

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 622

An Act to amend the Code of Virginia by adding in Chapter 14 of Title 10.1 an article numbered 4.1, consisting of sections numbered 10.1-1429.1, 10.1-1429.2, and 10.1-1429.3, relating to voluntary remediation of hazardous substances.

[H 1847]

Approved March 25, 1995

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 14 of Title 10.1 an article numbered 4.1, consisting of sections numbered 10.1-1429.1, 10.1-1429.2, and 10.1-1429.3, as follows:

Article 4.1.

Voluntary Remediation.

§ 10.1-1429.1. Regulation of voluntary remediation; cleanup standards; permit requirements; registration fees.

A. The Board shall promulgate regulations to allow persons who own, operate, have a security interest in or enter into a contract for the purchase of contaminated property to voluntarily remediate releases of hazardous substances, hazardous wastes, solid wastes or petroleum. The regulations shall apply where remediation has not clearly been mandated by the United States Environmental Protection Agency, the Department or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or other applicable statutory or common law or where jurisdiction of those statutes has been waived. The regulations shall provide for the following:

1. The establishment of methodologies to determine site-specific risk-based remediation standards, which shall be no more stringent than applicable or appropriate relevant federal standards for soil, groundwater and sediments, taking into consideration scientific information regarding the following: (i) protection of public health and the environment; (ii) the future industrial, commercial, residential, or other use of the property to be remediated and of surrounding properties; (iii) reasonably available and effective remediation technology and analytical quantitation technology; (iv) the availability of institutional or engineering controls that are protective of human health or the environment; and (v) natural background levels for hazardous constituents;

2. The establishment of procedures that minimize delay and expense of the remediation, to be followed by a person volunteering to remediate a release and by the Department in processing submissions and overseeing remediation;

3. The issuance of certifications of satisfactory completion of remediation, based on then-present conditions and available information, where voluntary cleanup achieves applicable cleanup standards or where the Department determines that no further action is required;

4. Procedures to waive or expedite issuance of any permits required to initiate and complete a voluntary cleanup consistent with applicable federal law; and

5. Registration fees to be collected from persons conducting voluntary remediation to defray the actual reasonable costs of the voluntary remediation program expended at the site not to exceed the lesser of \$5,000 or one percent of the cost of the remediation.

B. The Board shall promulgate the regulations required under subsection A to be in effect by July 1, 1997. Prior to the promulgation of those regulations, the Board, through the Director, shall administer a voluntary remediation program on a case-by-case basis consistent with the criteria set out in subsection A, including, but not limited to, the collection of registration fees. Persons conducting voluntary remediation pursuant to an agreement with the Department entered into prior to the promulgation of those regulations may elect to complete the cleanup in accordance with such an agreement or the regulations.

§ 10.1-1429.2. Immunity.

Certification of satisfactory completion of remediation shall constitute immunity to an enforcement action under this chapter, the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 13 (§ 10.1-1300 et seq.) of this title, or other applicable law.

§ 10.1-1429.3. Site access.

At the request of a person who owns, operates, holds a security interest in or contracts for the purchase of property from which the contamination to be voluntarily remediated originates, the Department is authorized to seek temporary access to private and public property not owned by such person conducting the voluntary remediation as may be reasonably necessary for such person to conduct

the voluntary remediation. Such request shall include a demonstration that the person requesting access has used reasonable effort to obtain access by agreement with the property owner. Such access, if granted, shall be granted for only the minimum amount of time necessary to complete the remediation and shall be exercised in a manner that minimizes the disruption of ongoing activities and compensates for actual damages. The person requesting access shall reimburse the Commonwealth for reasonable, actual and necessary expenses incurred in seeking or obtaining access. Denial of access to the Department by a property owner creates a rebuttable presumption that such owner waives all rights, claims and causes of action against the person volunteering to perform remediation for costs, losses or damages related to the contamination as to claims for costs, losses or damages arising after the date of such denial of access to the Department. A property owner who has denied access to the Department may rebut the presumption by showing that he had good cause for the denial or that the person requesting that the Department obtain access acted in bad faith.