# WEST VIRGINIA CODE: §22-4-24

**§22-4-24. Orders, inspections and enforcement; permit revocation, damages, civil and criminal penalties.**

(a) The director may at reasonable times without prior notice and upon presentation of appropriate credentials, enter any quarry and conduct periodic inspections and examine any required documentation to effectively implement and enforce the provisions of this article and rules promulgated thereunder.

(b) Whenever the director finds that an ongoing quarry operation is causing or is likely to cause imminent and substantial harm to the environment, public safety, or public health, the director may order immediate cessation of such operations, or portions of operations, and shall take other action as is deemed necessary to avoid adverse impact to the area.

(c) If the director, upon inspection or investigation observes, discovers or learns of a violation of this article, rules promulgated thereunder, or any permit condition or order issued under this article, he or she shall:

(1) Issue an order stating with reasonable specificity the nature of the alleged violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Notice of noncompliance, orders suspending, revoking or modifying permits, consent agreements which provide opportunity for correction without further agency action, orders requiring a permittee to take remedial action within a specified time, and cease and desist orders;

(2) Seek an injunction in accordance with subsection (g) of this section;

(3) Revoke the permit and pursue an appropriate remedy as provided in this section;

(4) Institute a civil action in accordance with subsection (g) of this section; or

(5) Request the prosecuting attorney of the county wherein the alleged violation occurred, to bring an appropriate action, either civil or criminal in accordance with subsection (g) or (h) of this section.

(d) If the operator has not reached an agreement with the director or has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked by order of the director and the performance bond or contributions to the bonding pooling fund shall then be forfeited. If an agreement satisfactory to the director has not been reached within thirty days after suspension of any permit, any and all suspended permits shall then be declared revoked and the performance bonds or contributions to the bond pooling fund with respect thereto forfeited.

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(e) Any person who violates any provision of this article, any permit condition or any rule or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the director, of not more than $5,000 for each day of such violation, not to exceed a maximum of $20,000. The director may accept in kind assessment by reclamation of an abandoned quarry site in lieu of cash payment of a civil administrative penalty.

In assessing any such penalty, the director shall take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements as well as any other appropriate factors as may be established by rules promulgated pursuant to this article and article three, chapter twenty-nine-a of this code. No assessment shall 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 director 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 director shall inform the alleged violator of the time and place of the hearing.

The director may appoint an assessment officer to conduct the informal hearing and then make a written recommendation to the director concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, the director shall issue and furnish to the alleged violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of the director's decision, the alleged violator may request a formal hearing before the surface mine board. The authority to levy a civil 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. No combination of assessments against a violator under this section shall exceed $5,000 for each day of such violation: Provided, That any violation for which the violator has paid a civil administrative penalty assessed under this section shall 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 this article and rules issued pursuant to this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the quarry reclamation fund established in section twenty-three of this article. No assessment levied pursuant to this subsection becomes due and payable until the procedures for review of such assessment as set out herein have been completed.

(f) Any person who violates any provision of this article, any permit condition, rule or order issued pursuant to this article is subject to a civil penalty not to exceed $5,000 for each day of such violation, which penalty shall be recovered in a civil action either in the circuit court wherein the violation occurs or in the circuit court of Kanawha County.

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(g) The director may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit condition, rule or order issued pursuant to this article. In seeking an injunction, it is not necessary for the director 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 such relief is sought.

(h) Any person who willfully or negligently violates the provisions of this article, any permit condition or any rule or order issued pursuant to this article is subject to the same criminal penalties as set forth in section twenty-four, article eleven of this chapter.

(i) Upon request of the director, the prosecuting attorney of the county in which the violation occurs shall assist the director in any civil or criminal action under this section.

(j) In any civil action brought pursuant to the provisions of this section, the state, or any agency of the state which prevails, may be awarded costs, reasonable attorney's fees, and, when a permit has been revoked, any actual costs incurred by the agency to complete reclamation of a permitted site above and beyond moneys received as a result of bond forfeiture.

(k) In addition to and notwithstanding any other penalties provided herein, any operator who directly causes damage to the property of others as a result of quarrying is liable to them, in an amount not in excess of three times the provable amount of such damage, if and only if such damage occurs before or within one year after such operator has completed all reclamation work with respect to the land on which such quarrying was carried out and all bonds of such operator with respect to such reclamation work are released. Such damages are recoverable in an action at law in any court of competent jurisdiction.

(l) The director may reinstate a revoked permit and allow resumption of quarrying upon a finding that the circumstance causing the revocation has been abated and the director has determined that the cause of the revocation will not reoccur upon reinstatement.

(m) It is unlawful for the owner or owners of surface rights or the owner or owners of mineral rights to interfere with the operator in the discharge of the operator's obligation to the state for the reclamation of lands disturbed by the operator. The director may initiate an action pursuant to either subsection (g) or (h) of this section, to enforce this prohibition.

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