

HOUSE BILL 294

Unofficial Copy
M3

2004 Regular Session
(4lr0195)

ENROLLED BILL

-- Environmental Matters/Education, Health, and Environmental Affairs --

Introduced by **The Speaker and the Minority Leader (By Request - Administration) and Delegates Edwards, Aumann, Bartlett, Barve, Bates, Boschert, Boteler, Boutin, Burns, Cane, V. Clagett, Costa, Cryor, Eckardt, Elmore, Frank, Frush, Glassman, Goldwater, Hammen, Hogan, Holmes, Hubbard, Kelly, Krebs, Leopold, Malone, Marriott, McComas, McConkey, McHale, McIntosh, Miller, Mitchell, Moe, Morhaim, Nathan-Pulliam, Oaks, O'Donnell, Owings, Parker, Parrott, Ross, Rudolph, Sossi, Stern, Stocksdale, Stull, Walkup, Weir, Weldon, and Wood**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____M.

Speaker.

CHAPTER 73

1 AN ACT concerning

2 **Brownfields Redevelopment Reform Act**

3 FOR the purpose of providing that certain applicants and certain properties may be
4 eligible to participate in the Voluntary Cleanup Program in the Maryland
5 Department of the Environment (~~MDE~~) under certain conditions; altering the
6 process by which a person may apply for, receive, and maintain inculpable
7 person status; requiring ~~MDE~~ the Department to review certain standards in a
8 certain time period; establishing certain application fees under certain
9 circumstances; altering certain application fees; ~~authorizing MDE to develop~~

1 requiring the Department to adopt certain regulations; altering certain
 2 procedures and requirements for applications to the Voluntary Cleanup
 3 Program; altering certain procedures and deadlines for public participation in
 4 MDE's the Department's process of approving response action plans;
 5 establishing certain liability protection for certain participants receiving a no
 6 further requirements notice; establishing certain liability protections for certain
 7 participants and successors in interest to certain property; requiring certain
 8 persons to submit certain information to a one-call system in Maryland;
 9 requiring certain persons to be responsible for the cost of cleaning up a property
 10 under certain conditions; establishing certain fees for certain conditions on
 11 certain property; authorizing the State to bring a civil action for punitive
 12 damage damages against certain persons who fail to comply with certain orders
 13 under certain circumstances; clarifying that certain actions by the Department
 14 do not affect certain active enforcement actions; requiring MDE to approve a
 15 response action plan for a portion of a property under certain conditions;
 16 requiring MDE the Department to convene a certain work group; authorizing
 17 certain agents or employees to enter certain private land in *Montgomery County*
 18 and Baltimore City under certain conditions; providing that certain persons and
 19 contaminated properties are eligible for money from the Brownfields
 20 Redevelopment Incentive Program in the Department of Business and Economic
 21 Development; altering certain requirements for certain local governments to
 22 participate in the program; altering the process for the distribution and use of
 23 certain contributions; defining altering the definitions of certain terms; and
 24 generally relating to the Voluntary Cleanup Program and the Brownfields
 25 Redevelopment Incentive Program.

26 BY adding to
 27 Article - Environment
 28 Section 7-266.1 and 7-506.1
 29 Annotated Code of Maryland
 30 (1996 Replacement Volume and 2003 Supplement)

31 BY repealing and reenacting, with amendments,
 32 Article - Environment
 33 Section 7-501(e), (g), and (j), 7-505, 7-506, 7-509, ~~7-510(a)~~, 7-511(a), 7-512(a),
 34 7-514, and 7-515
 35 Annotated Code of Maryland
 36 (1996 Replacement Volume and 2003 Supplement)

37 BY repealing and reenacting, with amendments,
 38 Article - Real Property
 39 Section 12-111(f)
 40 Annotated Code of Maryland
 41 (2003 Replacement Volume and 2003 Supplement)

42 BY repealing and reenacting, with amendments,

1 Article 83A - Business and Economic Development
2 Section 5-1401(j) and 5-1408(a)
3 Annotated Code of Maryland
4 (2003 Replacement Volume)

5 BY repealing and reenacting, with amendments,
6 Article - Tax - Property
7 Section 9-229(g)
8 Annotated Code of Maryland
9 (2001 Replacement Volume and 2003 Supplement)

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
11 MARYLAND, That the Laws of Maryland read as follows:

12 **Article - Environment**

13 7-266.1.

14 ~~(A) (1) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN~~
15 ~~EQUITY, ANY RESPONSIBLE PERSON WHO FAILS WITHOUT GOOD CAUSE TO COMPLY~~
16 ~~WITH A FINAL ORDER OF THE STATE IN ACCORDANCE WITH THIS SUBTITLE MAY BE~~
17 ~~LIABLE TO THE STATE FOR PUNITIVE DAMAGES.~~

18 ~~(2) PUNITIVE DAMAGES MAY BE ASSESSED IN AN AMOUNT NOT TO~~
19 ~~EXCEED THREE TIMES THE AMOUNT OF ANY COSTS INCURRED BY THE STATE AS A~~
20 ~~RESULT OF SUCH FAILURE.~~

21 ~~(3) A RESPONSIBLE PERSON SHALL BE ENTITLED TO A CONTESTED~~
22 ~~CASE HEARING FOR A DETERMINATION WHETHER THE RESPONSIBLE PERSON HAS~~
23 ~~FAILED WITHOUT GOOD CAUSE TO COMPLY WITH A FINAL ORDER OF THE STATE IN~~
24 ~~ACCORDANCE WITH THIS SUBTITLE.~~

25 ~~(4) PUNITIVE DAMAGES MAY BE CALCULATED ONLY ON THE COSTS~~
26 ~~ARISING AFTER THE DATE A DETERMINATION IS MADE UNDER PARAGRAPH (3) OF~~
27 ~~THIS SUBSECTION.~~

28 ~~(B) THE STATE IS AUTHORIZED TO COMMENCE A CIVIL ACTION AGAINST ANY~~
29 ~~PERSON TO RECOVER PUNITIVE DAMAGES IN ACCORDANCE WITH SUBSECTION (A)~~
30 ~~OF THIS SECTION, WHICH SHALL BE IN ADDITION TO ANY COSTS RECOVERED FROM~~
31 ~~THE PERSON IN ACCORDANCE WITH § 7-221 OF THIS SUBTITLE.~~

32 (A) IN ADDITION TO BEING SUBJECT TO PENALTIES UNDER §§ 7-266 AND 7-267
33 OF THIS SUBTITLE AND COST RECOVERY UNDER § 7-221 OF THIS SUBTITLE, A
34 RESPONSIBLE PERSON WHO FAILS WITHOUT SUFFICIENT CAUSE TO COMPLY WITH A
35 FINAL ORDER ISSUED UNDER THIS SUBTITLE IS SUBJECT TO PUNITIVE DAMAGES,
36 NOT EXCEEDING THREE TIMES THE AMOUNT OF ANY COSTS THAT ARE INCURRED BY
37 THE STATE:

1 (1) AFTER THE DATE OF THE FINAL DECISION AS PROVIDED IN
 2 SUBSECTION (B) OF THIS SECTION; AND

3 (2) AS A RESULT OF THE RESPONSIBLE PERSON'S FAILURE TO COMPLY
 4 WITH THE FINAL ORDER.

5 (B) (1) BEFORE SEEKING THE PUNITIVE DAMAGES AUTHORIZED BY
 6 SUBSECTION (A) OF THIS SECTION, THE DEPARTMENT SHALL ISSUE TO THE
 7 RESPONSIBLE PERSON A DETERMINATION THAT THE RESPONSIBLE PERSON FAILED
 8 WITHOUT SUFFICIENT CAUSE TO COMPLY WITH A FINAL ORDER ISSUED UNDER THIS
 9 SUBTITLE.

10 (2) A RESPONSIBLE PERSON SUBJECT TO A DETERMINATION ISSUED BY
 11 THE DEPARTMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION IS ENTITLED TO A
 12 CONTESTED CASE HEARING TO DETERMINE WHETHER THE RESPONSIBLE PERSON
 13 HAD SUFFICIENT CAUSE FOR THE FAILURE TO COMPLY WITH THE FINAL ORDER.

14 (3) FOLLOWING A FINAL DECISION UPHOLDING THE DETERMINATION
 15 ISSUED BY THE DEPARTMENT, THE STATE MAY COMMENCE A CIVIL ACTION AGAINST
 16 THE RESPONSIBLE PERSON TO RECOVER THE PUNITIVE DAMAGES.

17 7-501.

18 (e) "Contamination" means a release, discharge, or threatened release of:

19 (1) [a] A controlled hazardous substance, as defined in § 7-201 of this
 20 title; OR

21 (2) OIL, AS DEFINED IN § 4-401 OF THIS ARTICLE.

22 (g) (1) "Eligible property" means property ~~OR A PORTION OF A PROPERTY~~
 23 that is contaminated or perceived to be contaminated.

24 (2) "Eligible property" does not include property that is:

25 (i) On the national priorities list under § 105 of the federal act;

26 (ii) [Under] EXCEPT AS PROVIDED IN PARAGRAPH (3)(I) OF THIS
 27 SUBSECTION, UNDER active enforcement; or

28 (iii) Subject to a controlled hazardous substances permit issued in
 29 accordance with Title 7 of this article.

30 (3) (I) "ELIGIBLE PROPERTY" ~~MAY INCLUDE~~ INCLUDES A SITE UNDER
 31 ACTIVE ENFORCEMENT IF:

32 1. ALL APPLICATIONS FILED IN CONNECTION WITH THE
 33 PROPERTY ARE FILED BY INCULPABLE PERSONS; AND

34 2. ANY RESPONSE ACTION PLAN AND CLEANUP CRITERIA
 35 APPROVED BY THE DEPARTMENT UNDER THIS SUBTITLE ~~ARE~~ IS AT LEAST AS

1 PROTECTIVE OF PUBLIC HEALTH AND THE ENVIRONMENT AS THE REQUIREMENTS
2 OF ANY OUTSTANDING ACTIVE ENFORCEMENT ACTION.

3 (II) "Eligible property" includes sites listed on the Comprehensive
4 Environmental Response, Compensation, and Liability Information System.

5 (j) (1) "Inculpable person" means a person who:

6 (i) Has no prior or current ownership interest in an eligible
7 property at the time of application to participate in the Voluntary Cleanup Program;
8 and

9 (ii) Has not caused or contributed to contamination at the eligible
10 property at the time of application to participate in the Voluntary Cleanup Program.

11 (2) "Inculpable person" includes:

12 (I) [a] A successor in interest in an eligible property acquired from
13 an inculpable person, as defined in paragraph (1) of this subsection, if the successor in
14 interest does not have a prior ownership interest in the eligible property and, other
15 than by virtue of ownership of the eligible property, is not otherwise a responsible
16 person at the eligible property; AND

17 (II) NOTWITHSTANDING PARAGRAPH (1)(I) OF THIS SUBSECTION, A
18 PERSON WHO IS NOT CONSIDERED A RESPONSIBLE PERSON UNDER § 7-201(X)(2) OF
19 THIS TITLE.

20 7-505.

21 (a) (1) If the Department approves ~~an applicant's~~ A PERSON'S status as an
22 inculpable person under § [7-506(b)(1)(i)1] ~~7-506(E)(1)(I)~~ of this subtitle, the
23 ~~participant's~~ PERSON'S status as an inculpable person continues upon acquiring an
24 interest in the eligible property.

25 (2) ~~IF THE APPLICANT PERSON MEETS THE REQUIREMENTS OF §~~
26 ~~7-506(A) 7-506(A)(1)(I), (II), AND (III)~~ OF THIS SUBTITLE, THE DEPARTMENT SHALL
27 APPROVE OR DISAPPROVE ~~AN APPLICANT'S~~ THE PERSON'S STATUS AS AN
28 INCULPABLE PERSON WITHIN 5 BUSINESS DAYS OF RECEIVING:

29 (I) A WRITTEN REQUEST FROM THE ~~APPLICANT PERSON~~ FOR AN
30 EXPEDITED DETERMINATION OF THE ~~APPLICANT'S~~ PERSON'S STATUS AS AN
31 INCULPABLE PERSON; AND

32 (II) A FEE OF \$2,000.

33 (3) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, THE
34 DEPARTMENT'S APPROVAL OF A PERSON'S STATUS AS AN INCULPABLE PERSON
35 EXPIRES IF THE APPLICATION, INCLUDING ANY APPLICABLE FEES, REQUIRED
36 UNDER THIS SUBTITLE IS NOT FILED WITHIN 6 MONTHS AFTER THE APPROVAL OF A
37 PERSON'S STATUS AS AN INCULPABLE PERSON.

1 (b) Except as provided in subsection (c) of this section, an inculpable person is
2 not liable for existing contamination at the eligible property.

3 (c) An inculpable person shall be liable for:

4 (1) New contamination that the person causes or contributes to at the
5 eligible property; and

6 (2) Exacerbation of existing contamination at the eligible property.

7 7-506.

8 (a) To participate in the Program, an applicant shall:

9 (1) Submit an application, on a form provided by the Department, that
10 includes:

11 (i) Information demonstrating to the satisfaction of the
12 Department that the contamination did not result from the applicant knowingly or
13 willfully violating any law or regulation concerning controlled hazardous substances;

14 (ii) Information demonstrating the person's status as a responsible
15 person or an inculpable person;

16 (iii) Information demonstrating that the property is an eligible
17 property as defined in § 7-501 of this subtitle;

18 (iv) A detailed report with all available relevant information on
19 environmental conditions including contamination at the eligible property known to
20 the applicant at the time of the application;

21 (v) ~~±~~ An environmental site assessment that includes:

22 ~~A.~~ 1. [established] ESTABLISHED Phase I [and Phase II]
23 site assessment standards and follows principles established by the American Society
24 for Testing and Materials and that demonstrates to the satisfaction of the
25 Department that the assessment has [adequately investigated all potential sources
26 and areas of contamination] BEEN CONDUCTED IN ACCORDANCE WITH THOSE
27 STANDARDS AND PRINCIPLES; AND

28 ~~B.~~ 2. A PHASE II SITE ASSESSMENT ~~IF UNLESS THE~~
29 DEPARTMENT CONCLUDES, AFTER REVIEW OF THE PHASE I SITE ASSESSMENT, ~~ANY~~
30 ~~PUBLIC COMMENTS SUBMITTED DURING THE PUBLIC COMMENT PERIOD, AND~~
31 ~~INFORMATION IN THE DEPARTMENT'S FILES,~~ THAT THERE IS SUFFICIENT
32 INFORMATION TO DETERMINE THAT THERE ARE NO RECOGNIZED ENVIRONMENTAL
33 CONDITIONS, AS DEFINED BY THE AMERICAN SOCIETY FOR TESTING AND
34 MATERIALS; ~~AND~~

1 (II) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE
2 OFFICE WITHIN THE DEPARTMENT FROM WHICH INFORMATION ABOUT THE
3 APPLICATION MAY BE OBTAINED; AND

4 (III) THE TIME PERIOD DURING WHICH THE DEPARTMENT WILL
5 RECEIVE AND CONSIDER WRITTEN COMMENTS FROM THE PUBLIC.

6 [(b)] (E) (1) (i) The Department shall notify the applicant in writing,
7 within [60] 45 days after receipt of the application, whether:

8 1. The application, including the applicant's status as a
9 responsible person or an inculpaible person, is approved;

10 2. The application is denied or incomplete; or

11 3. The Department has no further requirements related to
12 the investigation of controlled hazardous substances at the eligible property as
13 provided in paragraph (3) of this subsection.

14 (ii) If the Department denies the application or determines that the
15 application is incomplete, the Department shall provide to the applicant the reasons
16 for its decision in writing.

17 (2) (i) An applicant may resubmit an application within 60 days after
18 receipt of notice of the Department's decision to deny the initial application or
19 determination that the application is incomplete.

20 (ii) The Department shall approve or deny a resubmitted or revised
21 application within 30 days after receipt.

22 (3) If the Department notifies the applicant that the Department has no
23 further requirements at the eligible property in accordance with paragraph (1)(i)3 of
24 this subsection, the Department shall include a statement that this notice does not:

25 (i) Subject to the provisions of § 7-505 of this subtitle, prevent the
26 Department from taking action against any person to prevent or abate an imminent
27 and substantial endangerment to the public health or the environment at the eligible
28 property;

29 (ii) Remain in effect if the notice of no further requirements is
30 obtained through fraud or a material misrepresentation;

31 (iii) Affect the authority of the Department to take any action
32 against a responsible person concerning previously undiscovered contamination at an
33 eligible property after a no further requirements notice has been issued by the
34 Department; or

35 (iv) Affect the authority of the Department to require additional
36 cleanup for future activities at the site that result in contamination by hazardous
37 substances.

1 (4) THE NO FURTHER REQUIREMENTS NOTICE SHALL PROVIDE THE
2 SAME LIABILITY PROTECTIONS AS PROVIDED IN § 7-513(B)(3) AND (4) OF THIS
3 SUBTITLE.

