

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.63538 Commencement of civil action; notice of intent to commence civil action; rule; notice of violation; effect of action by state; intervention by department or federal regulatory agency; costs of litigation; filing of security if temporary restraining order or preliminary injunction sought; construction of section.

Sec. 63538.

(1) Except as provided in subsections (2) and (3), a person having an interest that is or may be adversely affected by an operation not in compliance with a permit or this part may commence a civil action in circuit court or federal district court, whichever has jurisdiction, on his or her own behalf to compel compliance against any of the following:

(a) The department or other state agency if there is alleged a failure of the department or other state agency to perform any act or duty under this part that is not discretionary with the department or other state regulatory authority.

(b) Any governmental instrumentality or agency of the United States that is alleged to be in violation of this part or of any rule, order, or permit issued pursuant to this part or any other person who is alleged to be in violation of any rule, order, or permit issued pursuant to this part.

(2) An action shall not be commenced under subsection (1)(a) until 20 days after the person intending to bring the action has given notice in writing of the intent to commence a civil action to the department or other state regulatory authority in the manner as the department shall by rule prescribe, except that the action may be brought immediately after the notification if the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(3) An action shall not be commenced under subsection (1)(b) until 20 days after the person intending to bring the action has given notice in writing of the violation to the department and to any alleged violator. However, if this state has commenced and is diligently prosecuting a civil action in a court of this state or the United States to require compliance with the provisions of this part, or any rule, order, or permit issued pursuant to this part, an action shall not be commenced pursuant to subsection (1)(b). In a civil action brought under this section, the department or federal regulatory agency, if not a party, may intervene as a matter of right.

(4) The circuit court, in an action brought pursuant to this section, may award costs of litigation, including attorney and expert witness fees to a party. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security.

(5) This section shall not be construed to restrict any right that a person or class of persons has under any statute or common law to seek enforcement of this part and the rules promulgated under this part, or to seek any other relief, including relief against the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995

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