

H. B. 4320

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

[Introduced January 26, 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.

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

22 ~~director~~ secretary a written request for an informal hearing.
23 If no hearing is requested, the notice becomes a final order
24 after the expiration of the twenty-day period. If a hearing is
25 requested, the ~~director~~ secretary shall inform the alleged
26 violator of the time and place of the hearing. The ~~director~~
27 secretary may appoint an assessment officer to conduct the
28 informal hearing and then make a written recommendation to
29 the ~~director~~ secretary concerning the assessment of a civil
30 administrative penalty. Within thirty days following the
31 informal hearing, the ~~director~~ secretary shall issue and
32 furnish to the violator a written decision, and the reasons
33 therefor, concerning the assessment of a civil administrative
34 penalty. Within thirty days after notification of the ~~director's~~
35 secretary's decision, the alleged violator may request a
36 formal hearing before the Environmental Quality Board in
37 accordance with the provisions of article one, chapter twenty-
38 two-b of this code. The authority to levy an administrative
39 penalty is in addition to all other enforcement provisions of
40 this article and the payment of any assessment does not affect

41 the availability of any other enforcement provision in
42 connection with the violation for which the assessment is
43 levied: *Provided*, That no combination of assessments
44 against a violator under this section ~~shall~~ may exceed
45 \$25,000 per day of each ~~such~~ violation: *Provided, however*,
46 That any violation for which the violator has paid a civil
47 administrative penalty assessed under this section ~~shall~~ may
48 not be the subject of a separate civil penalty action under this
49 article to the extent of the amount of the civil administrative
50 penalty paid. All administrative penalties shall be levied in
51 accordance with rules issued pursuant to subsection (a), ~~of~~
52 section six of this article. The net proceeds of assessments
53 collected pursuant to this subsection shall be deposited in the
54 hazardous waste emergency response fund established
55 pursuant to section three, article nineteen of this chapter.

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

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

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

76 (c) The ~~director~~ secretary may seek an injunction, or may
77 institute a civil action against any person in violation of any
78 provisions of this article or any permit, rule or order issued

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

89 (d) Upon request of the ~~director~~ secretary, the Attorney
90 General, or the prosecuting attorney of the county in which
91 the violation occurs, shall assist the ~~director~~ secretary in any
92 civil action under this section.

93 (e) In any action brought pursuant to the provisions of
94 this section, the state, or any agency of the state which
95 prevails, may be awarded costs and reasonable attorney's
96 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.