4 (5) THE PARTICIPANT AND ANY SUCCESSORS IN INTEREST IN A
5 PROPERTY SUBJECT TO A NO FURTHER REQUIREMENTS NOTICE SHALL CONTINUE
6 TO BE PROTECTED FROM LIABILITY IN THE EVENT OF ANY VIOLATION OF THE
7 CONDITIONS PLACED ON THE USE OF THE PROPERTY, PROVIDED THAT THE
8 PARTICIPANT AND ANY SUCCESSORS IN INTEREST DID NOT CAUSE OR CONTRIBUTE
9 TO THE VIOLATION.

10 [(c)] (F) (1) The Department shall deny an application if:

11 (i) The applicant is not an eligible applicant;

12 (ii) The property is not an eligible property; or

13 (iii) The property was initially contaminated by a release of
14 hazardous substances after October 1, 1997 unless:

15 1. The property is acquired by an inculpable person; or

16 2. The contamination was caused by an act of God.

17 (2) For the purposes of paragraph (1) (iii) of this subsection, any property
18 identified in the Comprehensive Environmental Response, Compensation, and
19 Liability Information System in accordance with the federal act as of October 1, 1997
20 is presumed to have been initially contaminated on or before October 1, 1997.

21 [(d)] (1) If the direct costs of review of the application and administration and
22 oversight of the response action plan exceed the application fee, the Department shall
23 require an applicant or participant to pay to the Department the additional costs
24 incurred by the Department.

25 (2) If the direct costs of review of the application and administration and
26 oversight of the response action plan are less than the application fee, the
27 Department shall refund to the applicant or participant the difference between the
28 costs incurred and the application fee.

29 [(e)] (G) (1) Within 30 days after receiving notification of approval of an
30 application, a participant shall inform the Department in writing whether the
31 participant intends to proceed or withdraw from the Program.

32 (2) If a participant does not notify the Department of the participant's
33 intent to proceed or withdraw in accordance with paragraph (1) of this subsection, the
34 application will be deemed to be withdrawn.

35 [(f)] (H) A determination by the Department that it has no further
36 requirements may be transferred to a subsequent purchaser of the property provided
37 that the subsequent purchaser did not cause or contribute to the contamination.

1 [(g)] (I) (1) If a determination by the Department that it has no further
2 requirements is conditioned on certain uses of the property or on the maintenance of
3 certain conditions, the participant shall record the determination in the land records
4 of the local jurisdiction within 30 days after receiving the determination.

5 (2) If the determination by the Department that it has no further
6 requirements is conditioned on certain uses of the property or on the maintenance of
7 certain conditions and the participant fails to record the determination in the land
8 records in accordance with paragraph (1) of this subsection, the determination shall
9 be void.

10 (3) (I) IF A DETERMINATION BY THE DEPARTMENT THAT IT HAS NO
11 FURTHER REQUIREMENTS AT A PROPERTY IS CONDITIONED ON CERTAIN USES OF
12 THE PROPERTY OR ON THE MAINTENANCE OF CERTAIN CONDITIONS, THE
13 PARTICIPANT SHALL SEND A COPY OF THE DETERMINATION TO A ONE-CALL SYSTEM
14 AS DEFINED IN § 12-101 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

15 (II) ANY OBLIGATION FOR THE PARTICIPANT TO SEND THE
16 INFORMATION REQUIRED UNDER ~~§ 7-506(D)(2)~~ SUBPARAGRAPH (I) OF THIS SECTION
17 PARAGRAPH DOES NOT NEGATE THE OBLIGATION OF AN OWNER AS DEFINED IN §
18 12-101(F) OF THE PUBLIC UTILITY COMPANIES ARTICLE TO BECOME A MEMBER OF
19 THE ONE-CALL SYSTEM UNDER TITLE 12 OF THE PUBLIC UTILITY COMPANIES
20 ARTICLE.

21 (J) SUBJECT TO THE PROVISIONS OF § 7-516(A) OF THIS SUBTITLE AND
22 APPROVAL BY THE DEPARTMENT, IF AN OWNER OF AN ELIGIBLE PROPERTY THAT
23 HAS LIMITED PERMISSIBLE USES WANTS TO CHANGE THE USE OF THE ELIGIBLE
24 PROPERTY, THE OWNER, ~~SUBJECT TO APPROVAL BY THE DEPARTMENT,~~ IS
25 RESPONSIBLE FOR THE COST OF CLEANING UP THE PROPERTY TO THE APPROPRIATE
26 STANDARD.

27 7-506.1.

28 (A) IF A DETERMINATION BY THE DEPARTMENT THAT IT HAS NO FURTHER
29 REQUIREMENTS IS CONDITIONED ON CERTAIN USES OF THE PROPERTY OR ON THE
30 MAINTENANCE OF CERTAIN CONDITIONS, THE PARTICIPANT SHALL PAY TO THE
31 DEPARTMENT A FEE OF \$2,000.

32 (B) IF A CERTIFICATE OF COMPLETION IS CONDITIONED ON THE
33 PERMISSIBLE USE OF THE PROPERTY, THE PARTICIPANT SHALL PAY TO THE
34 DEPARTMENT A FEE OF \$2,000.

35 (C) ON A REQUEST BY A PARTICIPANT TO ALTER A RECORD OF
36 DETERMINATION IN THE LAND RECORDS FOR AN ELIGIBLE PROPERTY WITH
37 CONDITIONS IN ACCORDANCE WITH § 7-506(I) OR § 7-514(D) OF THIS SUBTITLE, THE
38 PARTICIPANT SHALL PAY TO THE DEPARTMENT A FEE OF \$2,000.

39 7-509.

40 (a) Upon submission of a proposed response action plan, the participant:

1 (1) Shall publish a notice of a proposed response action plan once a week
2 for 2 consecutive weeks in a daily or weekly newspaper of general circulation in the
3 geographical area in which the eligible property is located that shall include:

4 (i) A summary of the proposed response action plan;

5 (ii) The name and address of the participant and eligible property;

6 (iii) The name, address, and telephone number of the office within
7 the Department from which information about the proposed response action plan may
8 be obtained;

9 (iv) An address to which persons may submit written comments
10 about the proposed response action [plan or request a public informational meeting;
11 and] PLAN;

12 (v) A deadline for the close of the public comment period by which
13 written comments [or requests for a public informational meeting] must be received
14 by the Department; and

15 (VI) ~~THE DATE AND LOCATION OF THE PUBLIC INFORMATION~~
16 ~~INFORMATIONAL MEETING; AND~~

17 (2) Shall post at the eligible property a notice of intent to conduct a
18 response action plan at that property.

19 (b) The Department shall receive written comments from the public for 30
20 days after publication and posting required under this section OR 5 DAYS AFTER THE
21 PUBLIC INFORMATIONAL MEETING REQUIRED UNDER THIS SECTION, WHICHEVER IS
22 LATER.

23 (c) The Department shall hold a public informational meeting on the proposed
24 response action plan at the participant's expense within [30] ~~45~~ 40 days after [the
25 Department receives a written request for a meeting from the applicant or the public]
26 ~~THE PUBLICATION OF THE NOTICE IN ACCORDANCE WITH SUBSECTION (A)(1) OF~~
27 ~~THIS SECTION.~~

28 ~~7-510.~~

29 ~~(a) (1) The Department shall approve a response action plan FOR AN~~
30 ~~ELIGIBLE PROPERTY if the Department determines that the response action plan~~
31 ~~protects public health and the environment.~~

32 ~~(2) THE DEPARTMENT SHALL APPROVE A RESPONSE ACTION PLAN FOR~~
33 ~~A PORTION OF THE PROPERTY IN ACCORDANCE WITH § 7-501(G)(1) OF THIS SUBTITLE,~~
34 ~~UNLESS THE DEPARTMENT DETERMINES THAT CONTAMINATION ON THE~~
35 ~~REMAINDER OF THE PROPERTY REPRESENTS AN IMMINENT AND SUBSTANTIAL~~
36 ~~ENDANGERMENT TO PUBLIC HEALTH OR THE ENVIRONMENT.~~

1 7-511.

2 (a) Within [120] 75 days after the Department has received a proposed
3 response action plan, the Department, after considering any comments the
4 Department has received under § 7-509 of this subtitle, shall notify the participant in
5 writing that:

6 (1) The response action plan has been approved; or

7 (2) The response action plan has been rejected and shall state the
8 modifications in the response action plan that are necessary to receive the
9 Department's approval.

10 7-512.

11 (a) Except as provided in subsections (b) and (c) of this section, a participant
12 may withdraw from the Program at the time of a pending application or response
13 action plan, or after receiving a certificate of completion, and may not be obligated to
14 complete an application or a response action plan if the participant:

15 (1) Provides 10 days written notice of the anticipated withdrawal to the
16 Department;

17 (2) Stabilizes and secures the eligible property to the satisfaction of the
18 Department to ensure protection of the public health and the environment; and

19 (3) Forfeits any [expended] application [and oversight] fees.

20 7-514.

21 (a) A response action plan approval letter does not:

22 (1) Subject to the provisions of § 7-505 of this subtitle, prevent the
23 Department from taking action against any person to prevent or abate an imminent
24 and substantial endangerment to the public health or the environment at the eligible
25 property;

26 (2) Remain in effect if the response action plan approval letter is
27 obtained through fraud or a material misrepresentation;

28 (3) Affect the authority of the Department to take any action against any
29 person concerning new contamination or the exacerbation of existing contamination
30 at an eligible property after a response action plan approval letter has been issued by
31 the Department;

32 (4) Affect the authority of the Department to take any action against a
33 responsible person concerning previously undiscovered contamination at an eligible
34 property after a response action plan approval letter has been issued by the
35 Department;

1 (5) Prevent the Department from taking action against any person who
2 is responsible for long-term monitoring and maintenance as provided in the response
3 action plan; or

4 (6) Prevent the Department from taking action against any person who
5 does not comply with conditions on the permissible use of the eligible property
6 contained in the response action plan approval letter.

7 (b) A certificate of completion does not:

8 (1) Subject to the provisions of § 7-505 of this subtitle, prevent the
9 Department from taking action against any person to prevent or abate an imminent
10 and substantial endangerment to the public health or the environment at the eligible
11 property;

12 (2) Remain in effect if the certificate of completion is obtained through
13 fraud or a material misrepresentation;

14 (3) Affect the authority of the Department to take any action against any
15 person concerning new contamination or exacerbation of existing contamination at an
16 eligible property after a certificate of completion has been issued by the Department;

17 (4) Affect the authority of the Department to take any action against a
18 responsible person concerning previously undiscovered contamination at an eligible
19 property after a certificate of completion has been issued by the Department;

20 (5) Prevent the Department from taking action against any person who
21 is responsible for long-term monitoring and maintenance for failure to comply with
22 the response action plan;

23 (6) Prevent the Department from taking action against any person who
24 does not comply with conditions on the permissible use of the eligible property
25 contained in the certificate of completion; or

26 (7) Subject to the provisions of § 7-512 of this subtitle, prevent the
27 Department from requiring any person to take further action if the eligible property
28 fails to meet the applicable cleanup criteria set forth in the response action plan
29 approved by the Department.

30 (c) A response action plan approval letter or a certificate of completion may be
31 transferred to any person whose actions did not cause or contribute to the
32 contamination.

33 (d) (1) If a certificate of completion is conditioned on the permissible use of
34 the property [for industrial or commercial purposes], the participant shall record the
35 certificate of completion in the land records of the local jurisdiction within 30 days
36 after receiving the certificate.

37 (2) If the certificate of completion has a conditioned use and the
38 participant fails to record the certificate of completion in the land records in

1 accordance with paragraph (1) of this subsection, the certificate of completion shall be
2 void.

3 (3) (I) IF A CERTIFICATE OF COMPLETION IS CONDITIONED ON THE
4 PERMISSIBLE USE OF THE PROPERTY, THE PARTICIPANT SHALL SEND A COPY OF THE
5 CERTIFICATE OF COMPLETION TO A ONE-CALL SYSTEM, AS DEFINED IN § 12-101 OF
6 THE PUBLIC UTILITY COMPANIES ARTICLE.

7 (II) ANY OBLIGATION FOR THE PARTICIPANT TO SEND THE
8 INFORMATION REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH DOES NOT
9 NEGATE THE OBLIGATION OF AN OWNER AS DEFINED UNDER § 12-101(F) OF THE
10 PUBLIC UTILITY COMPANIES ARTICLE TO BECOME A MEMBER OF THE ONE-CALL
11 SYSTEM UNDER TITLE 12 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

12 (e) Subject to the provisions of § 7-516(a) of this subtitle, if an owner of an
13 eligible property that has limited permissible uses wants to change the use of the
14 eligible property, the owner, subject to approval by the Department, is responsible for
15 the cost of cleaning up the eligible property to the appropriate standard.

