WEST VIRGINIA CODE: §22-1A-5

§22-1A-5. Remedies.

When a court of competent jurisdiction determines that action of the Division of Environmental Protection, within its statutory authority, requires that compensation be paid to a private real property owner pursuant to section nine, article three of the Constitution of West Virginia, or the fifth or fourteenth amendments of the Constitution of the United States or the principles of nuisance law, the private real property owner is also entitled to his or her reasonable attorney fees and costs:

(1) If the court determines that the division failed to perform the assessment required in section three of this article; or

(2) If the court determines that the division performed the assessment required in section three of this article but failed to conclude that its action was reasonably likely to require compensation to be paid to the private real property owner.

WV Legislature