WEST VIRGINIA CODE: §22-15-15

§22-15-15. Orders, inspections and enforcement; civil and criminal penalties.

(a) If the secretary, upon inspection or investigation by duly authorized representatives or through other means observes, discovers or learns of a violation of this article, its rules, article eleven of this chapter or its rules, or any permit or order issued under this article, he or she shall:

(1) Issue an order stating with reasonable specificity the nature of the alleged 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 suspending, revoking or modifying permits, orders requiring a person to take remedial action or cease and desist orders;

(2) Seek an injunction in accordance with subsection (e) of this section;

(3) Institute a civil action in accordance with subsection (e) of this section; or

(4) Request the Attorney General, or the prosecuting attorney of the county wherein the alleged violation occurred, to bring an appropriate action, either civil or criminal in accordance with subsection (b) of this section.

(b) Any person who violates this article, or permits issued pursuant to this article or rules or orders issued by the secretary or board is subject to administrative, civil and criminal sanctions as follows:

(1) Any person who fails or refuses to discharge any duty imposed upon him or her by this article or by any rule of the secretary promulgated pursuant to the provisions and intent of this article or by an order of the secretary or board, or who fails or refuses to apply for and obtain a permit as required by the provisions of this article, or who fails or refuses to comply with any term or condition of the permit, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000, or imprisoned in the county or regional jail not more than six months, or both fined and imprisoned.

(2) Any person who intentionally misrepresents any material fact in an application, record, report, plan or other document filed or required to be maintained under the provisions of this article or any rules promulgated by the secretary thereunder is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $10,000, or imprisoned in a county or regional jail not more than six months, or both fined and imprisoned.

(3) Any person who willfully or negligently violates any provision of any permit issued under or subject to the provisions of this article or who willfully or negligently violates any

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provision of this article or any rule of the secretary or any order of the secretary or board is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $2,500 nor more than $25,000 per day of violation, or imprisoned in a county or regional jail not more than one year, or both fined and imprisoned.

(4) Any person convicted of a second offense or subsequent willful violation of subdivision (2) or (3) of this subsection or knowingly and willfully violating any provision of any permit, rule or order issued under or subject to the provisions of this article or knowingly and willfully violating any provision of this article, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than three years, or fined not more than $50,000 for each day of violation, or both fined and imprisoned.

(5) Any person convicted of accumulating or disposing of one thousand or more tires in violation of this article is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than five years and shall be required to clean up and properly dispose of the waste tires or reimburse the state agency or agencies for costs incurred in cleaning up the waste tires. In addition, any person so convicted may be fined not more than $50,000 for each day of the continued violation.

(6) A person may be prosecuted and convicted under the provisions of this section, notwithstanding that the administrative remedies provided in this article have not been pursued or invoked against the person and notwithstanding that civil action for the imposition and collection of a civil penalty or an application for an injunction under the provisions of this article has not been filed against the person.

(7) Where a person holding a permit is carrying out a program of pollution abatement or remedial action in compliance with the conditions and terms of the permit, that person is not subject to criminal prosecution for pollution recognized and authorized by the permit.

(c) Any person who violates any provision of this article, any permit or any rule 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 of the violation, not to exceed a maximum of $20,000:

(1) In assessing a penalty, the secretary shall take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements as well as any other appropriate factors as may be established by the secretary by rules promulgated pursuant to this article and article three, chapter twenty-nine-a of this code. No assessment shall 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, 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 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

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hearing is requested, the notice becomes a final order after the expiration 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. The secretary may appoint an assessment officer to conduct the informal hearing and then make a written recommendation to the secretary concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, the secretary shall issue and furnish to the alleged violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of the secretary's decision, the alleged violator may request a formal hearing before the environmental quality board in accordance with the provisions of section sixteen of this article. 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 under this section shall exceed $25,000 for each day of a violation: Provided, however, That any violation for which the violator has paid a civil administrative penalty assessed under this section shall not be the subject of a separate civil penalty action under this article to the extent of the amount of the civil administrative penalty paid. All administrative penalties shall be levied in accordance with rules issued pursuant to subsection (a), section five of this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the solid waste reclamation and environmental response fund established in subdivision (3), subsection (h), section eleven of this article;

(2) No assessment levied pursuant to subdivision (1) of this subsection becomes due and payable until the procedures for review of the assessment as set out in said subsection have been completed.

(d) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil penalty not to exceed $25,000 for each day of the violation, which penalty shall be recovered in a civil action either in the circuit court wherein the violation occurs or in the circuit court of Kanawha County.

(e) The secretary may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit, rule or order issued pursuant to this article. In seeking an injunction, it is not necessary for the secretary to post bond nor 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 for in this article have not been exhausted or invoked against the person or persons against whom relief is sought.

(f) 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.

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(g) In any civil 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.

(h) In addition to all other grounds for revocation, the secretary shall revoke a permit for any of the following reasons:

(1) Fraud, deceit or misrepresentation in securing the permit, or in the conduct of the permitted activity;

(2) Offering, conferring or agreeing to confer any benefit to induce any other person to violate the provisions of this chapter, or of any other law relating to the collection, transportation, treatment, storage or disposal of solid waste, or of any rule adopted pursuant thereto;

(3) Coercing a customer by violence or economic reprisal or the threat thereof to utilize the services of any permittee; or

(4) Preventing, without authorization of the secretary, any permittee from disposing of solid waste at a licensed treatment, storage or disposal facility.

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