

1 HB106  
2 127027-3  
3 By Representative Clouse  
4 RFD: Commerce and Small Business  
5 First Read: 01-MAR-11

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ENROLLED, An Act,

Relating to civil penalties assessed pursuant to Section 22-22A-5, Code of Alabama 1975, for violations of state environmental protection laws and orders; to amend Section 22-22A-5, Code of Alabama 1975, to remove minimum penalty amounts for certain violations.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 22-22A-5, Code of Alabama 1975, is amended to read as follows:

"§22-22A-5.

"In addition to any other powers and functions which may be conferred upon it by law, the department is authorized beginning October 1, 1982 to:

"(1) Administer appropriate portions of Sections 9-7-10 through 9-7-20, which relate to permitting, regulatory and enforcement functions; administer and enforce the provisions and execute the functions of Chapter 28 of this title; Chapter 22 of this title; Article 2 of Chapter 23 of this title; Chapter 30 of this title; appropriate portions of Article 1 of Chapter 27 of this title; Sections 22-24-1 through 22-24-11; Sections 22-25-1 through 22-25-15; and Sections 22-36-1 through 22-36-10.

"(2) Acting through the Environmental Management Commission, promulgate rules, regulations and standards in

1 order to carry out the provisions and intent of this chapter;  
2 provided, however, that prior to the promulgation of any state  
3 primary or secondary drinking water standard governed by  
4 Sections 22-23-30 through 22-23-53 or any regulations dealing  
5 with hazardous wastes governed by Sections 22-30-1 through  
6 22-30-24, the department shall receive the approval of the  
7 State Board of Health. The State Board of Health shall provide  
8 the department a response to its request for approval within  
9 60 days of receipt of such request unless such other time is  
10 mutually agreed upon by the department and the State Board of  
11 Health.

12 "(3) Acting through the Environmental Management  
13 Commission, adopt and promulgate rules, regulations and  
14 standards for the department, and to develop environmental  
15 policy for the state.

16 "(4) Consistent with the provisions in subsection  
17 22-22A-4(n), serve as the State Agency responsible for  
18 administering federally approved or federally delegated  
19 environmental programs.

20 "(5) Serve as the state's clearinghouse for  
21 environmental data. The clearinghouse shall be developed in  
22 coordination and cooperation with other governmental data  
23 collection and record keeping systems to provide for an  
24 inventory, and for the cataloguing and dissemination of  
25 environmental information.

1           "(6) Report, as appropriate, to the Governor and to  
2 the Legislature on the programs and activities of the  
3 department and to recommend needed changes in legislation or  
4 administrative practice.

5           "(7) Develop, conduct and disseminate education and  
6 training programs. Pursuant to this authority, the department  
7 shall establish a citizens' advisory committee to provide  
8 input into such education and training programs.

9           "(8) Enter into agreements and contracts, where  
10 appropriate, with other state agencies, the federal government  
11 or private individuals, in order to accomplish the purposes of  
12 this chapter.

13           "(9) Establish and maintain regional or field  
14 offices in order to provide more effective and efficient  
15 services to the citizens of the state.

16           "(10) Issue, modify, suspend or revoke orders,  
17 citations, notices of violation, licenses, certifications or  
18 permits.

19           "(11) Hold hearings relating to any provision of  
20 this chapter or relating to the administration thereof.

21           "(12) Enforce all provisions of this chapter and all  
22 provisions of law identified in subdivision (1) of this  
23 section and to file legal actions in the name of the  
24 department and to prosecute, defend or settle actions brought  
25 by or against the department or its agents. The Attorney

1 General shall represent the department in any and all legal  
2 actions brought by the department to enforce any provisions of  
3 this chapter; provided however, that if, within a reasonable  
4 time after the department refers the matter to him, he fails  
5 to file any such action, then the department may commence  
6 appropriate legal action. Nothing in this subdivision shall be  
7 construed so as to impair the authority of the Attorney  
8 General to independently enforce the provisions of this  
9 chapter.

10 "(13) When necessary to achieve conformance with  
11 Sections 9-7-10 through 9-7-20, acquire fee simple or less  
12 than fee simple, interest in land, water and other property  
13 under the procedures of Title 18 or other means; provided,  
14 however, that such power shall not apply to property and  
15 interest therein which is devoted to public use.

16 "(14) Apply for, where appropriate, accept, receive  
17 and administer grants or other funds or gifts from public and  
18 private agencies, including the federal government, for the  
19 purpose of carrying out any of the functions, purposes or  
20 provisions of this chapter or any of the functions or  
21 provisions transferred to the department by this chapter.

22 "(15) Employ such professional, technical, clerical  
23 and other workers including attorneys and special counsel, and  
24 such consultants as are necessary and within available funds  
25 to carry out the purposes of this chapter.

