

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 10.1-1406 of the Code of Virginia, relating to cleanup and containment*
3 *liability.*

4 [H 2705]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That § 10.1-1406 of the Code of Virginia is amended and reenacted as follows:**

8 § 10.1-1406. Exemptions from liability; expedited settlements.

9 A. No person shall be liable under the provisions of subdivision 19 of § 10.1-1402 for cleanup or to
10 reimburse the Virginia Environmental Emergency Response Fund if he can establish by a preponderance
11 of the evidence that the violation and the damages resulting therefrom were caused solely by:

12 1. An act of God;

13 2. An act of war;

14 3. An act or omission of a third party other than an employee or agent of the defendant, or other
15 than one whose act or omission occurs in connection with a contractual relationship, existing directly or
16 indirectly, with the defendant (except where the sole contractual arrangement arises from a published
17 tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a
18 preponderance of the evidence that (i) he exercised due care with respect to the hazardous waste or
19 hazardous substance concerned, taking into consideration the characteristics of such hazardous waste or
20 hazardous substance, in light of all relevant facts and circumstances and (ii) he took precautions against
21 foreseeable acts or omissions of any such third party and the consequences that could foreseeably result
22 from such acts or omissions; or

23 4. Any combination of subdivisions 1 through 3 of this section. For purposes of this section, the term
24 "contractual arrangement" shall have the meaning ascribed to it in 42 U.S.C. § 9601(35).

25 B. *The Board may, consistent with programs developed under the federal acts, expedite a*
26 *determination to limit the liability of innocent landowners, de minimis contributors or others who have*
27 *grounds to claim limited responsibility for a containment or cleanup which may be required pursuant to*
28 *this chapter.*

ENROLLED

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