

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012



ENROLLED

House Bill No. 4320

(By Delegates Ferro, Barker and Caputo)
[By Request of the Department of Environmental Protection]



Passed March 6, 2011

To Take Effect Ninety Days From Passage

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H. B. 4320

(BY DELEGATES FERRO, BARKER AND CAPUTO)
[BY REQUEST OF THE DEPARTMENT OF
ENVIRONMENTAL PROTECTION]

[Passed March 6, 2012; to take effect ninety days from passage.]

AN ACT to amend and reenact §22-18-17 of the Code of West Virginia, 1931, as amended, relating to the settlement of violations of the Hazardous Waste Management Act by consent agreements, as an alternative to instituting a civil action in the circuit courts of the state.

Be it enacted by the Legislature of West Virginia:

That §22-18-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.

§22-18-17. Civil penalties and injunctive relief.

1 (a) (1) Any person who violates any provision of this
2 article, any permit or any rule or order issued pursuant to this
3 article is subject to a civil administrative penalty, to be levied
4 by the secretary, of not more than \$7,500 for each day of
5 violation, not to exceed a maximum of \$22,500. In assessing
6 a penalty, the secretary shall take into account the seriousness
7 of the violation and any good faith efforts to comply with

8 applicable requirements as well as any other appropriate
9 factors as may be established by the secretary by rules
10 promulgated pursuant to this article and article three, chapter
11 twenty-nine-a of this code. No assessment may be levied
12 pursuant to this subsection until after the alleged violator has
13 been notified by certified mail or personal service. The
14 notice shall include a reference to the section of the statute,
15 rule, order or statement of permit conditions that was
16 allegedly violated, a concise statement of the facts alleged to
17 constitute the violation, a statement of the amount of the
18 administrative penalty to be imposed and a statement of the
19 alleged violator's right to an informal hearing. The alleged
20 violator has twenty calendar days from receipt of the notice
21 within which to deliver to the secretary a written request for
22 an informal hearing. If no hearing is requested, the notice
23 becomes a final order after the expiration of the twenty-day
24 period. If a hearing is requested, the secretary shall inform
25 the alleged violator of the time and place of the hearing. The
26 secretary may appoint an assessment officer to conduct the
27 informal hearing and then make a written recommendation to
28 the secretary concerning the assessment of a civil
29 administrative penalty. Within thirty days following the
30 informal hearing, the secretary shall issue and furnish to the
31 violator a written decision, and the reasons therefor,
32 concerning the assessment of a civil administrative penalty.
33 Within thirty days after notification of the secretary's
34 decision, the alleged violator may request a formal hearing
35 before the Environmental Quality Board in accordance with
36 the provisions of article one, chapter twenty-two-b of this
37 code. The authority to levy an administrative penalty is in
38 addition to all other enforcement provisions of this article and
39 the payment of any assessment does not affect the availability
40 of any other enforcement provision in connection with the
41 violation for which the assessment is levied: *Provided*, That
42 no combination of assessments against a violator under this
43 section may exceed \$25,000 per day of each violation:

44 *Provided, however,* That any violation for which the violator
45 has paid a civil administrative penalty assessed under this
46 section may not be the subject of a separate civil penalty
47 action under this article to the extent of the amount of the
48 civil administrative penalty paid. All administrative penalties
49 shall be levied in accordance with rules issued pursuant to
50 subsection (a), section six of this article. The net proceeds of
51 assessments collected pursuant to this subsection shall be
52 deposited in the hazardous waste emergency response fund
53 established pursuant to section three, article nineteen of this
54 chapter.

55 (2) No assessment levied pursuant to subdivision (1), of
56 this subsection becomes due and payable until the procedures
57 for review of the assessment have been completed.

58 (b) (1) Any person who violates any provision of this
59 article, any permit or any rule or order issued pursuant to this
60 article is subject to a civil penalty not to exceed \$25,000 for
61 each day of violation, which penalty shall be recovered in a
62 civil action either in the circuit court in which the violation
63 occurs or in the circuit court of Kanawha County.

64 (2) In addition to the powers and authority granted to the
65 secretary by this chapter to enter into consent agreements,
66 settlements and otherwise enforce this chapter, the secretary
67 shall propose rules for legislative approval in accordance
68 with the provisions of article three, chapter twenty-nine-a of
69 this code to establish a mechanism for the administrative
70 resolution of violations set forth in this section through
71 consent order or agreement as an alternative to instituting a
72 civil action.

73 (c) The secretary may seek an injunction, or may institute
74 a civil action against any person in violation of any
75 provisions of this article or any permit, rule or order issued

76 pursuant to this article. In seeking an injunction, it is not
77 necessary for the secretary to post bond nor to allege or prove
78 at any stage of the proceeding that irreparable damage will
79 occur if the injunction is not issued or that the remedy at law
80 is inadequate. An application for injunctive relief or a civil
81 penalty action under this section may be filed and relief
82 granted notwithstanding the fact that all administrative
83 remedies provided for in this article have not been exhausted
84 or invoked against the person or persons against whom the
85 relief is sought.

86 (d) Upon request of the secretary, the Attorney General,
87 or the prosecuting attorney of the county in which the
88 violation occurs, shall assist the secretary in any civil action
89 under this section.

90 (e) In any action brought pursuant to the provisions of
91 this section, the state, or any agency of the state which
92 prevails, may be awarded costs and reasonable attorney's
93 fees.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor