

# VIRGINIA ACTS OF ASSEMBLY -- 1999 SESSION

## CHAPTER 798

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

[H 2705]

Approved March 28, 1999

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

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

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

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

1. An act of God;

2. An act of war;

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

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

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