

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4967

BY DELEGATES ANDERSON, ZATEZALO, HECKERT, RILEY,
FEHRENBACHER, STREET, BARNHART, CRISS, HORST,
AND WARNER

[Passed March 8, 2024; in effect ninety days from
passage.]

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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1 AN ACT to amend and reenact §22-22-1, §22-22-2, §22-22-3, §22-22-4, §22-22-5, §22-22-6, §22-
2 22-7, §22-22-8, §22-22-9, §22-22-10, §22-22-11, §22-22-12, §22-22-13, §22-22-14, §22-
3 22-15, §22-22-16, of the Code of West Virginia, 1931, as amended, to repeal §22-22-17
4 of said code, and amend and reenact §22-22-18 and §22-22-20, all relating to the
5 administration of the Voluntary Remediation and Redevelopment Act to provide new
6 liability protections for those who wish to purchase and redevelop former industrial
7 properties; defining terms; providing for rulemaking by the Secretary of the Department of
8 Environmental Protection; clarifying procedures involving the Brownfields Revolving Fund;
9 revising public notice provisions concerning the fund; providing that the Secretary may
10 limit the liability of lenders, innocent purchasers, landowners, de minimis contributors, or
11 others who have limited responsibility for contamination under the Hazardous Waste
12 Management Act, the Water Pollution Control Act, the Groundwater Protection Act or any
13 other applicable law; providing that bona fide prospective purchasers are not liable for a
14 containment at a brownfield site if certain conditions are met; providing that an innocent
15 land owner who holds title or security interest in a brownfield site are not liable for
16 contamination at a brownfield site if defined conditions are met; providing that a person
17 that owns contiguous real property that is contaminated by a release of a hazardous
18 substance from real property that is not owned by that person is not liable for
19 contamination under defined conditions; and providing that the Secretary may require
20 anyone responsible for contamination to remediate sites where substances have been
21 improperly managed.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. VOLUNTARY REMEDIATION AND REDEVELOPMENT ACT.

§22-22-1. Legislative findings; legislative statement of purpose.

1 (a) The Legislature finds there is property in West Virginia that is not being put to its highest
2 productive use because it is contaminated or it is perceived to be contaminated as a result of past
3 activity on the property.

4 (b) The Legislature further finds that abandonment or underutilization of contaminated or
5 potentially contaminated industrial sites results in inefficient use of public facilities and services
6 and increases the pressure for development of uncontaminated pristine land. Since existing
7 industrial areas frequently have transportation networks, utilities, and an existing infrastructure, it
8 can be less costly to society to redevelop existing industrial areas than to relocate amenities for
9 industrial areas at pristine sites.

10 (c) The Legislature further finds that the existing legal structure creates uncertainty
11 regarding the legal effect of remediation upon liability. Legal uncertainty serves as a further
12 disincentive to productive redevelopment of brownfields. Therefore, incentives should be put in
13 place to encourage voluntary redevelopment of contaminated or potentially contaminated sites.

14 (d) The Legislature further finds that an administrative program should be established to
15 encourage persons to voluntarily develop and implement remedial plans without the need for
16 enforcement action by the Department of Environmental Protection. Therefore, it is the purpose
17 of this article to:

18 (1) Establish an administrative program to facilitate voluntary remediation activities and
19 brownfield revitalization;

20 (2) Provide financial incentives to entice investment at brownfield sites; and

21 (3) Establish limitations on liability under environmental laws and rules for those persons
22 who remediate sites in accordance with applicable standards established under this article.

§22-22-2. Definitions.

1 As used in this article, unless otherwise provided or indicated by the context:

2 "Abandoned property" means real property for which the current owner cannot be
3 determined or cannot be located or property which has been forfeited to or acquired by the State
4 for the nonpayment of taxes pursuant to State law;

5 "Applicable standards", mean the remediation levels established in or pursuant to section
6 three of this article;

7 "Bona fide prospective purchaser" means a person or a tenant of a person who acquires
8 ownership, or proposes to acquire ownership, of real property after the release of hazardous
9 substances occurred;

10 "Brownfield" means any property, the expansion, redevelopment, or reuse of which may
11 be complicated by the presence or potential presence of a hazardous substance, pollutant, or
12 contaminant;

13 "Brownfields Revolving Fund" means the special revenue fund established to provide
14 loans for site assessments and remediation of eligible brownfield sites;

15 "Contaminant" or "contamination" means any man made or man induced alteration of the
16 chemical, physical, or biological integrity of soils, sediments, air, and surface water or
17 groundwater resulting from activities regulated under this article, in excess of applicable standards
18 in this chapter, including any hazardous substance, petroleum, or natural gas;

19 "Controls" means to apply engineering measures, such as capping or treatment, or
20 institutional measures, such as deed restrictions, to contaminated sites;

21 "Department" means the West Virginia Department of Environmental Protection;

22 "Development Authority" means any authority as defined in §7-12-1, *et seq.* of this code
23 or the state Development Office as defined in §2-5B-1, *et seq.* of this code.

24 "Engineering controls" means remedial actions directed exclusively toward containing or
25 controlling the migration of contaminants through the environment. These include, but are not
26 limited to, slurry walls, liner systems, caps, leachate collection systems, and groundwater
27 recovery trenches;

28 **"Hazardous substance"** means any substance identified as a hazardous substance
29 pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act," 42
30 U.S.C. § 9604-9606;

31 **"Innocent land owner"** means a person who holds any title, security interest, or any other
32 interest in a brownfield site and who acquired ownership of the real property after the release of
33 hazardous substances occurred;

34 **"Industrial activity"** means commercial, manufacturing, public utility, mining, or any other
35 activity done to further the development, manufacturing, or distribution of goods and services,
36 intermediate and final products, and solid waste created during such activities, including, but not
37 limited to administration of business activities; research and development; warehousing; shipping;
38 transport; remanufacturing; stockpiling of raw materials; storage, repair, and maintenance of
39 commercial machinery or equipment; and solid waste management;

40 **"Institutional controls"** means legal or contractual restrictions on property use that remain
41 effective after the remediation action is completed and are used to meet applicable standards.
42 The term may include, but is not limited to, deed and water use restrictions;

43 **"Land-use covenant"** means an environmental covenant within the meaning of §22-22B-
44 2(4) of this code, and is a document or deed restriction issued by the Secretary on remediated
45 sites which have attained and demonstrate continuing compliance with site-specific standards for
46 any contaminants at the site and which is agreed to by the owner of the property. The covenant
47 shall be recorded by deed in the office of the county clerk of the county wherein the site is situated.
48 The document or covenant shall be included by any grantor or lessor in any deed or other
49 instrument of conveyance or any lease or other instrument whereby real property is let for a period
50 of one year or more, as more fully set forth in sections thirteen and fourteen of this article;

51 **"Licensed remediation specialist"** means a person certified by the Secretary pursuant to
52 rules adopted under section three of this article as qualified to perform professional services and
53 to supervise the remediation of contaminated sites;

54 "Natural gas" means natural gas, natural gas liquids, liquefied natural gas, coalbed
55 methane, synthetic gas usable for fuel, or mixtures of natural gas and synthetic gas;

56 (r) "Nonresidential property" means any real property on which industrial activity is
57 performed. This term shall not include schools, day care centers, nursing homes, or other
58 residential-style facilities or recreational areas;

59 "Operator" means the person responsible for the overall operation of a facility site. A
60 person who executes a voluntary remediation agreement with the Secretary may be considered
61 an operator for the purpose of carrying out the activities required by the government;

62 "Owner" means any person owning or holding legal or equitable title or possessory interest
63 in property or, where title or control of property was conveyed due to bankruptcy, foreclosure, tax
64 delinquency, abandonment, or similar means to this state or a political subdivision of this state;

65 "Person" means any public or private corporation, institution, association, firm, or company
66 organized or existing under the laws of this or any other state or country; the state of West Virginia;
67 governmental agency, including federal facilities; political subdivision; county commission;
68 municipal corporation; partnership; trust; estate; person or individuals acting individually or as a
69 group; or any legal entity whatever;

70 "Petroleum" means oil or petroleum of any kind and in any form, including, without
71 limitation, crude oil or any fraction thereof, oil sludge, oil refuse, used oil, substances or additives
72 in the refining or blending of crude petroleum or petroleum stock;

73 "Practical quantitation level" means the lowest analytical level that can be reliably
74 achieved within specified limits of precision and accuracy under routine laboratory conditions for
75 a specified matrix. It is based on quantitation, precision, and accuracy under normal operation of
76 a laboratory and the practical need in a compliance-monitoring program to have a sufficient
77 number of laboratories available to conduct the analyses;

78 "Property" means any parcel of real property, and any improvements thereof;

79 "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging,
80 injecting, escaping, leaching, migrating, dumping, or disposing of any contaminant or regulated
81 substance into the environment, including, without limitation, the abandonment or improper
82 discarding of barrels, containers, or any other closed receptacle containing any contaminant;

83 "Remediation" or "remedial action" means to cleanup, mitigate, correct, abate, minimize,
84 eliminate, control, and contain or prevent a release of a contaminant into the environment in order
85 to protect the present or future public health, safety, welfare, or the environment, including
86 preliminary actions to study or assess the release;

87 "Remediation contractor" means any person who enters into and is carrying out a contract
88 to cleanup, remediate, respond to or remove a release or threatened release of a contaminant
89 and includes any person who the contractor retained or hired to provide services under a
90 remediation contract;

91 "Residential" means any real property or portion thereof which is designed for the
92 housing of human beings and does not meet the definition of "nonresidential" property set forth
93 above;

94 "Risk" means the probability that a contaminant, when released into the environment, will
95 cause an adverse effect in exposed humans or other living organisms;

96 "Secretary" means the Secretary of the Department of Environmental Protection or any
97 other person to whom he or she has delegated authority or duties in accordance with §22-1-6 or
98 §22-1-8 of this code;

99 "Site" means any property or portion thereof which contains or may contain contaminants
100 and is eligible to participate in the voluntary remediation program as provided under this article;

101 "Unilateral enforcement order" means a written final order issued by a federal or state
102 agency charged with enforcing environmental law, which compels the fulfillment of an obligation
103 imposed by law, rule against a person without their voluntary consent; and

104 "Voluntary remediation" means a series of measures that may be self-initiated by a person
105 to identify and address potential sources of contamination of property and to establish that the
106 property complies with applicable remediation standards.

