

1 **ENROLLED**

2 **H. B. 4320**

3
4 (By Delegates Ferro, Barker and Caputo)

5 [By request of the Department of
6 Environmental Protection]

7 [Passed March 6, 2012; in effect ninety days from passage.]
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10 AN ACT to amend and reenact §22-18-17 of the Code of West Virginia,
11 1931, as amended, relating to the settlement of violations of
12 the Hazardous Waste Management Act by consent agreements, as
13 an alternative to instituting a civil action in the circuit
14 courts of the state.

15 *Be it enacted by the Legislature of West Virginia:*

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

18 **ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.**

19 **§22-18-17. Civil penalties and injunctive relief.**

20 (a) (1) Any person who violates any provision of this article,
21 any permit or any rule or order issued pursuant to this article is
22 subject to a civil administrative penalty, to be levied by the
23 secretary, of not more than \$7,500 for each day of violation, not
24 to exceed a maximum of \$22,500. In assessing a penalty, the

1 secretary shall take into account the seriousness of the violation
2 and any good faith efforts to comply with applicable requirements
3 as well as any other appropriate factors as may be established by
4 the secretary by rules promulgated pursuant to this article and
5 article three, chapter twenty-nine-a of this code. No assessment
6 may be levied pursuant to this subsection until after the alleged
7 violator has been notified by certified mail or personal service.
8 The notice shall include a reference to the section of the statute,
9 rule, order or statement of permit conditions that was allegedly
10 violated, a concise statement of the facts alleged to constitute
11 the violation, a statement of the amount of the administrative
12 penalty to be imposed and a statement of the alleged violator's
13 right to an informal hearing. The alleged violator has twenty
14 calendar days from receipt of the notice within which to deliver to
15 the secretary a written request for an informal hearing. If no
16 hearing is requested, the notice becomes a final order after the
17 expiration of the twenty-day period. If a hearing is requested,
18 the secretary shall inform the alleged violator of the time and
19 place of the hearing. The secretary may appoint an assessment
20 officer to conduct the informal hearing and then make a written
21 recommendation to the secretary concerning the assessment of a
22 civil administrative penalty. Within thirty days following the
23 informal hearing, the secretary shall issue and furnish to the
24 violator a written decision, and the reasons therefor, concerning

1 the assessment of a civil administrative penalty. Within thirty
2 days after notification of the secretary's decision, the alleged
3 violator may request a formal hearing before the Environmental
4 Quality Board in accordance with the provisions of article one,
5 chapter twenty-two-b of this code. The authority to levy an
6 administrative penalty is in addition to all other enforcement
7 provisions of this article and the payment of any assessment does
8 not affect the availability of any other enforcement provision in
9 connection with the violation for which the assessment is levied:
10 *Provided, That no combination of assessments against a violator*
11 *under this section may exceed \$25,000 per day of each violation:*
12 *Provided, however, That any violation for which the violator has*
13 *paid a civil administrative penalty assessed under this section may*
14 *not be the subject of a separate civil penalty action under this*
15 *article to the extent of the amount of the civil administrative*
16 *penalty paid. All administrative penalties shall be levied in*
17 *accordance with rules issued pursuant to subsection (a), section*
18 *six of this article. The net proceeds of assessments collected*
19 *pursuant to this subsection shall be deposited in the hazardous*
20 *waste emergency response fund established pursuant to section*
21 *three, article nineteen of this chapter.*

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

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

7 (2) In addition to the powers and authority granted to the
8 secretary by this chapter to enter into consent agreements,
9 settlements and otherwise enforce this chapter, the secretary shall
10 propose rules for legislative approval in accordance with the
11 provisions of article three, chapter twenty-nine-a of this code to
12 establish a mechanism for the administrative resolution of
13 violations set forth in this section through consent order or
14 agreement as an alternative to instituting a civil action.

15 (c) The secretary may seek an injunction, or may institute a
16 civil action against any person in violation of any provisions of
17 this article or any permit, rule or order issued pursuant to this
18 article. In seeking an injunction, it is not necessary for the
19 secretary to post bond nor to allege or prove at any stage of the
20 proceeding that irreparable damage will occur if the injunction is
21 not issued or that the remedy at law is inadequate. An application
22 for injunctive relief or a civil penalty action under this section
23 may be filed and relief granted notwithstanding the fact that all
24 administrative remedies provided for in this article have not been

1 exhausted or invoked against the person or persons against whom the
2 relief is sought.

3 (d) Upon request of the secretary, the Attorney General, or
4 the prosecuting attorney of the county in which the violation
5 occurs, shall assist the secretary in any civil action under this
6 section.

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