§ 71-2303. Violation; penalties.

1. Civil sanctions. a. Any person who violates, disobeys or disregards any provision of article twenty-four, including title five and section 24-0507 thereof or any rule or regulation, local law or ordinance, permit or order issued pursuant thereto, shall be liable to the people of the state for a civil penalty of not to exceed eleven thousand dollars for every such violation, to be assessed, after a hearing or opportunity to be heard upon due notice and with the rights to specification of the charges and representation by counsel at such hearing, by the commissioner or local government or in an action initiated by the attorney general pursuant to section 71-2305 of this title or on the attorney general's own initiative. Each violation shall be a separate and distinct violation and, in the case of a continuing violation, each day's continuance thereof shall be deemed a separate and distinct violation. Such penalty assessed by the commissioner or local government may be recovered in an action brought by the attorney general at the request and in the name of the commissioner or local government in any court of competent jurisdiction. Such civil penalty may be released or compromised by the commissioner or local government before the matter has been referred to the attorney general; and where such matter has been referred to the attorney general, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the commissioner or local government. In addition, the commissioner or local government shall have power, following a hearing held in conformance with the procedures set forth in section 71-1709 of this article, to direct the violator to cease violating the act and to restore the affected freshwater wetland to its condition prior to the violation, insofar as that is possible within a reasonable time and under the supervision of the commissioner or local government. Any such order of the commissioner or local government shall be enforceable in an action brought by the attorney general at the request and in the name of the commissioner or local government in any court of competent jurisdiction. Any civil penalty or order issued by the commissioner or local government pursuant to this subdivision shall be reviewable in a proceeding pursuant to article seventy-eight of the civil practice law

and rules.

b. Upon determining that significant damage to the functions and benefits of a freshwater wetland is occurring or is imminent as a result of any violation of article twenty-four of this chapter, including but not limited to (i) activity taking place requiring a permit under article twenty-four of this chapter but for which no permit has been granted or (ii) failure on the part of a permittee to adhere to permit conditions, the commissioner or local government shall have power to direct the violator to cease and desist from violating the act. In such cases the violator shall be provided an opportunity to be heard within ten days of receipt of the notice to cease and desist.

2. Criminal sanctions. Any person who violates any provision of article twenty-four of this chapter, including any rule or regulation, local law or ordinance, permit or order issued pursuant thereto, shall, in addition, for the first offense, be guilty of a violation punishable by a fine of not less than two thousand nor more than five thousand dollars; for a second and each subsequent offense he shall be guilty of a misdemeanor punishable by a fine of not less than four thousand nor more than ten thousand dollars or a term of imprisonment of not less than fifteen days nor more than six months or both. In addition to these punishments, any offender may be punishable by being ordered by the court to restore the affected freshwater wetland or adjacent area to its condition prior to the offense, insofar as that is possible. The court shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the commissioner or local government. Each offense shall be a separate and distinct offense and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.

3. All fines collected pursuant to this section shall be paid into the environmental protection fund established pursuant to section ninety-two-s of the state finance law.