WEST VIRGINIA CODE: §22-22-15

§22-22-15. Reopeners.

Any person who completes remediation in compliance with this article shall not be required to undertake additional remediation actions for contaminants subject to the remediation, unless the Secretary demonstrates that:

(a) Fraud was committed in demonstrating attainment of a standard at the site that resulted in avoiding the need for further remediation of the site;

(b) New information confirms the existence of an area of a previously unknown contamination which contains contaminants that have been shown to exceed the standards applied to the previous remediation at the site;

(c) The level of risk is increased significantly beyond the established level of protection at the site due to substantial changes in exposure conditions, such as a change in land use or new information is obtained about a contaminant associated with the site which revises exposure assumptions beyond the acceptable range. Any person who changes the use of the property causing the level of risk to increase beyond established protection levels shall be required by the Department to undertake additional remediation measures under the provisions of this article;

(d) The release occurred after the effective date of this article on a site not used for industrial activity prior to the effective date of this article; the remedy relied, in whole or in part, upon institutional or engineering controls instead of treatment or removal of contamination; and treatment, removal, or destruction has become technically and economically practicable; or

(e) The remediation method failed to meet the remediation standard or combination of standards.

In the event that any of the foregoing circumstances occur, the remediation agreement will be reopened and revised to the extent necessary to return the site to its previously agreed to state of remediation or other appropriate standard.

WV Legislature