;

(4) to a permittee from any person when the permittee demonstrates that the person initiated a proceeding or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee; or

(5) to the department when it demonstrates that any person applied for review or participated in an administrative proceeding in bad faith and for the purpose of harassing or embarrassing the department or any person employed by the department.

(e) An award may include all costs and expenses, including attorney fees and expert witness fees, reasonably incurred as a result of initiation of or participation in a proceeding under the state act.

(Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-407 and 49-416a; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997.)

***** Authenticated Kansas Administrative Regulation *****