

WEST VIRGINIA CODE: §22-22-2

§22-22-2. Definitions.

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

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

(b) "Brownfield" means any industrial or commercial property which is abandoned or not being actively used by the owner as of the effective date of this article, but shall not include any site subject to a unilateral enforcement order under §104 through §106 of the "Comprehensive Environmental Response, Compensation and Liability Act", 94 Stat. 2779, 42 U.S.C. §9601, as amended, or which has been listed or proposed to be listed by the United States environmental protection agency on the priorities list of Title I of said act, or subject to a unilateral enforcement order under §3008 and §7003 of the "Resource Conservation Recovery Act" or any unilateral enforcement order for corrective action under this chapter;

(c) "Certified laboratory" means any laboratory approved by the director under laboratory certification rules adopted pursuant to section fifteen, article one of this chapter;

(d) "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;

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

(f) "Development authority" means any authority as defined in article twelve, chapter seven of this code or the state Development Office as defined in article two, chapter five-b of this code.

(g) "Director" means the director of the Division of Environmental Protection or such other person to whom the director has delegated authority or duties pursuant to this article;

(h) "Division" means the Division of Environmental Protection of the State of West Virginia;

(i) "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;

(j) "Hazardous substance" means any substance identified as a hazardous substance

pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act", 94 Stat. 2779, 42 U.S.C. §9601, as amended;

(k) "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;

(l) "Industrial activity" means commercial, manufacturing, public utility, mining or any other activity done to further either 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;

(m) "Land-use covenant" means a document or deed restriction issued by the director on remediated sites which have attained and demonstrate continuing compliance with site-specific standards for any contaminants at the site. 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;

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

(o) "Mitigation measure" means any remediation action performed by a person prior to or during implementation of a remediation plan to protect human health and the environment;

(p) "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;

(q) "Nonresidential property" means any real property on which commercial, industrial, manufacturing or any other activity is done to further the development, manufacturing or distribution of goods and services, intermediate and final business activities, research and development, warehousing, shipping, transport, remanufacturing, stockpiling of raw materials, storage, repair and maintenance of commercial machinery and equipment, and solid waste management. This term shall not include schools, day care centers, nursing homes, or other residential-style facilities or recreational areas;

(r) "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, or any person who owned the property before the conveyance;

- (s) "Operator" means the person responsible for the overall operation of a facility site;
- (t) "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; 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;
- (u) "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;
- (v) "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;
- (w) "Property" means any parcel of real property, and any improvements thereof;
- (x) "Related" means the persons who are related to the third degree of consanguinity or marriage;
- (y) "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;
- (z) "Remediation" 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;
- (aa) "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;
- (bb) "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;
- (cc) "Risk" means the probability that a contaminant, when released into the environment, will cause an adverse effect in exposed humans or other living organisms;

(dd) "Site" means any property or portion thereof which contains or may contain contaminants and is eligible for remediation as provided under this article;

(ee) "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

(ff) "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.