

Senate Bill No. 495

(By Senators Beach, D. Facemire, Miller and Kirkendoll)

[Introduced February 2, 2012; referred to the Committee on the
Judiciary.]

A BILL 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.

(a) (1) Any person who violates any provision of this article,
any permit or any rule or order issued pursuant to this article is
subject to a civil administrative penalty, to be levied by the
~~director~~ secretary, of not more than \$7,500 for each day of such

1 violation, not to exceed a maximum of \$22,500. In assessing ~~any~~
2 ~~such a~~ penalty, the ~~director~~ secretary shall take into account the
3 seriousness of the violation and any good faith efforts to comply
4 with applicable requirements as well as any other appropriate
5 factors as may be established by the ~~director~~ secretary by rules
6 promulgated pursuant to this article and article three, chapter
7 twenty-nine-a of this code. No assessment ~~shall~~ may be levied
8 pursuant to this subsection until after the alleged violator has
9 been notified by certified mail or personal service. The notice
10 shall include a reference to the section of the statute, rule,
11 order or statement of permit conditions that was allegedly
12 violated, a concise statement of the facts alleged to constitute
13 the violation, a statement of the amount of the administrative
14 penalty to be imposed and a statement of the alleged violator's
15 right to an informal hearing. The alleged violator has twenty
16 calendar days from receipt of the notice within which to deliver to
17 the ~~director~~ secretary a written request for an informal hearing.
18 If no hearing is requested, the notice becomes a final order after
19 the expiration of the twenty-day period. If a hearing is
20 requested, the ~~director~~ secretary shall inform the alleged violator
21 of the time and place of the hearing. The ~~director~~ secretary may
22 appoint an assessment officer to conduct the informal hearing and
23 then make a written recommendation to the ~~director~~ secretary
24 concerning the assessment of a civil administrative penalty.

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

1 chapter.

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

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

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

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

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

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

12 (e) In any action brought pursuant to the provisions of this
13 section, the state, or any agency of the state which prevails, may
14 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.