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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2002

ENROLLED

SENATE BILL NO. 609

(By Senator Snyder, et al)

PASSED MARCH 7, 2002

In Effect Every Day From Passage

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Senate Bill No. 609

(BY SENATORS SNYDER, OLIVERIO, WOOTON, KESSLER,
REDD, BURNETTE, MITCHELL AND ROWE)

[Passed March 7, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact section fifteen, article fifteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to violations and penalties under the solid waste management act; inserting penalties previously incorporated by reference; creating civil and criminal penalties for certain illegal waste tire piles; and removing antiquated language.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article fifteen, 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 15. SOLID WASTE MANAGEMENT ACT.

§22-15-15. Orders, inspections and enforcement; civil and criminal penalties.

1 (a) If the secretary, upon inspection or investigation by
2 duly authorized representatives or through other means
3 observes, discovers or learns of a violation of this article,
4 its rules, article eleven of this chapter or its rules, or any
5 permit or order issued under this article, he or she shall:

6 (1) Issue an order stating with reasonable specificity the
7 nature of the alleged violation and requiring compliance
8 immediately or within a specified time. An order under
9 this section includes, but is not limited to, any or all of the
10 following: Orders suspending, revoking or modifying
11 permits, orders requiring a person to take remedial action
12 or cease and desist orders;

13 (2) Seek an injunction in accordance with subsection (e)
14 of this section;

15 (3) Institute a civil action in accordance with subsection
16 (e) of this section; or

17 (4) Request the attorney general, or the prosecuting
18 attorney of the county wherein the alleged violation
19 occurred, to bring an appropriate action, either civil or
20 criminal in accordance with subsection (b) of this section.

21 (b) Any person who violates this article, or permits
22 issued pursuant to this article or rules or orders issued by
23 the secretary or board is subject to administrative, civil
24 and criminal sanctions as follows:

25 (1) Any person who fails or refuses to discharge any duty
26 imposed upon him or her by this article or by any rule of
27 the secretary promulgated pursuant to the provisions and
28 intent of this article or by an order of the secretary or
29 board, or who fails or refuses to apply for and obtain a
30 permit as required by the provisions of this article, or who
31 fails or refuses to comply with any term or condition of the
32 permit, is guilty of a misdemeanor and, upon conviction
33 thereof, shall be fined not less than one hundred dollars
34 nor more than one thousand dollars, or imprisoned in the

35 county or regional jail not more than six months, or both
36 fined and imprisoned.

37 (2) Any person who intentionally misrepresents any
38 material fact in an application, record, report, plan or
39 other document filed or required to be maintained under
40 the provisions of this article or any rules promulgated by
41 the secretary thereunder is guilty of a misdemeanor and,
42 upon conviction thereof, shall be fined not less than one
43 thousand dollars nor more than ten thousand dollars, or
44 imprisoned in a county or regional jail not more than six
45 months, or both fined and imprisoned.

46 (3) Any person who willfully or negligently violates any
47 provision of any permit issued under or subject to the
48 provisions of this article or who willfully or negligently
49 violates any provision of this article or any rule of the
50 secretary or any order of the secretary or board is guilty of
51 a misdemeanor and, upon conviction thereof, shall be fined
52 not less than two thousand five hundred dollars nor more
53 than twenty-five thousand dollars per day of violation, or
54 imprisoned in a county or regional jail not more than one
55 year, or both fined and imprisoned.

56 (4) Any person convicted of a second offense or subse-
57 quent willful violation of subdivision (2) or (3) of this
58 subsection or knowingly and willfully violating any
59 provision of any permit, rule or order issued under or
60 subject to the provisions of this article or knowingly and
61 willfully violating any provision of this article, is guilty of
62 a felony and, upon conviction thereof, shall be imprisoned
63 in a state correctional facility not less than one nor more
64 than three years, or fined not more than fifty thousand
65 dollars for each day of violation, or both fined and impris-
66 oned.

67 (5) Any person convicted of accumulating or disposing of
68 one thousand or more tires in violation of this article is
69 guilty of a felony and, upon conviction thereof, shall be
70 imprisoned in a state correctional facility for not less than

71 one nor more than five years and shall be required to clean
72 up and properly dispose of the waste tires or reimburse the
73 state agency or agencies for costs incurred in cleaning up
74 the waste tires. In addition, any person so convicted may
75 be fined not more than fifty thousand dollars for each day
76 of the continued violation.

77 (6) A person may be prosecuted and convicted under the
78 provisions of this section, notwithstanding that the
79 administrative remedies provided in this article have not
80 been pursued or invoked against the person and notwith-
81 standing that civil action for the imposition and collection
82 of a civil penalty or an application for an injunction under
83 the provisions of this article has not been filed against the
84 person.

85 (7) Where a person holding a permit is carrying out a
86 program of pollution abatement or remedial action in
87 compliance with the conditions and terms of the permit,
88 that person is not subject to criminal prosecution for
89 pollution recognized and authorized by the permit.

