

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

OHIO VALLEY ENVIRONMENTAL
COALITION, et al.,

Plaintiffs,

v.

CIVIL ACTION NOS. 3:05-0784
3:06-0438

UNITED STATES ARMY CORPS
OF ENGINEERS, et al.,

Defendants.

v.

INDEPENDENCE COAL COMPANY, et. al.,

Intervenor-Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the Court is Permittee-Intervenors, Independence Coal Co., Elk Run Coal Co., and Alex Energy, Inc.'s, Motion for Costs (Doc. 452). Plaintiffs have been afforded a full opportunity to respond to Permittee-Intervenors' request and have not filed any objection. Thus, for the reasons set forth below, the motion is **GRANTED** in the amount of \$2,814.30.


Federal Rule of Appellate Procedure 39(a)(3) provides that "if a judgment is reversed, costs are taxed against the appellee." FRAP 39(a)(3). Further, FRAP 39(a) creates a presumption that costs should be awarded to a prevailing party. *See* FRAP 39(a) ("The following rules apply *unless* the law provides or the court order otherwise[.]") (emphasis added). In *OVEC v. Aracoma Coal Co.*, the Fourth Circuit reversed two decisions by this Court, ruling in favor of Permittee-Intervenors.

See generally 556 F.3d 177 (4th Cir. 2009). Accordingly, Permittee-Intervenors move for an award of costs under FRAP 39(e)(2) and FRAP 39(e)(4). Specifically, Permittee-Intervenors seek \$455.00 in reimbursement for the appeal filing fee and \$2,359.30 in reimbursement for their share of the cost of the trial transcript.

FRAP 39 sections (e)(2) and (e)(4) provide that a prevailing party is entitled to an award of the costs of “the reporter’s transcript, if needed to determine appeal[.]” and “the fee for filing the notice of appeal[.]” FRAP 39(e)(2) and (e)(4). Permittee-Intervenors prevailed before the Fourth Circuit. Further, the Court **FINDS** that – because Plaintiffs relied on the trial transcript in their post-trial briefs to this Court and in their briefs to the Fourth Circuit – the reporter’s transcript was “needed to determine appeal.” Thus, Permittee-Intervenors are entitled to costs as requested and the Court **GRANTS** the motion in the amount of \$2,814.30.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: September 28, 2009



ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE