WEST VIRGINIA CODE: §22-22-2

§22-22-2. Definitions.

As used in this article, unless otherwise provided or indicated by the context:

"Abandoned property" means real property for which the current owner cannot be determined or cannot be located or property which has been forfeited to or acquired by the State for the nonpayment of taxes pursuant to State law;

"Applicable standards", mean the remediation levels established in or pursuant to section three of this article;

"Bona fide prospective purchaser" means a person or a tenant of a person who acquires ownership, or proposes to acquire ownership, of real property after the release of hazardous substances occurred;

"Brownfield" means any property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant;

"Brownfields Revolving Fund" means the special revenue fund established to provide loans for site assessments and remediation of eligible brownfield sites;

"Contaminant" or "contamination" means any man made or man induced alteration of the chemical, physical, or biological integrity of soils, sediments, air, and surface water or groundwater resulting from activities regulated under this article, in excess of applicable standards in this chapter, including any hazardous substance, petroleum, or natural gas;

"Controls" means to apply engineering measures, such as capping or treatment, or institutional measures, such as deed restrictions, to contaminated sites;

"Department" means the West Virginia Department of Environmental Protection;

"Development Authority" means any authority as defined in §7-12-1, *et seq*. of this code or the state Development Office as defined in §2-5B-1, *et seq*. of this code.

"Engineering controls" means remedial actions directed exclusively toward containing or controlling the migration of contaminants through the environment. These include, but are not limited to, slurry walls, liner systems, caps, leachate collection systems, and groundwater recovery trenches;

"Hazardous substance" means any substance identified as a hazardous substance pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act," 42 U.S.C. § 9604-9606;

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"Innocent land owner" means a person who holds any title, security interest, or any other interest in a brownfield site and who acquired ownership of the real property after the release of hazardous substances occurred;

"Industrial activity" means commercial, manufacturing, public utility, mining, or any other activity done to further the development, manufacturing, or distribution of goods and services, intermediate and final products, and solid waste created during such activities, including, but not limited to administration of business activities; research and development; warehousing; shipping; transport; remanufacturing; stockpiling of raw materials; storage, repair, and maintenance of commercial machinery or equipment; and solid waste management;

"Institutional controls" means legal or contractual restrictions on property use that remain effective after the remediation action is completed and are used to meet applicable standards. The term may include, but is not limited to, deed and water use restrictions;

"Land-use covenant" means an environmental covenant within the meaning of §22-22B-2(4) of this code, and is a document or deed restriction issued by the Secretary on remediated sites which have attained and demonstrate continuing compliance with site-specific standards for any contaminants at the site and which is agreed to by the owner of the property. The covenant shall be recorded by deed in the office of the county clerk of the county wherein the site is situated. The document or covenant shall be included by any grantor or lessor in any deed or other instrument of conveyance or any lease or other instrument whereby real property is let for a period of one year or more, as more fully set forth in sections thirteen and fourteen of this article;

"Licensed remediation specialist" means a person certified by the Secretary pursuant to rules adopted under section three of this article as qualified to perform professional services and to supervise the remediation of contaminated sites;

"Natural gas" means natural gas, natural gas liquids, liquefied natural gas, coalbed methane, synthetic gas usable for fuel, or mixtures of natural gas and synthetic gas;

(r) "Nonresidential property" means any real property on which industrial activity is performed. This term shall not include schools, day care centers, nursing homes, or other residential-style facilities or recreational areas;

"Operator" means the person responsible for the overall operation of a facility site. A person who executes a voluntary remediation agreement with the Secretary may be considered an operator for the purpose of carrying out the activities required by the government;

"Owner" means any person owning or holding legal or equitable title or possessory interest in property or, where title or control of property was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to this state or a political subdivision of this state;

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"Person" means any public or private corporation, institution, association, firm, or company organized or existing under the laws of this or any other state or country; the state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; partnership; trust; estate; person or individuals acting individually or as a group; or any legal entity whatever;

"Petroleum" means oil or petroleum of any kind and in any form, including, without limitation, crude oil or any fraction thereof, oil sludge, oil refuse, used oil, substances or additives in the refining or blending of crude petroleum or petroleum stock;

"Practical quantitation level" means the lowest analytical level that can be reliably achieved within specified limits of precision and accuracy under routine laboratory conditions for a specified matrix. It is based on quantitation, precision, and accuracy under normal operation of a laboratory and the practical need in a compliance-monitoring program to have a sufficient number of laboratories available to conduct the analyses;

"Property" means any parcel of real property, and any improvements thereof;

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, or disposing of any contaminant or regulated substance into the environment, including, without limitation, the abandonment or improper discarding of barrels, containers, or any other closed receptacle containing any contaminant;

"Remediation" or "remedial action" means to cleanup, mitigate, correct, abate, minimize, eliminate, control, and contain or prevent a release of a contaminant into the environment in order to protect the present or future public health, safety, welfare, or the environment, including preliminary actions to study or assess the release;

"Remediation contractor" means any person who enters into and is carrying out a contract to cleanup, remediate, respond to or remove a release or threatened release of a contaminant and includes any person who the contractor retained or hired to provide services under a remediation contract;

"Residential" means any real property or portion thereof which is designed for the housing of human beings and does not meet the definition of "nonresidential" property set forth above;

"Risk" means the probability that a contaminant, when released into the environment, will cause an adverse effect in exposed humans or other living organisms;

"Secretary" means the Secretary of the Department of Environmental Protection or any other person to whom he or she has delegated authority or duties in accordance with §22-1-6 or §22-1-8 of this code;

"Site" means any property or portion thereof which contains or may contain contaminants and is eligible to participate in the voluntary remediation program as provided under this

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article;

"Unilateral enforcement order" means a written final order issued by a federal or state agency charged with enforcing environmental law, which compels the fulfillment of an obligation imposed by law, rule against a person without their voluntary consent; and

"Voluntary remediation" means a series of measures that may be self-initiated by a person to identify and address potential sources of contamination of property and to establish that the property complies with applicable remediation standards.

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