

# WEST VIRGINIA CODE: §22-18-14

## **§22-18-14. Monitoring, analysis and testing.**

(a) If the director determines, upon receipt of any information, that: (1) The presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated or disposed of; or (2) the release of any such waste from such facility or site may present a substantial hazard to human health or the environment, he or she may issue an order requiring the owner or operator of such facility or site to conduct such monitoring, testing, analysis and reporting with respect to such facility or site as the director deems reasonable to ascertain the nature and extent of such hazard.

(b) In the case of any facility or site not in operation at the time a determination is made under subsection (a) of this section with respect to the facility or site, if the director finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, he or she may issue an order requiring the most recent previous owner or operator of such facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection (a) of this section.

(c) An order under subsection (a) or (b) of this section shall require the person to whom such order is issued to submit to the director within thirty days from the issuance of such order a proposal for carrying out the required monitoring, testing, analysis and reporting. The director may, after providing such person with an opportunity to confer with the director respecting such proposal, require such person to carry out such monitoring, testing, analysis and reporting in accordance with such proposal, and such modifications in such proposal as the director deems reasonable to ascertain the nature and extent of the hazard.

(d) The following duties shall be carried out by the director:

(1) If the director determines that no owner or operator referred to in subsection (a) or (b) of this section is able to conduct monitoring, testing, analysis or reporting satisfactory to the director, if the director deems any such action carried out by an owner or operator to be unsatisfactory or if the director cannot initially determine that there is an owner or operator referred to in subsection (a) or (b) of this section who is able to conduct such monitoring, testing, analysis or reporting, he or she may conduct monitoring, testing or analysis (or any combination thereof) which he or she deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned, or authorize a state or local authority or other person to carry out any such action, and require, by order, the owner or operator referred to in subsection (a) or (b) of this section to reimburse the director or other authority or person for the costs of such activity.

(2) No order may be issued under this subsection requiring reimbursement of the costs of any action carried out by the director which confirms the results of the order issued under

subsection (a) or (b) of this section.

(e) If the monitoring, testing, analysis and reporting conducted pursuant to this section indicates that a potential hazard to human health or the environment may or does exist, the director may issue an appropriate order requiring that the hazard or risk of hazard be eliminated.

(f) The director may commence a civil action against any person who fails or refuses to comply with any order issued under this section. Such action shall be brought in the circuit court in which the defendant is located, resides or is doing business. Such court has jurisdiction to require compliance with such order and to assess a civil penalty of not to exceed \$5,000 for each day during which such failure or refusal occurs.