WEST VIRGINIA CODE: §22-12-10

§22-12-10. Civil and criminal penalties; civil administrative penalties; dedication of penalty proceeds; injunctive relief; enforcement orders; hearings.

(a) Any person who violates any provision of this article, or any permit or agency approval, rule or order issued to implement this article, is subject to civil penalties in accordance with the provisions of section twenty-two, article eleven of this chapter: Provided, That such penalties are in lieu of civil penalties which may be imposed under other provisions of this code for the same violation.

(b) Any person who willfully or negligently violates any provision of this article, or any provision of a permit or agency approval, rule or order issued to implement this article, is subject to criminal penalties in accordance with the provisions of section twenty-four, article eleven of this chapter: Provided, That such penalties are in lieu of other criminal penalties which may be imposed under other provisions of this code for the same violation.

(c) Any person who violates any provision of this article, or any permit or rule or order issued to implement this article, is subject to a civil administrative penalty to be levied by the director, the commissioner of agriculture or the commissioner of the bureau of public health, as appropriate, of not more than $5,000 for each day of such violation, not to exceed a maximum of $20,000. In assessing any such penalty, any such official shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements as well as any other appropriate factors as may be established by such official by legislative rules promulgated pursuant to this article and the provisions of chapter twenty-nine-a of this code. No assessment may be levied pursuant to this subsection until after the alleged violator has been notified by such official by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator shall have twenty calendar days from receipt of the notice within which to deliver to such official a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period. If a hearing is requested, such official shall inform the alleged violator of the time and place of the hearing. Such official may appoint an assessment officer to conduct the informal hearing who shall make a written recommendation to such official concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, such official shall issue and furnish to the violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of such official's decision, the alleged violator may request a formal hearing before the board in accordance with the provisions of section eleven of this article. Any administrative civil penalty assessed pursuant to this section is in lieu of any other civil penalty which may be

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assessed under any provision of this code for the same violation. No combination of assessments against any violator under this section may exceed $25,000 per day of each such violation. All administrative penalties shall be levied in accordance with legislative rules promulgated by such official in accordance with the provisions of chapter twenty-nine-a of this code.

(d) The net proceeds of all civil penalties collected pursuant to subsection (a) of this section and all assessments of any civil administrative penalties collected pursuant to subsection (c) of this section shall be deposited into the groundwater remediation fund established pursuant to this article.

(e) Any such official may seek an injunction, or may institute a civil action against any person in violation of any provision of this article or any permit, agency approval, rule or order issued to implement this article. In seeking an injunction, it is not necessary for such official to post bond nor to allege or prove at any point in the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

(f) If any such official upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, or any permit, order or rules issued to implement the provisions of this article, he or she may issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders implementing this article which: (1) Suspend, revoke or modify permits; (2) require a person to take remedial action; or (3) are cease and desist orders.

(g) Any person issued a cease and desist order under subsection (f) of this section may file a notice of request for reconsideration with such official not more than seven days from the issuance of such order and shall have a hearing before such official to contest the terms and conditions of such order within ten days after filing such notice of a request for reconsideration. The filing of a notice of request for reconsideration does not stay or suspend the execution or enforcement of such cease and desist order.

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