WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED
Committee Substitute for
SENATE BILL NO. 415

(By Senators Pass & Helwix)

PASSED March 9, 1996
In Effect NINETY DAYS FROM PASSAGE
ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 415

(SENATORS ROSS AND HELMICK, original sponsors)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-two-a, relating generally to creating the West Virginia limited liability for persons responding to oil discharges act; providing definitions; and providing limited immunity from liability for removal costs and damages for those persons responding to oil discharges or the threat of oil discharges.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended
by adding thereto a new article, designated article twenty-two-a, to read as follows:

ARTICLE 22A. WEST VIRGINIA LIMITED LIABILITY FOR PERSONS RESPONDING TO OIL DISCHARGES ACT.


1 This article may be cited as the "West Virginia Limited Liability for Persons Responding to Oil Discharges Act".


1 For the purposes of this article:

2 (a) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the discharge or threatened discharge of oil;

3 (b) "Discharge" means any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping;

4 (c) "Federal on-scene coordinator" means the federal official designated by the lead agency or predesignated by the United States environmental protection agency or the United States coast guard to coordinate and direct responses under the national contingency plan (NCP);

5 (d) "National contingency plan" means the national contingency plan prepared and published under Section 311(d) of the federal Water Pollution Control Act, 33 U.S.C. §1321(d), as amended by the Oil Pollution Act of 1990, Public Law No. 101-380, 104 Stat. 484 (1990) as in effect as of the effective date of this article;

6 (e) "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil;

7 (f) "Person" means an individual, corporation, partnership, association, state, municipality, commission or political subdivision of a state or any interstate body;
(g) "Remove" or "removal" means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife and public and private property, shorelines and beaches;

(h) "Removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize or mitigate oil pollution from such an incident;

(i) "Responsible party" means a responsible party as defined under §1001 of the Oil Pollution Act of 1990, Public Law No. 101-380, 104 Stat. 484 (1990).


(a) Notwithstanding any other provision of this code to the contrary, a person engaged in removal activities is not liable for removal costs or damages which result from acts or omissions in the course of rendering care, assistance or advice consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or by the state official charged with responsibility for oil discharge responses.

(b) Subsection (a) of this section does not apply:

(1) To a responsible party;

(2) With respect to personal injury or wrongful death;

(3) If the person is grossly negligent or engages in willful misconduct.

(c) A responsible party is liable for any removal costs and damages that another person is relieved of under the provisions of subsection (a) of this section.

(d) Nothing in this section affects the liability of a responsible party for oil spill response under state law.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the ___ day of ___ , 1996.

Governor