WEST VIRGINIA CODE: §19-11E-12

§19-11E-12. Criminal penalties; civil penalties; negotiated agreements.

(a) Any person violating any provision of this article or rules adopted hereunder 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 confined in jail not more than six months, or both fined and confined. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) Any person violating a provision of this article or rules adopted hereunder may be assessed a civil penalty by the commissioner. 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, and any economic damages to the public and the demonstrated good faith of any person charged in attempting 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 any 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 the civil penalty neglects or refuses to pay the same, the amount of the civil penalty, together with interest at 10 percent, is a lien in favor of the State of West Virginia upon the property, both real and personal, of such a person after the same 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 promulgate and adopt rules which permit consent agreements or negotiated settlements for the civil penalties assessed as a result of violation of the provisions of this article.

(d) Nothing in this article may be construed as requiring the commissioner or his or her representative to report for prosecution as a result of minor violations of the article when the commissioner believes that the public interest will be best served by a suitable notice of warning in writing.

(e) Upon application by the commissioner, 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 of the provisions of this article or any rule promulgated under this article,

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notwithstanding the existence of other remedies at law. Any such injunction shall be issued without bond.

(f) No state court may allow for the recovery of damages for any administrative action taken, if the court finds that there was a probable cause for the action.

(g) The prosecuting attorney of the county in which the violation occurred shall represent the Department of Agriculture to institute proceedings and to prosecute the person charged with a violation.

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