WEST VIRGINIA CODE: §21-3A-11

§21-3A-11. Notice to employer of contest period; action by commissioner; action by review commission.

(a) If, after inspection or investigation, the commissioner issues a citation pursuant to section nine, he shall, within a reasonable time after the termination of the inspection or investigation, notify the employer or employee by certified mail. The notification shall inform the employer or employee that he has fifteen working days from the receipt of notice within which to notify the commissioner that he wishes to contest the citation or to seek a variance. If the employer or employee fails to so notify the commissioner within fifteen days, and if no notice is filed by any employee or representative of employees pursuant to subsection (c) of this section within fifteen days, the citation, as proposed, becomes a final order and not subject to review by any court or agency.

(b) If the commissioner has reason to believe that an employer or employee has failed to correct a violation for which a citation has been issued within the period permitted for correction, the commissioner shall notify the employer or employee by certified mail or personal service of such failure and the commissioner shall seek judicial enforcement of such citation order: Provided, That in the case of a review proceeding initiated by the employer or employee under this section in good faith and not solely for delay, the period permitted for correction of the violation does not begin to run until the entry of a final order by the review commission. The notification by the commissioner shall inform the employer or employee that he has fifteen working days from the receipt of the notice within which to notify the commissioner that he wishes to contest the notification. If, within fifteen days from receipt of notification under this section, the employer or employee fails to notify the commissioner that he intends to contest the notification, the notification and assessment as proposed become a final order of the commission and not subject to review by any court or agency.

(c) If an employer or employee notifies the commissioner within the fifteen day period provided for in subsection (b) of this section that he wishes to contest the notification, the commissioner shall immediately advise the commission of the notification and the commission shall afford an opportunity for a hearing. Upon a showing by an employer or employee of a good faith effort to comply with the abatement requirements of a citation and a showing that abatement has not been completed because of factors beyond his reasonable control, the commissioner, after an opportunity for a hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in the citation. The rules of procedure prescribed by the commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.

(d) If the employer or employee, at a hearing under subsection (c) of this section, does not prove he made a good faith effort to comply, the commission shall seek judicial enforcement to compel compliance.

WV Legislature