WEST VIRGINIA CODE: §22-22-20

§22-22-20. Affirmative defenses.

Any person who is alleged to have violated an environmental law or the common law equivalent, which occurred while acting pursuant to this article, may affirmatively plead the following in response to an alleged violation:

(a) An act of God;

(b) An intervening act of a public agency;

(c) Migration from property owned by a third party;

(d) Actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the environmental laws or at the direction of the Department;

(e) An act of a third party who was not an agent or employee of the lender, fiduciary, developer, remediation contractor, or development authority; or

(f) If the alleged liability for a lender, fiduciary, developer, or development authority arises after foreclosure, and the lender, fiduciary, developer, or development authority exercised due care with respect to the lender's, fiduciary's, developer's, or development authority's knowledge about the contaminants, and took reasonable precautions based upon such knowledge against foreseeable actions of third parties and the consequences arising therefrom. A lender, fiduciary, developer, remediation contractor, or development authority may avoid liability by proving any other defense which may be available to it.

WV Legislature