§22-22-3. Rule-making authority of the Secretary.

1 The Secretary, in accordance with chapter twenty-nine-a of this code, shall propose, and
2 subsequently may amend, suspend, or rescind, rules that do the following:

3 (a) Establish an administrative program for both brownfield revitalization and voluntary
4 remediation, including application procedures;

5 (b) Establish procedures for the licensure of remediation specialists, including, but not
6 limited to establishing licensing fees, testing procedures, disciplinary procedures, and methods
7 for revocation of licenses;

8 (c) Establish procedures for community notification and involvement;

9 (d) Establish risk-based standards for remediation;

10 (e) Establish standards for the remediation of property;

11 (f) Establish a risk protocol for conducting risk assessments and establishing risk-based
12 standards. The risk protocol shall:

13 (1) Require consideration of existing and reasonably anticipated future human exposures
14 based on current and reasonably anticipated future land and water uses and significant adverse
15 effects to ecological receptor health and viability;

16 (2) Include, at a minimum, both central tendency and reasonable upper bound estimates
17 of exposure;

18 (3) Require risk assessments to consider, to the extent practicable, the range of
19 probabilities of risks actually occurring, the range or size of populations likely to be exposed to
20 risk, and quantitative and qualitative descriptions of uncertainties;

21 (4) Establish criteria for what constitutes appropriate sources of toxicity information;

22 (5) Address the use of probabilistic modeling;

23 (6) Establish criteria for what constitutes appropriate criteria for the selection and
24 application of fate and transport models;

25 (7) Address the use of population risk estimates in addition to individual risk estimates;

26 (8) To the extent considered appropriate and feasible by the Secretary considering
27 available scientific information, define appropriate approaches for addressing cumulative risks
28 posed by multiple contaminants or multiple exposure pathways;

29 (9) Establish appropriate sampling approaches and data quality requirements; and

30 (10) Include public notification and involvement provisions so that the public can
31 understand how remediation standards are applied to a site and provide for clear communication
32 of site risk issues, including key risk assessment assumptions, uncertainties, populations
33 considered, the context of site risks to other risks, and how the remedy will address site risks;

34 (g) Establish chemical and site-specific information, where appropriate for purpose of risk
35 assessment. Risk assessments should use chemical and site-specific data and analysis, such as
36 toxicity, exposure, and fate and transport evaluations in preference to default assumptions. Where
37 chemical and site-specific data are not available, a range and distribution of realistic and plausible
38 assumptions should be employed;

39 (h) Establish criteria to evaluate and approve methods for the measurement of
40 contaminants using the practical quantitation level and related laboratory standards and practices
41 to be used by certified laboratories;

42 (i) Establish standards and procedures for the use of certificates of completion, land use
43 covenants, and other legal documents necessary to effectuate the purposes of this article; and

44 (j) Establish any other rules necessary to carry out the requirements and the legislative
45 intent of this act.

**§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.

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

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

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

20 (d) Information obtained by the Department under this article shall be available to the
21 public, unless the Secretary certifies such information to be confidential. The Secretary may make
22 such certification where any person shows, to the satisfaction of the Secretary, that the
23 information or parts thereof, if made public, would divulge methods, processes, or activities
24 entitled to protection as trade secrets. In submitting data under this article, any person required

25 to provide such confidential data may designate the data which that person believes is entitled to
26 protection under this section and submit such designated data separately from other data
27 submitted under this article. This designation request shall be made in writing. Any person who
28 divulges or discloses any information entitled to protection under this section is guilty of a
29 misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in
30 a county jail for not more than one year, or both fined and imprisoned.

31 (e) The site assessment must include a legal description of the site; a description of the
32 physical characteristics of the site, and the general operational history of the site to the extent that
33 the history is known by the applicant; and information of which the applicant is aware concerning
34 the nature and extent of any known contamination at the site and immediately contiguous to the
35 site, or wherever the contamination came to be located.

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

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

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

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

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

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

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

**§22-22-5. Brownfields Revolving Fund applicant eligibility; loans; remediation process;
and public notification.**

1 (a) A person may be eligible for Brownfields Revolving Fund moneys when environmental
2 remediation is undertaken pursuant to this article and the person did not cause or contribute to
3 the contamination on the property. A person receiving Brownfields Revolving Fund moneys shall
4 comply with the appropriate standards established by the Secretary pursuant to this article and
5 rules promulgated hereunder.

6 (b) After conferring with the Secretary, the person may apply to the Secretary for a site
7 assessment or remediation loan under §22-22-6 of this code. An application for money from the
8 Brownfields Revolving Fund must be submitted along with an application fee to be established by
9 the Secretary.

10 (c) Brownfields being remediated by persons who did not cause or contribute to the
11 contamination of the site are also eligible for consideration for remediation loans established
12 under §15-31-1, *et seq.* of this code.

13 (d) Persons receiving Brownfields Revolving Fund moneys to perform remediation and
14 revitalization of brownfield sites shall comply with the following public notice and involvement
15 requirements:

16 (1) Submit a notice of intent to remediate to the Department. This notice shall provide, to
17 the extent known, a brief description of the location of the site; a listing of the contaminants
18 involved; and the proposed remediation measures. The Department shall publish an
19 acknowledgment noting the receipt of the notice of intent in a Department publication of general
20 circulation. At the time a notice of intent to remediate a site is submitted to the Department, a copy
21 of the notice shall be provided to the municipality and the county in which the site is located. A

22 summary of the notice of intent shall be published in a newspaper of general circulation serving
23 the area in which the site is located;

24 (2) Provide a 30-day public, county, and municipal comment period for the notice required
25 by this subsection during which the public, county, and municipality may request to be involved in
26 the development of the remediation and reuse plans for the site. If requested by the public, county,
27 municipality, or the Secretary, the person undertaking the remediation shall develop and
28 implement a public involvement program plan which meets the requirements set forth by the
29 Secretary; and

30 (3) Adhere to other public notice requirements as stipulated by federal or other grantors
31 that provide moneys to the Brownfields Revolving Fund, or as promulgated in the rules developed
32 by the Secretary.

**§22-22-6. Voluntary remediation administrative fund established; voluntary remediation
fees authorized; Brownfields revolving fund established; disbursement of funds
moneys; employment of specialized persons authorized.**

1 (a) There is hereby reauthorized and continued in the State Treasury special revenue fund
2 known as the Voluntary Remediation Administrative Fund. The fund shall operate as a special
3 fund whereby all deposits and payments thereto do not expire to the General Revenue Fund but
4 shall remain in the fund and be available for expenditure in succeeding fiscal years. This fund
5 shall consist of fees collected by the Secretary in accordance with the provisions of this article as
6 well as interest earned on investments made from moneys deposited in the fund. Moneys from
7 this fund shall be expended by the Secretary for the administration, licensing, enforcement,
8 inspection, monitoring, planning, research, and other activities required by this article.

9 The Secretary shall promulgate legislative rules in accordance with the provisions of §29A-
10 3-1 *et seq.* of this code establishing a schedule of voluntary remediation fees applicable to
11 persons who conduct activities subject to the provisions of this article. The fees may include an

12 appropriate assessment of other program costs not otherwise attributable to any specific site but
13 necessary for the administrative activities required to carry out the provisions of this article.

14 (b) There is hereby reauthorized and continued in the State Treasury a special revenue
15 fund known as the Brownfields Revolving Fund. The fund shall be comprised of moneys allocated
16 to the state by the federal government expressly for the purposes of establishing and maintaining
17 a state brownfields redevelopment revolving fund, all receipts from loans made from the fund, any
18 moneys appropriated by the Legislature, all income from the investment of moneys held in the
19 fund, and all other sums designated for deposit to the fund from any source, public or private. The
20 fund shall operate as a special fund whereby all deposits and payments thereto do not expire to
21 the General Revenue Fund but shall remain in the account and be available for expenditure in
22 succeeding fiscal years. Moneys in the fund, to the extent that moneys are available, shall be
23 used to make loans to persons to finance site assessments and remediation of eligible brownfield
24 sites and such other activities as authorized by any federal grant received or any legislative
25 appropriation: *Provided*, That moneys in the fund may be utilized to defray those costs incurred
26 by the Department in administering the provisions of this subsection. The Secretary shall
27 promulgate rules in accordance with the provisions of §29A-3-1 *et seq.* of this code, to govern the
28 disbursement of moneys from the fund, and establish a state brownfields redevelopment
29 assistance program to direct the distribution of loans from the fund, and establish the interest
30 rates and repayment terms of any loans: *Provided, however*, That amounts in the fund,
31 appropriated by the West Virginia Legislature, and which are found from time to time to exceed
32 the amount needed for the purposes set forth in this article, may be transferred to other accounts
33 or funds and redesignated for other purposes through appropriations of the Legislature. Moneys
34 from any other source, public or private, shall remain in the fund.

35 In order to carry out the administration and management of the fund, the Department may
36 employ officers, agents, advisors, and consultants, including attorneys, financial advisors,

37 engineers, other technical advisors, and public accountants and, notwithstanding any provisions
38 of this code to the contrary, determine their duties and compensation without the approval of any
39 other agency or instrumentality.

§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.

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

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

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

9 (c) A voluntary remediation agreement shall provide for cost recovery of all reasonable
10 costs incurred by the Department in review and oversight of the person's work plan and reports
11 as a result of field activities or attributable to the voluntary remediation agreement, which are in
12 excess of the fees submitted by the applicant along with a schedule of payments; appropriate
13 tasks, deliverables, and schedules for performance of the remediation; a listing of all statutes and
14 rules for which compliance is mandated; a description of any work plan or report to be submitted
15 for review by the Secretary, including a final report that provides all information necessary to verify
16 that all work contemplated by the agreement has been completed; the licensed remediation
17 specialist's supervision of remediation contractors; and a listing of the technical standards to be
18 applied in evaluating the work plans and reports, with reference to the proposed future land use
19 to be achieved. The voluntary remediation agreement may also provide for alternate dispute

20 resolutions between the parties to the agreement, including, but not limited to, arbitration or
21 mediation of any disputes under this agreement;

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

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

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

§22-22-8. Voluntary remediation work plans and reports.

1 After signing a voluntary remediation agreement, the person undertaking remediation shall
2 prepare and submit the appropriate work plans and reports to the Secretary. The Secretary shall
3 review and evaluate the work plans and reports for accuracy, quality, and completeness. The
4 Secretary may approve a voluntary remediation work plan or report or disapprove and notify the
5 person of additional information needed to obtain approval.

§22-22-9. Termination of agreement; cost of recovery; legal actions.

1 The person undertaking remediation may, in his or her sole discretion, terminate the
2 agreement as provided by the terms of the agreement and by giving 15 days advance written

3 notice of termination. Only those costs incurred or obligated by the Secretary before notice of
4 termination of the agreement are recoverable, if the agreement is terminated. The termination of
5 the agreement does not affect any right the Secretary may have under any other law to recover
6 costs. The person undertaking the remediation must pay the Department's costs associated with
7 the voluntary remediation within 31 days after receiving notice that the costs are due and owing.
8 The Secretary may bring an action in Kanawha County circuit court or in the circuit court in the
9 county wherein the property is situated to recover the amount owed to the Department and
10 reasonable legal expenses.

§22-22-10. Inspections; right of entry; sampling; reports and analyses.

1 (a) The Secretary, upon presentation of proper credentials, may enter any building,
2 property, premises, place, or facility where brownfield or voluntary remediation activities are being
3 or have been performed for the purpose of making an inspection to ascertain the compliance by
4 any person with the provisions of this article or the rules promulgated by the Secretary.

5 (b) The Secretary shall make periodic inspections at sites subject to this article. After an
6 inspection is made, a report shall be filed with the Secretary and a copy shall be provided to the
7 person who is responsible pursuant to the voluntary agreement for remediation activities. The
8 reports shall not disclose any confidential information protected under the provisions of §22-22-
9 4(d) of this code. The inspection reports shall be available to the public in accordance with the
10 provisions of §29B-1-1, *et seq.* of this code.

11 (c) The Secretary may, upon presentation of proper credentials, enter any building, motor
12 vehicle, property, premises, or site where brownfield or voluntary remediation activities are being
13 or have been performed and take samples of wastes, soils, air, surface water, and groundwater.
14 In taking such samples, the Secretary may utilize sampling methods necessary in exercising good
15 scientific technique. Following the taking of any sample, the Secretary shall give the person
16 responsible in the voluntary agreement for remediation activities a receipt describing the sample
17 obtained and, if requested, a portion of each sample equal in volume or weight to the portion

18 retained. The Secretary shall promptly provide a copy of any analysis made to the responsible
19 person named in the voluntary agreement.

20 (d) Upon presentation of proper credentials, the Secretary shall be given access to all
21 records relating to a voluntary remediation.

§22-22-11. Licensed remediation specialist, licensure procedures.

1 (a) A person may not practice as a licensed remediation specialist without a license issued
2 by the Secretary. Any violation of this provision shall be subject to the enforcement orders set
3 forth in §22-22-12 of this code.

4 (b) To obtain a license, a person must apply to the Secretary in writing on forms approved
5 and supplied by the Secretary. Each application for examination for a license shall contain:

6 (1) The full name of the person applying for the license;

7 (2) The principal business address of the applicant;

8 (3) All formal academic education and experience of the applicant to demonstrate
9 professional expertise of the applicant;

10 (4) If waiver of the examination is being requested, any license or certification that the
11 person desires to be considered as part of the waiver request;

12 (5) The examination fee; and

13 (6) Any other necessary information prescribed by the Secretary.

14 (c) The Secretary shall establish the date, time, and location of licensed remediation
15 specialist examinations.

16 (d) The applicant shall demonstrate that he or she possesses a practical knowledge of the
17 remediation activities; procedures necessary to remediate a site; and the management of
18 contaminants at a site, including, but not limited to, site investigation, health and safety protocol,
19 quality assurance, feasibility studies and remedial design.

20 (e) If the Secretary does not certify the remediation specialist applicant, the Secretary shall
21 inform the applicant in writing of the reasons therefor. The Secretary may not deny a license
22 without cause.

23 (f) It is the licensed remediation specialist's duty to protect the safety, health, and welfare
24 of the public as set forth in this article, in the performance of his or her professional duties. The
25 licensed remediation specialist is responsible for any release of contaminants during remediation
26 activities undertaken pursuant to the approved remediation agreement, work plans, or reports. If
27 a licensed remediation specialist faces a situation where he or she is unable to meet this duty,
28 the licensed remediation specialist may either sever the relationship with the client or employer
29 or refuse professional responsibility for work plan, report, or design. The specialist shall notify the
30 Department if there is a threat to the environment or the health, safety, or welfare of the public.

31 (g) A licensed remediation specialist shall only perform assignments for which the
32 specialist is qualified by training and experience in those specific technical fields; be objective in
33 work plans, reports, and opinions; and avoid any conflict of interest with employer, clients, and
34 suppliers. A licensed remediation specialist shall not solicit or accept gratuities, directly or
35 indirectly, from contractors, agents, or other parties dealing directly with the employer or client in
36 regard to professional services being performed at the work site; accept any type of bribe; falsify
37 or permit misrepresentation of professional qualifications; intentionally provide false information
38 to the Secretary; or knowingly associate with a person who is engaging in business or professional
39 practices of a fraudulent or dishonest nature.

40 (h) A licensed remediation specialist shall not charge any special fees above usual and
41 customary professional rates for being licensed.

42 (i) The license issued by the Secretary may be renewed every two years for any licensed
43 remediation specialist in good standing. The Secretary, by rule, shall establish license fees.

44 (j) The Secretary may revoke a license; suspend a license for not more than five years; or
45 impose lesser sanctions as may be appropriate for acts or omissions in violation of this article.

§22-22-12. Enforcement orders for licensed remediation specialists; cease and desist order; criminal penalties.

1 (a) If the Secretary, upon inspection, investigation, or through other means observes,
2 discovers, or learns that a licensed remediation specialist has violated the provisions of this article
3 or any rules promulgated hereunder, the Secretary may:

4 (1) Issue an order stating with reasonable specificity the nature of the violation and
5 requiring compliance immediately or within a specified time. An order under this section includes,
6 but is not limited to, orders suspending or revoking licenses, orders requiring a person to take
7 remedial action, or cease and desist orders; or

8 (2) Request the prosecuting attorney of the county in which the alleged violation occurred
9 bring a criminal action as provided for herein.

10 (b) Any person issued an order may file a request for reconsideration with the Secretary
11 within seven days of the receipt of the order. The Secretary shall conduct a hearing on the merits
12 of the order within 10 days of the filing of the request for reconsideration. The filing of a notice of
13 request for reconsideration does not stay or suspend the execution or enforcement of the order.

14 (c) Any licensed remediation specialist who fraudulently misrepresents that work has been
15 completed and such action results in an unjustified and inexcusable disregard for the safety of
16 others, thereby placing another in imminent danger or contributing to ongoing harm to the
17 environment, is guilty of a felony and, upon conviction thereof, shall be fined not more than
18 \$50,000, or imprisoned not less than one nor more than two years, or both.

19 (d) If any person associated with remediation of a brownfield or voluntary remediation site
20 engages in fraudulent acts or representations to the Department, he or she is guilty of a felony
21 and, upon conviction thereof, shall be fined not more than \$50,000 or imprisoned not less than
22 one nor more than two years, or both.

§22-22-13. Certificate of completion.

1 (a) The licensed remediation specialist shall issue a final report to the person undertaking
2 the voluntary remediation when the property meets the applicable standards and all work has
3 been completed as contemplated in the voluntary remediation agreement or the site assessment
4 shows that all applicable standards are being met. Upon receipt of the final report, the person
5 may seek a certificate of completion from the Secretary.

6 (b) The Secretary may delegate the responsibility for issuance of a certificate of
7 completion to a licensed remediation specialist in limited circumstances, as specified by rule
8 pursuant to this article.

9 (c) The certificate of completion shall contain a provision relieving a person who undertook
10 the remediation and subsequent successors and assigns from all liability to the state as provided
11 under this article which shall remain effective as long as the property complies with the applicable
12 standards in effect at the time the certificate of completion was issued. This certificate is subject
13 to reopener provisions of section fifteen of this article and may, if applicable, result in a land-use
14 covenant as provided in section fourteen of this article.

§22-22-14. Land-use covenant; criminal penalties.

1 (a) The Secretary shall establish by rule, criteria for deed recordation of land-use
2 covenants and containing all necessary deed restrictions. The Secretary shall cause all land-use
3 covenants to appear in the chain of title by deed to be properly recorded in the office of the county
4 clerk where the remediation site is located. If institutional and engineering controls are used, in
5 whole or in part, to achieve a remediation standard, the Secretary shall direct that a land-use
6 covenant be applied. The covenant shall include whether residential or nonresidential exposure
7 factors were used to comply with the site-specific standard. The covenant shall contain a provision
8 relieving the person who undertook the remediation and subsequent successors and assigns from
9 all civil liability to the state as provided under this article and shall remain effective as long as the
10 property complies with the applicable standards in effect at the time the covenant was issued.

