WEST VIRGINIA CODE: §44-5A-7

§44-5A-7. Powers of fiduciaries regarding environmental laws.

(a) For purposes of this section:

(1) "Environmental law" means any federal, state or local law, rule, regulation or ordinance relating to the regulation of hazardous substances or hazardous wastes, air pollution, water pollution and underground storage tanks;

(2) "Hazardous substance" means any substance defined as hazardous in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") [42 U.S.C. 9601, et seq. (1980)] as amended and in effect on January 1, 2010, and regulations promulgated thereunder;

(3) "Hazardous waste" means a waste characterized or listed as hazardous in the Resource, Conservation and Recovery Act ("RCRA") [42 U.S.C. 6901, et seq. as amended] as in effect on January 1, 2010, and regulations promulgated thereunder;

(4) "Fiduciary" means a fiduciary as defined by section one-d, article four-d, chapter thirty-one of this code.

(b) In addition to powers, remedies and rights which may be set forth in any will, trust agreement or other document which is the source of authority, a trustee, executor, administrator, guardian or one acting in any other fiduciary capacity, whether an individual, corporation or other entity ("fiduciary") has the following powers, rights and remedies whether or not set forth in the will, trust agreement or other document which is the source of authority:

(1) To inspect property held by the fiduciary including interests in sole proprietorships, partnerships or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with any environmental law affecting the property and to take necessary or reasonable action, including reporting to the appropriate regulatory authority as may be otherwise required by law, with respect to any actual or potential violation of any environmental law affecting property held by the fiduciary;

(2) To take, on behalf of the estate or trust, any action necessary to prevent, abate or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;

(3) To refuse to accept property in trust or estate if the fiduciary determines any property to be donated or conveyed to the trust or estate is contaminated by any hazardous substance or hazardous waste or is being used or has been used for any activity directly or indirectly

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involving any violation of an environmental law which is reasonably likely to result in liability to the fiduciary: Provided, That the refusal does not limit the liability of the trust or estate or its income or principal, for any liability the trust or estate may otherwise have in connection with any environmental law, but only to limit the liability of the fiduciary. Property not accepted into a trust or estate by the fiduciary may revert to the grantor or its successors or pass by the laws of descent and distribution, as may otherwise be provided by law;

(4) To settle or compromise at any time any and all claims against the trust or estate which may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting property held in trust or in an estate;

(5) To decline to serve as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between it and its fiduciary capacity and in its individual capacity because of potential claims or liabilities which may be asserted against it on behalf of the trust or estate because of the type or condition of assets held therein.

(c) The fiduciary is entitled to charge the cost of any inspection, review, abatement, response, cleanup or remedial action authorized herein against the income or principal of the trust or estate.

(d) A fiduciary is not personally liable to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's compliance with any environmental law, specifically including any reporting requirement under the law.

(e) Neither the acceptance by the fiduciary of property nor the failure by the fiduciary to inspect property creates any inference as to whether or not there is or may be any liability under any environmental law with respect to the property.

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