WEST VIRGINIA CODE: §22-22-4

§22-22-4. Voluntary remediation program; eligibility application and fee; information available to public; confidentiality of trade secrets; information; criminal penalties; requirements of site assessment; rejection or return of application; appeal of rejection.

(a) Any site is eligible for participation in the voluntary remediation program, except those sites subject to a unilateral enforcement order, under §§ 104 through 106 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9604-9006, or which have been listed or proposed to be listed by the United States Environmental Protection Agency ("USEPA") on the priorities list of Title I of said act, or which is subject to a unilateral enforcement order under §3008 and §7003 of the Resource Conservation Recovery Act ("RCRA"), 42 U.S.C. § 6928 or § 6973, or which is subject to any unilateral enforcement order for corrective action under this chapter: *Provided*, That the release which is subject to remediation was not created through gross negligence or willful misconduct.

(b) Any person who desires to participate in the voluntary remediation program shallsubmit to the Department an application and an application fee established by the Secretary. The application shall be on a form provided by the Secretary and contain the following information: The applicant's name, address, financial and technical capability to perform the voluntary remediation, a general description of the site, a site assessment of the actual or potential contaminants prepared by a licensed remediation specialist, and all other information required by the Secretary.

(c) The Secretary shall promulgate a legislative rule establishing a reasonable application fee. Fees collected under this section shall be deposited to the credit of the Voluntary Remediation Fund in the State Treasury as established in §22-22-6 of this code.

(d) Information obtained by the Department under this article shall be available to the public, unless the Secretary certifies such information to be confidential. The Secretary may make such certification where any person shows, to the satisfaction of the Secretary, that the information or parts thereof, if made public, would divulge methods, processes, or activities entitled to protection as trade secrets. In submitting data under this article, any person required to provide such confidential data may designate the data which that person believes is entitled to protection under this section and submit such designated data separately from other data submitted under this article. This designation request shall be made in writing. Any person who divulges or discloses any information entitled to protection under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned in a county jail for not more than one year, or both fined and imprisoned.

(e) The site assessment must include a legal description of the site; a description of the

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physical characteristics of the site, and the general operational history of the site to the extent that the history is known by the applicant; and information of which the applicant is aware concerning the nature and extent of any known contamination at the site and immediately contiguous to the site, or wherever the contamination came to be located.

(f) The Secretary may reject or return an application if:

(1) A federal requirement precludes the eligibility of the site;

(2) The application is not complete and accurate; or

(3) The site is ineligible under the provisions of this article.

(g) The Secretary shall act upon all applications within 45 days of receipt, unless an extension of time is mutually agreed to and confirmed in writing. If an application is returned by the Secretary because it is not complete or accurate, the Secretary shall provide the applicant a list of all information that is needed to make the application complete or accurate. The applicant may resubmit an application without submitting an additional application fee.

(h) If the Secretary rejects the application, then he or she shall notify the applicant that the application has been rejected and provide an explanation of the reasons for the rejection. The applicant may, within 25 days of rejection, indicate his or her desire to resubmit the application. Upon final determination by the Secretary, if the application is rejected, the Secretary shall return one half of the application fee. The applicant may appeal the Secretary’s rejection of the application to the Environmental Quality Board established under §22B-3-1, *et seq*. of this code.

(i) Upon withdrawal of an application, the applicant is entitled to the refund of one half of the application fee, provided the application has not been accepted by the Secretary.

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