WEST VIRGINIA CODE: §19-10A-13

§19-10A-13. Penalties.

(a) Criminal penalties. -- Any person violating any provision of this article or any rule adopted under the authority of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500 for the first offense, and for the second or subsequent offense, shall be fined not less than $500 nor more than $1,000, or imprisoned not more than six months, or both fined and imprisoned. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) Civil penalties. -- Any person violating a provision of this article or any rules adopted under the authority of this article may be assessed a civil penalty by the commissioner of agriculture. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous violations of any person, the seriousness of the violation, including any irreparable harm to the environment, any hazards to the health and safety of the public, any economic damages to the public and the demonstrated good faith of any person charged to achieve compliance with this article before and after written notification of the violation:

(1) The commissioner may assess a civil penalty of up to $1,000 for a violation;

(2) The civil penalty is payable to the State of West Virginia and is collectible in any manner now or hereafter provided for collection of debt. If any person liable to pay a civil penalty neglects or refuses to pay the civil penalty, the amount of the civil penalty, together with interest at ten percent, is a lien in favor of the State of West Virginia upon the property, both real and personal, of that person after the lien has been entered and docketed to record in the county where the property is situated. The clerk of the county, upon receipt of the certified copy of the lien, shall enter it to record without requiring the payment of costs as a condition precedent to recording.

(c) Notwithstanding any other provision of law to the contrary, the commissioner may propose for promulgation and adopt rules which permit consent agreement or negotiated settlements for the civil penalties assessed as a result of violation of the provision of this article.

(d) Upon application by the commissioner for an injunction, the circuit court of the county in which the violation is occurring, has occurred or is about to occur, as the case may be, may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any provision of this article or any rule promulgated under this article, notwithstanding the existence of other remedies of law. Any such injunction shall be issued without bond.

(e) No state court may allow for the recovery of damages for any administrative action taken,

WV Legislature

if the court finds that there was a probable cause for that action.

(f) It is the duty of the prosecuting attorney of the county in which the violation occurred to represent the Department of Agriculture, to institute proceedings and to prosecute the person charged with that violation.

(g) Hearings and appeals. --

(1) Any person aggrieved by any action taken under this article shall be afforded the opportunity for a hearing before the commissioner under the rules promulgated by the commissioner;

(2) Hearings shall be conducted in accordance with procedures set forth by rule;

(3) All the testimony and evidence at a hearing shall be recorded by mechanical means, which may include the use of tape recordings. The mechanical record shall be maintained for ninety days from the date of the hearing and a transcript shall be made available to the aggrieved party;

(4) Any person who feels aggrieved of the suspension, revocation or denial order may appeal within sixty days to the circuit court of the county in which the person has located its principal place of business.

WV Legislature