WEST VIRGINIA CODE: §22-22-7

§22-22-7. Voluntary remediation agreement; required use of licensed remediation specialist; required provisions of a voluntary remediation agreement; failure to reach agreement; appeal to the Environmental Quality Board; no enforcement action when subject of agreement.

Upon acceptance of an application, the Secretary shall enter into an agreement with the applicant for the remediation of the site which sets forth the following:

(a) A person desiring to participate in the voluntary remediation program shall enter into a voluntary remediation agreement that sets forth the terms and conditions of the evaluation of the reports and the implementation of work plans;

(b) Any voluntary remediation agreement approved by the Secretary shall provide for the services of a licensed remediation specialist for supervision of all activities described in the agreement;

(c) A voluntary remediation agreement shall provide for cost recovery of all reasonable costs incurred by the Department in review and oversight of the person's work plan and reports as a result of field activities or attributable to the voluntary remediation agreement, which are in excess of the fees submitted by the applicant along with a schedule of payments; appropriate tasks, deliverables, and schedules for performance of the remediation; a listing of all statutes and rules for which compliance is mandated; a description of any work plan or report to be submitted for review by the Secretary, including a final report that provides all information necessary to verify that all work contemplated by the agreement has been completed; the licensed remediation specialist's supervision of remediation contractors; and a listing of the technical standards to be applied in evaluating the work plans and reports, with reference to the proposed future land use to be achieved. The voluntary remediation agreement may also provide for alternate dispute resolutions between the parties to the agreement, including, but not limited to, arbitration or mediation of any disputes under this agreement;

(d) A voluntary remediation agreement may not be modified or amended, unless the amendment or modification is reduced to writing and mutually agreed upon by the parties to the agreement: *Provided*, That when the Secretary determines that there is an imminent threat to the public, he or she may unilaterally modify or amend the agreement;

(e) Upon acceptance of an application, the Secretary and the applicant shall develop a remediation agreement. If an agreement is not reached between the applicant and the Secretary on or before the 31st day after the application has been accepted, either party may withdraw from negotiations. If this occurs, the agency retains the application fee. The applicant may appeal the failure to reach agreement to the Environmental Quality Board as established under §22B-3-1, *et seq*. of this code. By mutual agreement, when it becomes

WV Legislature

impractical to reach an agreement within 31 days, the time limit may be extended in writing; and

(f) The Department may not initiate an enforcement action against a person who is in compliance with this section for the contamination that is the subject of the voluntary remediation agreement or for the activity that resulted in the contamination, unless there is an imminent threat to the public.

WV Legislature