WEST VIRGINIA CODE: §17c-17A-9

§17C-17A-9. Administrative sanctions.

(a) This section imposes administrative sanctions for violations occurring on the coal resource transportation road system. It is the intent of the Legislature to impose administrative sanctions in addition and separate from any criminal or civil penalties upon any person violating or assisting in the violation of the provisions of this article.

(b) For a particular violation, the commission may take administrative notice of criminal convictions, or a plea of nolo contendere, for a violation for purposes of imposing the administrative sanctions in this section in lieu of the procedure provided in subsection (f) of this section. After providing notice and an opportunity to show cause why penalties should not be imposed for the violation of provisions of this article, the commission shall impose sanctions upon an operator, shipper, receiver or truck owner when a violation is found to have occurred. Lack of intent is not a defense to a violation except as it applies to receivers.

(c) Administrative sanctions for violations shall be imposed as follows:

(1) Every shipper of coal for transport on the public roads or highways of this state which loads coal in an amount which results in gross vehicle weight to be in excess of the weight limits established in this article shall be subject to an administrative penalty per pound in excess of the lawful weight pursuant to the penalty schedule established in section ten of this article;

(2) It is unlawful for any person to operate a commercial motor vehicle engaged in the transportation of coal with a gross vehicle weight for nonpermitted vehicles in excess of the lawful maximum weight on a coal resource transportation road without a permit required by section five of this article. Any person violating this subsection shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of ninety days for the first offense, six months for the second offense, and one year for the third offense: Provided, That in the case of a permit, expired for less than thirty days, the operator my present a valid permit to the commission within five days of the date of the offense in order to avoid the penalty;

(3) Any owner of a commercial motor vehicle engaged in the transportation of coal operating without an excess weight hauling permit and bearing a gross vehicle weight in excess of the lawful maximum weight for the public highway for nonpermitted vehicles who allows the operation of that vehicle upon a coal resource transportation road of this state shall have any state-issued hauling permit then in force suspended by the commission for a period of ninety days for the first offense, six months for the second offense, and revoked for the third offense: Provided, That in the case of a permit, expired for less than thirty days, the operator my present a valid permit to the commission of motor vehicles within five days of the date of the offense in order to avoid the penalty: Provided, however, That should there be no state-

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issued hauling permit then in force, the owner shall have his or her vehicle registration suspended by the commission of motor vehicles for a period of ninety days for the first offense, six months for the second offense and revoked for the third offense;

(4) Any operator who operates a vehicle engaged in the transportation of coal that has been issued a special permit by the division upon the coal resource transportation road system and who operates the vehicle with a gross vehicle weight that is in excess of the lawful maximum weight allowed pursuant to the permit shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of three days for the first offense, thirty days for the second offense and six months for the third offense;

(5) Any owner of a vehicle engaged in the transportation of coal that has been issued a special permit by the commission who allows the operation of that vehicle upon the coal resource transportation road system with a gross vehicle weight that is in excess of the lawful maximum weight allowed pursuant to the permit shall have the special permit suspended by the commission for a period of three days for the first offense, thirty days for the second offense and revoked for the third offense;

(6) Any operator who operates a vehicle engaged in the transportation of coal with a suspended excess weight hauling permit at a weight in excess of the limits imposed by article seventeen of this chapter upon the coal resource transportation road system shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of six months for the first offense, twelve months for the second offense, and two years for the third offense: Provided, That if the operator is also the owner of the vehicle, the owner penalties set forth in subdivision (5) of this subsection also apply;

(7) Any owner of a vehicle engaged in the transportation of coal with a suspended excess weight hauling permit who allows the operation of that vehicle upon the roads or highways of this state during a period of permit suspension at a weight in excess of the limits imposed by article seventeen of this chapter shall have all state-issued hauling permits then in force suspended by the commission or, if applicable, the commissioner of highways for a period of twelve months for the first offense, two years for the second offense and revoked for the third offense;

(8) Any operator who operates a vehicle engaged in the transportation of coal that has been issued a special permit by the commission under the provisions of section five of this article and who is charged with a violation of section one, article six, chapter seventeen-c of this code upon a road or highway of this state designated by the commissioner of Division of Highways as a part of the coal resource transportation road system shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of three days for the first offense, thirty days for the second offense and revoked for the third offense;

(9) Any person who falsifies information relating to the acquisition of a hauling permit shall have his or her driver's license suspended by the commissioner of the Division of Motor

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Vehicles for a period of sixty days for the first offense, one hundred twenty days for the second offense and six months for the third offense;

(10) Any person regulated pursuant to this article that falsifies information relating to the acquisition of a hauling permit shall have its state-issued business license suspended by the commissioner of the state Tax Division for a period of six months for the first offense, one year for the second offense and two years for the third offense;

(11) Any person who fabricates or displays an altered, forged or counterfeited permit shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of sixty days for the first offense, one hundred twenty days for the second offense and revoked for the third offense;

(12) Any person that bribes or attempts to bribe an employee of the State of West Virginia or who gives an employee of the State of West Virginia a gift, gratuity, entertainment, loan, favor or other thing of monetary value for the purpose of avoiding any penalties permitted under this article shall have his or her state-issued hauling permit then in force suspended by the commission for a period of sixty days for the first offense, one hundred twenty days for the second offense and revoked for the third offense;

(13) In the case of multiple violations by a permittee, shipper, operator or receiver, the commission may direct that the imposed suspension be served concurrently or consecutively, taking into account the frequency of violations committed during the inclusive time periods, or in the same course of misconduct if the commission determines that sufficient mitigating or aggravating circumstances are present;

(14) Any person who aids or abets another person's attempt to avoid suspension shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of sixty days for the first offense, one hundred twenty days for the second offense and six months for the third offense; and

(15) Any person that aids or abets a person's attempt to avoid suspension shall have its state-issued business license suspended by the Tax Commissioner for a period of three months for the first offense, six months for the second offense and one year for the third offense.

(d) Without providing a hearing, the commission may immediately suspend a person from obtaining permits or operating under permit authority for failure to pay a fee required under this article until proper payment is received. Upon the completion of all administrative appeals of any violation that results in a license suspension, the commission shall notify the Division of Motor Vehicles which shall act accordingly.

(e) Without providing a hearing, the commission and law-enforcement personnel may immediately confiscate an altered, forged or counterfeited permit, or a permit used in violation of its terms and conditions. Upon issuance of a citation alleging a violation of this subsection, the vehicle and its load shall be impounded by law-enforcement personnel until

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such time as a hearing on the matter is conducted by the division.

(f) Administrative sanctions may be imposed pursuant to the following procedures:

(1) No administrative sanction may be imposed until after the person has been notified by certified mail or personal service. The notice shall include: A reference to the section of statute, rule, order, or permit violated; a concise statement of the facts alleged to constitute a violation; a statement of the administrative penalties to be imposed; and a statement of the person's right to a hearing. The person has twenty days from receipt of the notice within which to deliver to the commission a written request for a hearing.

(2) Subsequent to the hearing and upon finding that a violation has occurred, the commission shall issue a final order. If no hearing is requested, the notice shall become a final order upon the expiration of the twenty-day period.

(3) For purposes of the enhanced penalty provisions of this section, the second and subsequent offenses shall be calculated on a per-year basis.

(4) In addition to the imposition of an administrative sanction, the commission or division may, by administrative order and upon an appropriate finding, assess a violator for the reasonable costs, as established by rules of any investigation, inspection or monitoring survey which led to the establishment of the violation.

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