WEST VIRGINIA CODE: §22-15A-12

§22-15A-12. Remediation; liability for remediation and court costs.

(a) Any person who has, prior or subsequent to the effective date of this act, illegally disposed of waste tires or has waste tires illegally disposed on his or her property shall be liable for:

(1) All costs of removal or remedial action incurred by the department;

(2) Any other necessary costs of remediation, including properly disposing of waste tires and damage to adjacent property owners; and

(3) All costs incurred in bringing civil actions under this article.

(b) The department shall notify any person who owns real property or rights to property where a waste tire pile is located that remediation of the waste tire pile is necessary. The department shall make and enter an order directing such person or persons to remove and properly dispose of the waste tires. The department shall set a time limit for completion of the remediation. The order shall be served by registered or certified mail, return receipt requested, or by a county sheriff or deputy sheriff.

(c) If the remediation is not completed within the time limit or the person cannot be located or the person notifies the department that he or she is unable to comply with the order, the department may expend funds, as provided herein, to complete the remediation. Any amounts so expended shall be promptly repaid by the person or persons responsible for the waste tire pile. Any person owing remediation costs or damages shall be liable at law until such time as all costs or damages are fully paid.

(d) Authorized representatives of the department have the right, upon presentation of proper identification, to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of a waste tire pile, to determine the feasibility of the remediation or prevention of such adverse effects and to conduct remediation activities provided herein. Such entry is an exercise of the police power of the state and for the protection of public health, safety and general welfare and is not an act of condemnation of property or trespass thereon. Nothing contained in this section eliminates any obligation to follow any process that may be required by law.

(e) There is hereby created a statutory lien upon all real property and rights to the property from which a waste tire pile was remediated for all reclamation costs and damages incurred by the department. The lien created by this section shall arise at the later of the following:

(1) The time costs are first incurred by the department; or

(2) The time the person is provided, by certified or registered mail or personal service,

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written notice as required by this section.

The lien shall continue until the liability for the costs or judgment against the property is satisfied.

(f) Any person, who is a bona fide purchaser of real property prior to July 1, 2001, who did not cause, permit or profit from the illegal disposal of waste tires on the property is only liable for the costs of remediation to the extent that the fair market value of the property, when remediation is completed, exceeds the fair market value of the property that existed on July 1, 2001. The department shall have a cause of action against any previous owner who caused, permitted, contributed or profited from the illegal disposal of waste tires on the property for the difference in the amount recovered from the purchaser and the cost of remediation.

(g) Liens created by this section shall be duly recorded in the office of the clerk of the county commission in the county where the real property is located and be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served. The department shall have the power and authority to enforce such liens in a civil action to recover the money due for remediation costs and damages plus court fees and costs and reasonable attorney's fees.

(h) The department may foreclose upon the premises by bringing a civil action, in the circuit court of the county where the property is located, for foreclosure and an order to sell the property to satisfy the lien.

(i) Any proceeds from any sale of property obtained as a result of execution of a lien or judgment under this section for remediation costs, excluding costs of obtaining judgment and perfecting the lien, shall be deposited into the A. James Manchin Fund of the state Treasury.

(j) The provisions of this section do not apply and no lien may attach to the right-of-way, easement or other property interest of a utility, whether electric, gas, water, sewer, telephone, television cable or other public service, unless the utility contributed to the illegal tire pile.

(k) Upon determining the existence of a waste tire pile, the department shall file a notice of the location of the waste tire pile in the office of the county clerk in the county where property containing a waste tire pile is situate. The department shall immediately file the notice for all property known to have waste tire piles as of the day the Legislature enacted the amendment to this section during the 2005 legislative session. The notice shall contain the property owner's name, a location and description of the property and the waste tire pile and the potential liability for remediation. The county clerk shall record the notice in the same manner as a lien and index the notice by the name of the property owner.

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