



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

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

1 (2) No assessment levied pursuant to subdivision (1), of this  
2 subsection ~~(a) above~~ becomes due and payable until the procedures  
3 for review of ~~such~~ the assessment ~~as set out in said subsection~~  
4 have been completed.

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

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

19 (c) The ~~director~~ secretary may seek an injunction, or may  
20 institute a civil action against any person in violation of any  
21 provisions of this article or any permit, rule or order issued  
22 pursuant to this article. In seeking an injunction, it is not  
23 necessary for the ~~director~~ secretary to post bond nor to allege or  
24 prove at any stage of the proceeding that irreparable damage will

1 occur if the injunction is not issued or that the remedy at law is  
2 inadequate. An application for injunctive relief or a civil  
3 penalty action under this section may be filed and relief granted  
4 notwithstanding the fact that all administrative remedies provided  
5 for in this article have not been exhausted or invoked against the  
6 person or persons against whom ~~such~~ the relief is sought.

7 (d) Upon request of the ~~director~~ secretary, the Attorney  
8 General, or the prosecuting attorney of the county in which the  
9 violation occurs, shall assist the ~~director~~ secretary in any civil  
10 action under this section.

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

NOTE: The purpose of this bill is to authorize the Secretary of the Department of Environmental Protection to propose legislative rules to settle 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.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.