11 (b) Whoever knowingly violates a land-use covenant by converting nonresidential
12 property to residential property is guilty of a felony, and, upon conviction thereof, shall be fined
13 not more than \$25,000, imprisoned for not more than five years, or both.

§22-22-15. Reopeners.

1 Any person who completes remediation in compliance with this article shall not be required
2 to undertake additional remediation actions for contaminants subject to the remediation, unless
3 the Secretary demonstrates that:

4 (a) Fraud was committed in demonstrating attainment of a standard at the site that resulted
5 in avoiding the need for further remediation of the site;

6 (b) New information confirms the existence of an area of a previously unknown
7 contamination which contains contaminants that have been shown to exceed the standards
8 applied to the previous remediation at the site;

9 (c) The level of risk is increased significantly beyond the established level of protection at
10 the site due to substantial changes in exposure conditions, such as a change in land use or new
11 information is obtained about a contaminant associated with the site which revises exposure
12 assumptions beyond the acceptable range. Any person who changes the use of the property
13 causing the level of risk to increase beyond established protection levels shall be required by the
14 Department to undertake additional remediation measures under the provisions of this article;

15 (d) The release occurred after the effective date of this article on a site not used for
16 industrial activity prior to the effective date of this article; the remedy relied, in whole or in part,
17 upon institutional or engineering controls instead of treatment or removal of contamination; and
18 treatment, removal, or destruction has become technically and economically practicable; or

19 (e) The remediation method failed to meet the remediation standard or combination of
20 standards.

21 In the event that any of the foregoing circumstances occur, the remediation agreement will
22 be reopened and revised to the extent necessary to return the site to its previously agreed to state
23 of remediation or other appropriate standard.

§22-22-16. Duty of assessor and citizens to notify Secretary when change of property use occurs.

1 If an assessor in any county becomes aware of a change of remediated property use from
2 nonresidential property to residential, the assessor shall check the land record of the county to
3 ascertain if a land-use covenant appears to have been violated. Should it appear that a violation
4 has occurred, the assessor shall notify the Secretary in writing of the suspected violation. If any
5 citizen becomes aware of a change of property use from nonresidential to residential, the citizen
6 may check the land record of the county to ascertain if a land use covenant appears to have been
7 violated and may notify the Secretary in writing. The Secretary shall then investigate and proceed
8 with any necessary enforcement action.

§22-22-17. Public notification for brownfields.

1 [Repealed.]

§22-22-18. Environmental liability protection.

1 (a) Any person demonstrating compliance with the applicable standards established in
2 section three of this article, whether by remediation or where the site assessment shows that the
3 contamination at the site meets applicable standards, shall be relieved of further liability for the
4 remediation of the site under this chapter. Contamination identified in the remediation agreement
5 submitted to and approved by the Department is not subject to citizen suits or contribution actions.
6 The protection from further remediation liability provided by this article applies to the following
7 persons:

8 (1) The current or future owner or operator of the site, including development authorities
9 and fiduciaries who participated in the remediation of the site;

10 (2) A person who develops or otherwise occupies the site;

11 (3) A successor or assign of any person to whom the liability protection applies;

12 (4) A public utility, as defined in §24-1-2 of this code, and for the purpose of this article, a
13 utility engaged in the storage and transportation of natural gas, to the extent the public utility
14 performs activities on the site;

15 (5) A remediation contractor;

16 (6) A licensed remediation specialist; and

17 (7) A lender or developer who engages in the routine practices of commercial lending,
18 including, but not limited to, providing financial services, holding of security interests, workout
19 practices, foreclosure, or the recovery of funds from the sale of a site.

20 (b) A person shall not be considered a person responsible for a release or a threatened
21 release of contaminants simply by virtue of conducting or having a site assessment conducted.
22 Nothing in this section relieves a person of any liability for failure to exercise due diligence in
23 performing a site assessment.

24 (c) The Secretary may, consistent with programs developed under federal law, make a
25 determination to limit the liability of lenders, innocent purchasers or landowners, de minimis
26 contributors, or others who have grounds to claim limited responsibility for a containment or
27 cleanup that may be required pursuant to the Hazardous Waste Management Act §22-18-1, *et*
28 *seq.* of this code, the Water Pollution Control Act §22-11-1, *et seq.* of this code, the Groundwater
29 Protection Act §22-12-1, *et seq.* of this code, or any other applicable law.

