

# 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 federal environmental protection agency 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 have 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: Provided, That the release which is subject to remediation was not created through gross negligence or willful misconduct. In order to participate in the voluntary remediation program, a person must submit an application to the director and enter into a voluntary remediation agreement as set forth in section seven of this article.

(b) Any person who desires to participate in the voluntary remediation program must submit to the division an application and an application fee established by the director. The application shall be on a form provided by the director 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 made by a licensed remediation specialist and all other information required by the director.

(c) The director 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 section six of this article.

(d) Information obtained by the division under this article shall be available to the public, unless the director certifies such information to be confidential. The director may make such certification where any person shows, to the satisfaction of the director, 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 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 director 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 director shall act upon all applications within forty-five days of receipt, unless an extension of time is mutually agreed to and confirmed in writing. If an application is returned by the director because it is not complete or accurate, the director 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 director 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 twenty-five days of rejection, indicate his desire to resubmit the application. Upon final determination by the director, if the application is rejected, the director shall return one half of the application fee. The applicant may appeal the director's rejection of the application to the environmental quality board established under article three, chapter twenty-two-b of this code.

(i) Upon withdrawal of an application, the applicant is entitled to the refund of one half of the application fee.