WEST VIRGINIA CODE: §22-14-15

§22-14-15. Civil penalties and injunctive relief.

(a) Any person who violates any provision of this article, any certificate of approval or any rule, notice or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the secretary, of not more than $5,000 for each day the violation continues, not to exceed a maximum of $20,000. In assessing any penalty, the secretary 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 rules proposed by the secretary for legislative approval pursuant to article three, 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 certified mail or personal service. The notice shall include a reference to the section of the statute, rule, notice, order or statement of the certificate of approval's terms that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the civil administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the secretary a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration date of the twenty-day period. If a hearing is requested, the secretary shall inform the alleged violator of the time and place of the hearing. Within thirty days following the informal hearing, the secretary shall issue and furnish to the violator a written decision, and the reasons for the decision, concerning the assessment of a civil administrative penalty. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions of this article and the payment of any assessment does not affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied: Provided, That no combination of assessments against a violator shall exceed $20,000 per day of each violation: Provided, however, That any violation for which the violator has paid a civil administrative penalty assessed under this subsection is not subject to a separate civil penalty action under this article to the extent of the amount of the civil administrative penalty paid. Civil administrative penalties shall be levied in accordance with the rules promulgated under the authority of section four of this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the dam safety fund established pursuant to section eighteen of this article. Any person adversely affected by the assessment of a civil administrative penalty has the right to appeal to the Environmental Quality Board pursuant to the provisions of article one, chapter twenty-two-b of this code.

(b) No assessment levied pursuant to subsection (a) of this section is due and payable until the procedures for review of the assessment as set out in said subsection have been completed.

(c) Any person who violates any provision of any certificate issued under or subject to the

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provisions of this article is subject to a civil penalty not to exceed $25,000 per day of the violation and any person who violates any provision of this article or of any rule or who violates any standard or order promulgated or made and entered under the provisions of this article is subject to a civil penalty not to exceed $25,000 per day of the violation. The civil penalty may be imposed and collected only by a civil action instituted by the secretary in the circuit court of Kanawha County or in the county in which the violation or noncompliance exists or is taking place.

Upon application by the secretary, the circuit courts of this state or the judges thereof in vacation may by injunction compel compliance with and enjoin violations of the provisions of this article and rules proposed in accordance with section four of this article, the terms and conditions of any certificate of approval granted under the provisions of this article or any order of the secretary or Environmental Quality Board and the venue of any action shall be in the circuit court of Kanawha County or in the county in which the violation or noncompliance exists or is taking place. The court or the judge thereof in vacation may issue a temporary or preliminary injunction in any case pending a decision on the merits of any injunctive application filed. In seeking an injunction, it is not necessary for the secretary to post bond or to allege or prove at any stage of 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 in this article have not been exhausted or invoked against the person or persons against whom the relief is sought.

The judgment of the circuit court upon any application filed or in any civil action instituted under the provisions of this section is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals. An appeal shall be sought in the manner provided by law for appeals from circuit courts in other civil cases, except that the petition seeking review of an order in any injunction proceeding must be filed with the Supreme Court of Appeals within ninety days from the date of entry of the judgment of the circuit court.

(d) Upon request of the secretary, the Attorney General or the prosecuting attorney of the county in which the violation occurs shall assist the secretary in any civil action under this section.

(e) In any action brought pursuant to the provisions of this section, the state or any agency of the state which prevails may be awarded costs and reasonable attorney's fees.

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