16 (F) THE PARTICIPANT AND ANY SUCCESSORS IN INTEREST IN A PROPERTY
17 SUBJECT TO A CERTIFICATE OF COMPLETION SHALL CONTINUE TO BE PROTECTED
18 FROM LIABILITY IN THE EVENT OF ANY VIOLATION OF THE CONDITIONS PLACED ON
19 THE USE OF THE PROPERTY, PROVIDED THAT THE PARTICIPANT AND ANY
20 SUCCESSORS IN INTEREST DID NOT CAUSE OR CONTRIBUTE TO THE VIOLATION.

21 7-515.

22 (A) The provisions of §§ 7-256 through 7-268 of this title shall be used and
23 shall apply to enforce violations of:

24 (1) This subtitle; or

25 (2) Any regulation adopted under this subtitle.

26 (B) ANY ACTION TAKEN BY THE DEPARTMENT UNDER THIS SUBTITLE AT A
27 SITE UNDER ACTIVE ENFORCEMENT MAY NOT:

28 (1) NEGATE THE TERMS AND CONDITIONS OF ANY OUTSTANDING
29 ACTIVE ENFORCEMENT ORDER, DECREE, JUDGMENT, PERMIT, OR OTHER DOCUMENT
30 THAT ADDRESSES ENVIRONMENTAL CONTAMINATION AT THE SITE; OR

31 (2) RELIEVE ANY PERSON WHO IS THE SUBJECT OF AN ACTIVE
32 ENFORCEMENT ACTION FROM LIABILITY FOR PENALTIES UNDER THE
33 ENFORCEMENT ACTION.

1

Article - Real Property

2 12-111.

3 (f) In Anne Arundel County, MONTGOMERY COUNTY, OR BALTIMORE CITY, an
 4 agent or employee, or one or more assistants of the ~~county~~ JURISDICTION, after real
 5 and bona fide effort to notify the occupant or the owner, if the land is unoccupied or if
 6 the occupant is not the owner, may enter on any private land to make test borings and
 7 soil tests and obtain information related to such tests for the purpose of determining
 8 the possibility of public use of the property. If an agent, employee, or assistant is
 9 refused permission to enter or remain on any private land for the purposes set out in
 10 this subsection, Anne Arundel County, MONTGOMERY COUNTY, OR BALTIMORE CITY
 11 may apply to a law court of the ~~county~~ JURISDICTION where the property or any part
 12 of it is located for an order directing that its agent, employee, or assistant be
 13 permitted to enter and remain on the land to the extent necessary to carry out the
 14 purposes authorized by this subsection. The court may require that [Anne Arundel
 15 County] THE APPLYING JURISDICTION post a bond in an amount sufficient to
 16 reimburse any person for damages reasonably estimated to be caused by test borings,
 17 soil tests, and related activities. If any person enters on any private land under the
 18 authority of this section or of any court order passed pursuant to it and damages or
 19 destroys any land or personal property on it, the owner of the property has a cause of
 20 action for damages against [Anne Arundel County] THE JURISDICTION THAT ~~DID~~
 21 ~~NOT AUTHORIZE~~ AUTHORIZED THE ENTRANCE. Any person who knows of an order
 22 issued under this subsection and who obstructs any agent, employee or any assistant
 23 acting under the authority of the order may be punished for contempt of court.

24

Article 83A - Business and Economic Development

25 5-1401.

- 26 (j) (1) "Brownfields site" means:
- 27 (i) An eligible property, as defined in § 7-501 of the Environment
 28 Article, that is:
- 29 1. Owned or operated by[:
- 30 A. An] AN inculpable person, as defined in § 7-501 of the
 31 Environment Article[; or
- 32 B. An innocent purchaser that meets the requirements set
 33 forth in § 7-201(x)(2)(i) of the Environment Article]; and
- 34 2. Located in a county or municipal corporation that has
 35 elected to participate in the Brownfields Revitalization Incentive Program in
 36 accordance with § 5-1408(a) of this subtitle; or
- 37 (ii) Property where there is a release, discharge, or threatened
 38 release of oil, as defined in § 4-401 of the Environment Article, that is:

1 Environmental Affairs Committee and the House Environmental Matters Committee
2 on or before December 31, 2004.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2004.