90 (c) Any person who violates any provision of this article,
91 any permit or any rule or order issued pursuant to this
92 article is subject to a civil administrative penalty, to be
93 levied by the secretary, of not more than five thousand
94 dollars for each day of the violation, not to exceed a
95 maximum of twenty thousand dollars:

96 (1) In assessing a penalty, the secretary shall take into
97 account the seriousness of the violation and any good faith
98 efforts to comply with the applicable requirements as well
99 as any other appropriate factors as may be established by
100 the secretary by rules promulgated pursuant to this article
101 and article three, chapter twenty-nine-a of this code. No
102 assessment shall be levied pursuant to this subsection until
103 after the alleged violator has been notified by certified
104 mail or personal service. The notice shall include a
105 reference to the section of the statute, rule, order or
106 statement of permit conditions that was allegedly violated,

107 a concise statement of the facts alleged to constitute the
108 violation, a statement of the amount of the administrative
109 penalty to be imposed and a statement of the alleged
110 violator's right to an informal hearing. The alleged
111 violator has twenty calendar days from receipt of the
112 notice within which to deliver to the secretary a written
113 request for an informal hearing. If no hearing is re-
114 quested, the notice becomes a final order after the expira-
115 tion of the twenty-day period. If a hearing is requested,
116 the secretary shall inform the alleged violator of the time
117 and place of the hearing. The secretary may appoint an
118 assessment officer to conduct the informal hearing and
119 then make a written recommendation to the secretary
120 concerning the assessment of a civil administrative
121 penalty. Within thirty days following the informal
122 hearing, the secretary shall issue and furnish to the alleged
123 violator a written decision, and the reasons therefor,
124 concerning the assessment of a civil administrative
125 penalty. Within thirty days after notification of the
126 secretary's decision, the alleged violator may request a
127 formal hearing before the environmental quality board in
128 accordance with the provisions of section sixteen of this
129 article. The authority to levy a civil administrative
130 penalty is in addition to all other enforcement provisions
131 of this article and the payment of any assessment does not
132 affect the availability of any other enforcement provision
133 in connection with the violation for which the assessment
134 is levied: *Provided*, That no combination of assessments
135 against a violator under this section shall exceed twenty-
136 five thousand dollars for each day of a violation: *Pro-*
137 *vided, however*, That any violation for which the violator
138 has paid a civil administrative penalty assessed under this
139 section shall not be the subject of a separate civil penalty
140 action under this article to the extent of the amount of the
141 civil administrative penalty paid. All administrative
142 penalties shall be levied in accordance with rules issued
143 pursuant to subsection (a), section five of this article. The
144 net proceeds of assessments collected pursuant to this
145 subsection shall be deposited in the solid waste reclama-

146 tion and environmental response fund established in
147 subdivision (3), subsection (h), section eleven of this
148 article;

149 (2) No assessment levied pursuant to subdivision (1) of
150 this subsection becomes due and payable until the proce-
151 dures for review of the assessment as set out in said
152 subsection have been completed.

153 (d) Any person who violates any provision of this article,
154 any permit or any rule or order issued pursuant to this
155 article is subject to a civil penalty not to exceed
156 twenty-five thousand dollars for each day of the violation,
157 which penalty shall be recovered in a civil action either in
158 the circuit court wherein the violation occurs or in the
159 circuit court of Kanawha County.

160 (e) The secretary may seek an injunction, or may insti-
161 tute a civil action against any person in violation of any
162 provisions of this article or any permit, rule or order issued
163 pursuant to this article. In seeking an injunction, it is not
164 necessary for the secretary to post bond nor to allege or
165 prove at any stage of the proceeding that irreparable
166 damage will occur if the injunction is not issued or that the
167 remedy at law is inadequate. An application for injunctive
168 relief or a civil penalty action under this section may be
169 filed and relief granted notwithstanding the fact that all
170 administrative remedies provided for in this article have
171 not been exhausted or invoked against the person or
172 persons against whom relief is sought.

173 (f) Upon request of the secretary, the attorney general or
174 the prosecuting attorney of the county in which the
175 violation occurs shall assist the secretary in any civil
176 action under this section.

177 (g) In any civil action brought pursuant to the provisions
178 of this section, the state, or any agency of the state which
179 prevails may be awarded costs and reasonable attorney's
180 fees.

181 (h) In addition to all other grounds for revocation, the
182 secretary shall revoke a permit for any of the following
183 reasons:

184 (1) Fraud, deceit or misrepresentation in securing the
185 permit, or in the conduct of the permitted activity;

186 (2) Offering, conferring or agreeing to confer any benefit
187 to induce any other person to violate the provisions of this
188 chapter, or of any other law relating to the collection,
189 transportation, treatment, storage or disposal of solid
190 waste, or of any rule adopted pursuant thereto;

191 (3) Coercing a customer by violence or economic reprisal
192 or the threat thereof to utilize the services of any
193 permittee; or

194 (4) Preventing, without authorization of the secretary,
195 any permittee from disposing of solid waste at a licensed
196 treatment, storage or disposal facility.

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 *21st*
Day of *March*....., 2002.

[Signature]
.....
Governor

PRESENTED TO

GOVERNOR

Date 3/15/02

Time 10:45 am