WEST VIRGINIA CODE: §22-3-25

§22-3-25. Citizen suits; order of court; damages.

(a) Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action in the circuit court of the county to which the surface mining operation is located on the person's own behalf to compel compliance with this article:

(1) Against the State of West Virginia or any other governmental instrumentality or agency thereof, to the extent permitted by the West Virginia Constitution and by law, which is alleged to be in violation of the provisions of this article or any rule, order or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, order or permit issued pursuant to this article; or

(2) Against the director, division, surface mine board or appropriate division employees, to the extent permitted by the West Virginia Constitution and by law, where there is alleged a failure of the above to perform any act or duty under this article which is not discretionary.

(b) No action may be commenced:

(1) Under subdivision (1), subsection (a) of this section: (A) Prior to sixty days after the plaintiff has given notice in writing of the violation to the director or to any alleged violator, or (B) if the director has commenced and is diligently prosecuting a civil action in a circuit court to require compliance with the provisions of this article or any rule, order or permit issued pursuant to this article; or

(2) Under subdivision (2), subsection (a) of this section prior to sixty days after the plaintiff has given notice in writing of such action to the director, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(c) Any action respecting a violation of this article or the rules thereunder may be brought in any appropriate circuit court. In such action under this section, the director, if not a party, may intervene as a matter of right.

(d) The court in issuing any final order in any action brought pursuant to subsection (a) of this section may award costs of litigation, including reasonable attorney and expert witness fees, to any party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security.

(e) Nothing in this section restricts any right which any person or class of persons may have

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under any statute or common law to seek enforcement of any of the provisions of this article and the rules thereunder or to seek any other relief.

(f) Any person or property who is injured through the violation by any operator of any rule, order or permit issued pursuant to this article may bring an action for damages, including reasonable attorney and expert witness fees, in any court of competent jurisdiction. Nothing in this subsection affects the rights established by or limits imposed under state workers' compensation laws.

(g) This section applies to violations of this article and the rules promulgated thereto, or orders or permits issued pursuant to said article insofar as said violations, rules, orders and permits relate to surface mining operations.

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