WEST VIRGINIA CODE: §22-22-3

§22-22-3. Rule-making authority of the Secretary.

The Secretary, in accordance with chapter twenty-nine-a of this code, shall propose, and subsequently may amend, suspend, or rescind, rules that do the following:

(a) Establish an administrative program for both brownfield revitalization and voluntary remediation, including application procedures;

(b) Establish procedures for the licensure of remediation specialists, including, but not limited to establishing licensing fees, testing procedures, disciplinary procedures, and methods for revocation of licenses;

(c) Establish procedures for community notification and involvement;

(d) Establish risk-based standards for remediation;

(e) Establish standards for the remediation of property;

(f) Establish a risk protocol for conducting risk assessments and establishing risk-based standards. The risk protocol shall:

(1) Require consideration of existing and reasonably anticipated future human exposures based on current and reasonably anticipated future land and water uses and significant adverse effects to ecological receptor health and viability;

(2) Include, at a minimum, both central tendency and reasonable upper bound estimates of exposure;

(3) Require risk assessments to consider, to the extent practicable, the range of probabilities of risks actually occurring, the range or size of populations likely to be exposed to risk, and quantitative and qualitative descriptions of uncertainties;

(4) Establish criteria for what constitutes appropriate sources of toxicity information;

(5) Address the use of probabilistic modeling;

(6) Establish criteria for what constitutes appropriate criteria for the selection and application of fate and transport models;

(7) Address the use of population risk estimates in addition to individual risk estimates;

(8) To the extent considered appropriate and feasible by the Secretary considering available scientific information, define appropriate approaches for addressing cumulative risks posed

WV Legislature

by multiple contaminants or multiple exposure pathways;

(9) Establish appropriate sampling approaches and data quality requirements; and

(10) Include public notification and involvement provisions so that the public can understand how remediation standards are applied to a site and provide for clear communication of site risk issues, including key risk assessment assumptions, uncertainties, populations considered, the context of site risks to other risks, and how the remedy will address site risks;

(g) Establish chemical and site-specific information, where appropriate for purpose of risk assessment. Risk assessments should use chemical and site-specific data and analysis, such as toxicity, exposure, and fate and transport evaluations in preference to default assumptions. Where chemical and site-specific data are not available, a range and distribution of realistic and plausible assumptions should be employed;

(h) Establish criteria to evaluate and approve methods for the measurement of contaminants using the practical quantitation level and related laboratory standards and practices to be used by certified laboratories;

(i) Establish standards and procedures for the use of certificates of completion, land use covenants, and other legal documents necessary to effectuate the purposes of this article; and

(j) Establish any other rules necessary to carry out the requirements and the legislative intent of this act.

WV Legislature