1           "(16) Adopt rules and regulations relating to  
2 charging and collecting fees sufficient to cover the  
3 reasonable anticipated costs to be incurred by the department  
4 and directly related to the issuance, reissuance, modification  
5 or denial of any permit, license, certification or variance,  
6 such fees to include, but not be limited to, the reasonable  
7 anticipated cost of the examination and processing of  
8 applications, plans, specifications or any other data and any  
9 necessary public hearings and investigations; provided,  
10 however, that nothing in this subdivision shall be construed  
11 as modifying or affecting the provisions of Section 22-24-5. A  
12 schedule of estimated reasonable anticipated costs shall be  
13 appended to rules and regulations with the understanding that  
14 fees may be higher or lower on a case-by-case basis.

15           "(17) In addition to any other remedies provided by  
16 law, recover in a civil action from any person who has  
17 violated, or threatens to violate, any provision of this  
18 chapter, or any provision of law identified in subdivision (1)  
19 of this section, or any rule or regulation promulgated  
20 thereunder, or any order, or condition of any permit, license,  
21 certification or variance issued by the department pursuant  
22 thereto, the actual costs reasonably incurred by the  
23 department to prevent, minimize or abate any adverse effect on  
24 air, land or water resources which results or may result from  
25 such violation. Such civil actions may be filed in the circuit

1 court of the county in which the defendant resides or does  
 2 business, or in which the violation or threatened violation  
 3 occurs or in which the adverse effect occurs.

4 "(18)a. Issue an order assessing a civil penalty to  
 5 any person who violates any provision of law identified in  
 6 subdivision (1) of this section, any rule, regulation or  
 7 standard promulgated by the department, any provision of any  
 8 order, or any condition of any permit, license, certification  
 9 or variance issued by the department, provided however, that  
 10 no such order shall be issued to a person:

11 "1. If a civil action to recover a penalty for such  
 12 violation has been commenced against such person as provided  
 13 in paragraph b. of this subdivision.

14 "2. For any violation at a coal mining operation  
 15 regulated under Sections 9-16-70 through 9-16-107 or Title V  
 16 of Public Law 95-87, 30 U.S.C. § 1251-1279.

17 "3. If an order assessing a civil penalty for such  
 18 violation has been issued to such person pursuant to  
 19 subdivision (2) of subsection 22-28-23(b).

20 "4. Who is a responsible corporate officer subject  
 21 to a civil action for the recovery of a penalty under  
 22 paragraph b. of this subdivision.

23 "The department shall commence enforcement action  
 24 under this paragraph by notifying the person subject thereto  
 25 in writing of the alleged violation and affording the person

1 an opportunity for an informal conference with the director or  
2 his or her designated representative concerning the alleged  
3 violation and any proposed order. The informal conference  
4 shall not be subject to the procedures for hearings under  
5 Section 22-22A-7. Before issuing any consent or unilateral  
6 order under this section, the department shall cause public  
7 notice to be published for one day in a newspaper of general  
8 circulation in the area where the alleged violation occurred  
9 and on the website of the department for the duration of the  
10 comment period; provided, however, that unavailability of the  
11 website during the comment period shall not affect the  
12 validity of an order issued under this paragraph. The notice  
13 shall reasonably describe the nature and location of the  
14 alleged violation and the amount of civil penalty proposed,  
15 contain a summary of any proposed corrective measures, provide  
16 instructions for obtaining a copy of the proposed order, and  
17 indicate that persons may submit written comments to the  
18 department and request a hearing on the proposed order within  
19 30 days of the first date of publication. The department may  
20 hold a hearing if the information submitted in support of the  
21 request is material and if a hearing may clarify one or more  
22 issues raised in the written comments. If the department  
23 grants a request for a hearing, the department shall provide  
24 written notice of the time, date, and location of the hearing  
25 by regular mail at least 20 days prior to the hearing to all



1 persons subject to the proposed order and all persons who  
2 submitted written comments on the proposed order that contain  
3 a current return address. At any such hearing, the department  
4 shall provide a reasonable opportunity for persons subject to  
5 the proposed order and persons who submitted written comments  
6 on the proposed order to be heard and to submit information to  
7 the director or his or her designated representative,  
8 provided, however, that the hearing shall not be subject to  
9 the procedures for hearings under Section 22-22A-7, or  
10 practices or procedures governing public hearings. The  
11 department shall also accept additional written comments from  
12 any interested party that are received on or before the date  
13 of the hearing. After consideration of written comments, any  
14 information submitted at the hearing, if one was held, and any  
15 other publicly available information, the department may issue  
16 the order as proposed, issue a modified order, or withdraw the  
17 proposed order. Any order issued under this paragraph shall  
18 include findings of fact relied upon by the department in  
19 determining the alleged violation and the amount of the civil  
20 penalty and shall be served on persons subject to the order in  
21 the manner provided for service of process in the Alabama  
22 Rules of Civil Procedure. Upon issuance of an order, the  
23 department shall also provide written notice of the order by  
24 regular mail to each person who submitted written comments on  
25 the proposed order that contain a current return address. The