30 (d) A person who is a bona fide prospective purchaser shall not be held liable for a
31 containment or cleanup that may be required at a brownfield site pursuant to the Hazardous
32 Waste Management Act §22-18-1, *et seq.* of this code, the Water Pollution Control Act §22-11-1,
33 *et seq.* of this code, the Groundwater Protection Act §22-12-1, *et seq.* of this code, or any other
34 applicable law, if:

35 (1) The person did not cause, contribute, or consent to the release or threatened release;

36 (2) The person is not liable or potentially liable through any direct or indirect familial
37 relationship or any contractual, corporate, or financial relationship or is not the result of a
38 reorganization of a business entity that was potentially liable;

39 (3) The person exercises appropriate care with respect to hazardous substances found at
40 the facility by taking reasonable steps to stop any continuing release, prevent any threatened
41 future release, and prevent or limit human, environmental, or natural resource exposure to any
42 previously released hazardous substances; and

43 (4) The person does not impede the performance of any response action.

44 (e) A person who is an innocent land owner who holds title, security interest, or any other
45 interest in a brownfield site shall not be held liable for a containment or cleanup that may be
46 required at a brownfield site pursuant to the Hazardous Waste Management Act §22-18-1, *et seq.*
47 of this code, the Water Pollution Control Act §22-11-1, *et seq.* of this code, the Groundwater
48 Protection Act §22-12-1, *et seq.* of this code, or any other applicable law if:

49 (1) The person did not cause, contribute, or consent to the release or threatened release;

50 (2) The person is not liable or potentially liable through any direct or indirect familial
51 relationship or any contractual, corporate, or financial relationship or is not the result of a
52 reorganization of a business entity that was potentially liable;

53 (3) The person made all appropriate inquiries into the previous uses of the facility in
54 accordance with generally accepted good commercial and customary standards and practices,
55 including those established by federal law;

56 (4) The person exercises appropriate care with respect to hazardous substances found at
57 the facility by taking reasonable steps to stop any continuing release, prevent any threatened
58 future release, and prevent or limit human, environmental, or natural resource exposure to any
59 previously released hazardous substances;

60 (5) The person does not impede the performance of any response action; and either

61 (6) At the time the person acquired the interest, he or she did not know and had no reason
62 to know, that any hazardous substances had been or were likely to have been disposed of on, in,
63 or at the site, or

64 (7) The person is a government entity that acquired the site by escheat or through other
65 involuntary transfer or acquisition.

66 (f) A person that owns real property that is contiguous to or otherwise similarly situated
67 with respect to, and that is or may be contaminated by a release or threatened release of a
68 hazardous substance from real property that is not owned by that person shall not be considered
69 liable for a containment or cleanup that may be required pursuant to the Hazardous Waste
70 Management Act §22-18-1, *et seq.* of this code, the Water Pollution Control Act §22-11-1, *et seq.*
71 of this code, the Groundwater Protection Act §22-12-1, *et seq.* of this code, or any other applicable
72 law if the person did not cause, contribute, or consent to the release or threatened release, if the
73 person is not liable or potentially liable through any direct or indirect familial relationship or any
74 contractual, corporate, or financial relationship or is not the result of a reorganization of a business
75 entity that was potentially liable, and if such person provides full cooperation, assistance, and
76 access to persons that are authorized to conduct response actions at the facility from which there
77 has been a release.

78 (g) The provisions of this section shall not otherwise limit the authority of the Secretary to
79 require any person responsible for the contamination or pollution to contain or remediate sites
80 where solid or hazardous waste or other substances have been improperly managed.

§22-22-20. Affirmative defenses.

1 Any person who is alleged to have violated an environmental law or the common law
2 equivalent, which occurred while acting pursuant to this article, may affirmatively plead the
3 following in response to an alleged violation:

4 (a) An act of God;

5 (b) An intervening act of a public agency;

6 (c) Migration from property owned by a third party;

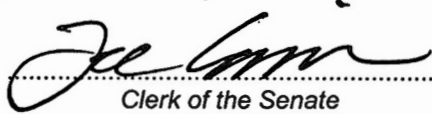
7 (d) Actions taken or omitted in the course of rendering care, assistance, or advice in
8 accordance with the environmental laws or at the direction of the Department;

9 (e) An act of a third party who was not an agent or employee of the lender, fiduciary,
10 developer, remediation contractor, or development authority; or

11 (f) If the alleged liability for a lender, fiduciary, developer, or development authority arises
12 after foreclosure, and the lender, fiduciary, developer, or development authority exercised due
13 care with respect to the lender's, fiduciary's, developer's, or development authority's knowledge
14 about the contaminants, and took reasonable precautions based upon such knowledge against
15 foreseeable actions of third parties and the consequences arising therefrom. A lender, fiduciary,
16 developer, remediation contractor, or development authority may avoid liability by proving any
17 other defense which may be available to it.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.


.....
Clerk of the House of Delegates

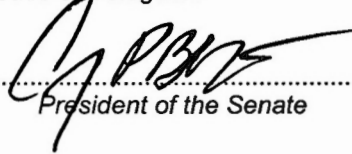

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Clerk of the Senate

FILED
2024 MAR 26 P 2:32
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Originated in the House of Delegates.

In effect ninety days from passage.


.....
Speaker of the House of Delegates


.....
President of the Senate

The within is approved this the 26th
Day of March 2024.


.....
Governor

PRESENTED TO THE GOVERNOR

MAR 21 2024

Time 10:42am