WEST VIRGINIA LEGISLATURE
Regular Session, 2001

ENROLLED
Committee Substitute for
SENATE BILL NO. 574

(By Senator Snyder, et al)

PASSED April 14, 2001
In Effect 90 days from Passage
AN ACT to amend and reenact section twenty-two, article eleven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing certain civil penalties of the water pollution control act; and authorizing rules for the development of administrative resolution as an alternative to civil action.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article eleven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-22. Civil penalties and injunctive relief; administrative penalties.
(a) Any person who violates any provision of any permit issued under or subject to the provisions of this article is subject to a civil penalty not to exceed twenty-five thousand dollars per day of such violation and any person who violates any provision of this article or of any rule or who violates any standard or order promulgated or made and entered under the provisions of this article or article one or three, chapter twenty-two-b of this code is subject to a civil penalty not to exceed twenty-five thousand dollars per day of such violation. Any such civil penalty may be imposed and collected only by a civil action instituted by the director in the circuit court of the county in which the violation occurred or is occurring or of the county in which the waters thereof are polluted as the result of such violation.

Upon application by the director, the circuit courts of the state or the judges thereof in vacation may by injunction compel compliance with and enjoin violations of the provisions of this article, the rules of the board or director, effluent limitations, the terms and conditions of any permit granted under the provisions of this article, or any order of the director or board, and the venue of any such actions shall be the county in which the violations or noncompliance exists or is taking place or in any county in which the waters thereof are polluted as the result of such violation or noncompliance. The court or the judge thereof in vacation may issue a temporary or preliminary injunction in any case pending a decision on the merits of any injunction application filed. Any other section of this code to the contrary notwithstanding, the state is not required to furnish bond as a prerequisite to obtaining injunctive relief under this article. An application for an injunction under the provisions of this section may be filed and injunctive relief granted notwithstanding that all of the administrative remedies provided for in this article have not been pursued or invoked against the person or persons against whom such relief is sought and notwithstanding that the person or persons against whom such relief is
sought have not been prosecuted or convicted under the provisions of this article.

The judgment of the circuit court upon any application filed or in any civil action instituted under the provisions of this section is final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner provided by law for appeals from circuit courts in other civil cases, except that the petition seeking review in any injunctive proceeding must be filed with said supreme court of appeals within ninety days from the date of entry of the judgment of the circuit court.

Legal counsel and services for the chief, director or the board in all civil penalty and injunction proceedings in the circuit court and in the supreme court of appeals of this state shall be provided by the attorney general or his or her assistants and by the prosecuting attorneys of the several counties as well, all without additional compensation, or the chief, director or the board, with the written approval of the attorney general, may employ counsel to represent him or her or it in a particular proceeding.

(b) In addition to the powers and authority granted to the director by this chapter to enter into consent agreements, settlements and otherwise enforce this chapter, the director shall propose, for legislative promulgation, rules 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved this the 2nd Day of May, 2001.

[Signature]
Governor