1 notice shall reasonably describe the nature and location of  
2 the alleged violation and the amount of civil penalty, contain  
3 a summary of any required corrective measures, provide  
4 instructions for obtaining a copy of the order, and indicate  
5 that persons who submitted written comments on the proposed  
6 order may, within 30 days of the issuance of the order,  
7 request a hearing on the order before the Environmental  
8 Management Commission in accordance with Section 22-22A-7.  
9 Where the department has issued an order finding that a  
10 violation has occurred and assessing a civil penalty, the  
11 person subject thereto shall, unless the department and that  
12 person agree on a different schedule, pay the penalty in full  
13 within 45 days after issuance of such order unless any person  
14 has filed a timely request for a hearing to contest the  
15 issuance of such order in accordance with Section 22-22A-7, in  
16 which case the penalty assessed in the order as approved or  
17 modified by the Environmental Management Commission shall,  
18 unless the department and that person agree on a different  
19 schedule, be paid in full within 30 days after the order is  
20 approved or modified by the Environmental Management  
21 Commission or, if an appeal thereof is taken to circuit court,  
22 within 42 days after the court affirms the order as approved  
23 or modified by the Environmental Management Commission. Civil  
24 penalties assessed in an order under this paragraph and not  
25 paid as provided herein may be recovered in a civil action

1 brought by the department in the Circuit Court of Montgomery  
2 County or the county in which the defendant does business.

3 "b. Commence a civil action in the circuit court of  
4 the county in which the defendant or any material defendant  
5 resides or does business or in which the violation occurred to  
6 recover a civil penalty from such person for any violation of  
7 any provision of law identified in subdivision (1) of this  
8 section, any rule, regulation or standard promulgated by the  
9 department, any provision of any order or any condition of any  
10 permit, license, certification or variance issued by the  
11 department, provided however, that no such civil action may be  
12 commenced against a person if an order assessing a civil  
13 penalty for such violation has been issued to such person  
14 under paragraph a. of this subdivision. Whenever such person  
15 is a corporation and the violation is of a provision of law in  
16 Chapter 22 of this title, or any rule, regulation or standard  
17 promulgated by the department thereunder, or any provision of  
18 any order or any condition of any permit, license,  
19 certification or variance issued by the department thereunder,  
20 the same civil penalties that may be imposed upon a person  
21 under this subdivision may be imposed upon the responsible  
22 corporate officers in a civil action. Any person having an  
23 interest which is or may be adversely affected may intervene  
24 as a matter of right in any civil action commenced under this

1 paragraph. The Attorney General may also commence a civil  
2 action under this paragraph.

3 "c. Any civil penalty assessed or recovered under  
4 paragraph a. or b. of this subdivision shall not ~~be less than~~  
5 ~~\$100.00~~ or exceed \$25,000.00 for each violation, provided  
6 however, that the total penalty assessed in an order issued by  
7 the department under paragraph a. of this subdivision shall  
8 not exceed \$250,000.00. Each day such violation continues  
9 shall constitute a separate violation for purposes of this  
10 subdivision. In determining the amount of any penalty,  
11 consideration shall be given to the seriousness of the  
12 violation, including any irreparable harm to the environment  
13 and any threat to the health or safety of the public; the  
14 standard of care manifested by such person; the economic  
15 benefit which delayed compliance may confer upon such person;  
16 the nature, extent and degree of success of such person's  
17 efforts to minimize or mitigate the effects of such violation  
18 upon the environment; such person's history of previous  
19 violations; and the ability of such person to pay such  
20 penalty. Civil penalties may be assessed under this  
21 subdivision for any violation occurring within two years prior  
22 to the date of issuance of an order under paragraph a. of this  
23 subdivision or commencement of such civil action under  
24 paragraph b. of this subdivision. All civil penalties  
25 recovered under this subdivision by the department or Attorney

1 General shall be deposited into the State Treasury to the  
2 credit of the General Fund, except that portion which  
3 represents the reasonable costs incurred by the department or  
4 Attorney General to recover such penalties which shall be  
5 deposited to the credit of the operating fund of the  
6 department or Attorney General, whichever incurred such costs.

7 "(19) Commence a civil action in the circuit court  
8 of the county in which the defendant or any material defendant  
9 resides or does business or in which the threatened or  
10 continuing violation of any provision of law identified in  
11 subdivision (1) of this section, any rule, regulation or  
12 standard promulgated by the department, any provision of any  
13 order, or any condition of any permit, license, certification  
14 or variance issued by the department. The Attorney General or  
15 district attorney having jurisdiction in the circuit, county  
16 or territory in which the threatened or continuing violation  
17 occurs may also commence a civil action to enjoin such  
18 violation. In any such action, any person having an interest  
19 which is or may be adversely affected may intervene as a  
20 matter of right.

21 "(20) Perform any other duty or take any other  
22 action necessary for the implementation and enforcement of  
23 this chapter."

1                   Section 2. This act shall become effective  
2 immediately following its passage and approval by the  
3 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 05-MAY-11.

Greg Pappas  
Clerk

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|--------|-----------|-------------------------------|
| Senate | 31-MAY-11 | Amended and Passed            |
| House  | 31-MAY-11 | Concurred in Senate Amendment |