

# WEST VIRGINIA CODE: §22-18-17

## §22-18-17. Civil penalties and injunctive relief.

(a)(1) 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 \$7,500 for each day of violation, not to exceed a maximum of \$22,500. In assessing a 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 the secretary by rules promulgated pursuant to this article and 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, 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 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 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 article one, chapter twenty-two-b of this code. The authority to levy an 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 may exceed \$25,000 per day of each violation: Provided, however, That any violation for which the violator has paid a civil administrative penalty assessed under this section may 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 six of this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the hazardous waste emergency response fund established pursuant to section three, article nineteen of this chapter.

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

(b)(1) 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 violation, which penalty shall be recovered in a civil action either in the circuit court in which the violation occurs or in the circuit court of Kanawha County.

(2) In addition to the powers and authority granted to the secretary by this chapter to enter into consent agreements, settlements and otherwise enforce this chapter, the secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish a mechanism for the administrative resolution of violations set forth in this section through consent order or agreement as an alternative to instituting a civil action.

(c) 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 the relief is sought.

(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.