WEST VIRGINIA CODE: §22-18-19

§22-18-19. Citizen suits; petitions for rulemaking; intervention.

(a) Any person may commence a civil action on his or her own behalf against any person who is alleged to be in violation of any provision of this article or any condition of a permit issued or rules promulgated hereunder, except that no action may be commenced under this section prior to sixty days after the plaintiff has given notice to the appropriate enforcement, permit issuing or rule-making authority and to the person against whom the action will be commenced, or if the state has commenced and is diligently prosecuting a civil or criminal action pursuant to this article: Provided, That such person may commence a civil action immediately upon notification in the case of an action under subsection (b) of this section. Such actions may be brought in the circuit court in the county in which the alleged violation occurs or in the circuit court of Kanawha County.

(b) Any person may commence a civil action against the appropriate enforcement, permit issuing or rule-making authority where there is alleged a failure of such authority to perform any nondiscretionary duty or act under this article. Such actions may be brought only in the circuit court of Kanawha County.

(c) Any person may petition the appropriate rule-making authority for rule-making on an issue arising under this article. The appropriate rule-making authority, if it believes such issue to merit rule making, may commence any studies and investigations necessary to issue rules. A decision by the appropriate rule-making authority not to pursue rule making must be set forth in writing with substantial reasons for refusing to do so.

(d) Nothing in this article restricts any rights of any person or class of persons under statute or common law.

(e) In issuing any final order in any action brought pursuant to this section any court with jurisdiction may award costs of litigation, including reasonable attorney's fees and expert witnesses fees, to any party whenever the court determines such award to be appropriate.

(f) Any enforcement, permit issuing or rule-making authority may intervene as a matter of right in any suit brought under this section.

(g) Any person may intervene as a matter of right in any civil action or administrative action instituted under this article.

(h) Notwithstanding any provision of this article to the contrary, any person may maintain an action to enjoin a nuisance against any permit holder or other person subject to the provisions of this article and may seek damages in said action, all to the same extent and for all intents and purposes as if this article were not enacted, if such person maintaining such action and seeking such damages would otherwise have standing to maintain such action

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and be entitled to damages by any other rule of law.

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