

EMERGENCY BILL

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By: Senators Frosh, Blount, and the President (Administration)

Introduced and read first time: January 24, 1997

Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Brownfields - Voluntary Cleanup and Revitalization Programs**

3 FOR the purpose of establishing a Voluntary Cleanup Program in the Maryland
4 Department of the Environment (MDE); establishing a Voluntary Cleanup Fund
5 administered by MDE; requiring MDE to adopt certain regulations; establishing
6 certain application requirements, including the payment of a certain fee;
7 establishing certain requirements for MDE's determination of whether to approve
8 an application; authorizing MDE to notify an applicant of a certain determination
9 of no further requirements at the applicant's property, subject to certain conditions;
10 establishing procedures for the payment of certain additional costs or the refund of
11 certain application fees under certain circumstances; establishing certain
12 requirements upon approval of an application; establishing certain requirements
13 and procedures for the proposal and approval of response action plans; requiring a
14 participant to file a certain bond or other security for certain purposes; requiring
15 MDE to review certain standards in a certain time period and authorizing MDE to
16 revise the standards; establishing certain procedures for public participation in
17 MDE's process of approving response action plans; establishing certain
18 requirements for MDE's decision on a proposed response action plan, including the
19 issuance of a certain letter that provides the participant with certain assurances;
20 establishing certain procedures and requirements for the withdrawal of an
21 application or response action plan; requiring a participant to notify MDE that a
22 response action plan has been completed; requiring MDE to issue a certificate of
23 completion, that includes certain information and certain assurances, under certain
24 circumstances; establishing certain conditions under which MDE retains
25 enforcement authority against certain persons; authorizing the transfer of certain
26 documents under certain circumstances; requiring certain documents to be recorded
27 in certain land records under certain circumstances; defining certain terms; altering
28 certain definitions applicable to certain programs to allow certain lenders to take
29 certain actions under certain circumstances subject to certain conditions; providing
30 that certain provisions of law apply to enforce certain violations; providing that this
31 Act does not affect the planning and zoning authority of a county or municipal
32 corporation and certain tort actions; establishing a Brownfields Revitalization
33 Program in the Department of Business and Economic Development (DBED);
34 authorizing taxing jurisdictions to elect whether to participate in the Program;
35 authorizing DBED to select Brownfields sites based on certain criteria; requiring
36 DBED to consult with certain persons during a certain time; establishing a

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1 Brownfields Revitalization Incentive Fund comprised of certain moneys and
 2 administered by DBED; requiring taxing jurisdictions participating in the Program
 3 to establish a certain property tax credit for a certain period of time and for a
 4 certain amount; authorizing a participating taxing jurisdiction to grant a certain
 5 additional property tax credit up to a certain amount; requiring a participating
 6 taxing jurisdiction to contribute to the Brownfields Revitalization Incentive Fund
 7 for a certain period of time and for a certain amount; establishing certain
 8 requirements for the return of a proportional share of certain funds to certain
 9 jurisdictions; authorizing the governing body of a county or municipal corporation
 10 to grant a tax abatement for certain taxes for certain properties; requiring MDE to
 11 report to the Governor and certain committees of the General Assembly on the
 12 Voluntary Cleanup Program and Fund by certain dates; requiring DBED to report
 13 to the Governor and certain committees of the General Assembly on the
 14 Brownfields Revitalization Incentive Program by certain dates; requiring the
 15 transfer of certain moneys between certain funds; making this Act an emergency
 16 measure; and generally relating to the establishment of a Voluntary Cleanup
 17 Program and Brownfields Revitalization Program.

18 BY repealing and reenacting, with amendments,
 19 Article - Environment
 20 Section 4-401(i) and 7-201(x)
 21 Annotated Code of Maryland
 22 (1996 Replacement Volume and 1996 Supplement)

23 BY adding to
 24 Article - Environment
 25 Section 4-401(l), 7-201(n-1), and 7-501 through 7-516, inclusive, to be under the
 26 new subtitle "Subtitle 5. Voluntary Cleanup Program"
 27 Annotated Code of Maryland
 28 (1996 Replacement Volume and 1996 Supplement)

29 BY adding to
 30 Article 83A - Department of Business and Economic Development
 31 Section 3-901 through 3-905, inclusive, to be under the new subtitle "Subtitle 9.
 32 Brownfields Revitalization Incentive Program"
 33 Annotated Code of Maryland
 34 (1995 Replacement Volume and 1996 Supplement)

35 BY adding to
 36 Article - Tax - Property
 37 Section 9-109 and 14-902
 38 Annotated Code of Maryland
 39 (1994 Replacement Volume and 1996 Supplement)

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

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1 **Article - Environment**

2 4-401.

3 (i) (1) "Person responsible for the discharge" includes:

4 (i) The owner of the discharged oil;

5 (ii) The owner, operator, or person in charge of the oil storage facility,
6 vessel, barge, or vehicle involved in the discharge at the time of or immediately before the
7 discharge; and

8 (iii) Any other person who through act or omission causes the
9 discharge.

10 (2) "Person responsible for the discharge" does not include:

11 (I) [a] A person who, without participating in the management of an
12 underground oil storage tank, and who otherwise is not engaged in petroleum production,
13 refining, or marketing, holds indicia of ownership in an underground oil storage tank
14 primarily to protect its security interest in that underground oil storage tank if that
15 person:

16 [(i)] 1. Has not foreclosed on its security interest in the underground
17 oil storage tank; or

18 [(ii)] 2. Abandoned that underground oil storage tank under
19 regulations of the Department within 180 days of acquiring the tank through foreclosure
20 or other means;

21 (II) A HOLDER OF A MORTGAGE OR DEED OF TRUST WHO
22 ACQUIRES TITLE TO A PROPERTY THAT IS SUBJECT TO A CORRECTIVE ACTION PLAN
23 APPROVED BY THE DEPARTMENT UNDER THIS SUBTITLE PROVIDED THAT THE
24 HOLDER COMPLIES WITH THE REQUIREMENTS, PROHIBITIONS, AND CONDITIONS OF
25 THE PLAN;

26 (III) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A LENDER
27 WHO EXTENDS CREDIT FOR THE PERFORMANCE OF REMOVAL OR REMEDIAL
28 ACTIONS CONDUCTED IN ACCORDANCE WITH REQUIREMENTS IMPOSED UNDER
29 THIS TITLE WHO:

30 1. HAS NOT CAUSED OR CONTRIBUTED TO A DISCHARGE OF
31 OIL; AND

32 2. PREVIOUS TO EXTENDING THAT CREDIT, IS NOT A
33 PERSON RESPONSIBLE FOR THE DISCHARGE AT THE SITE; OR

34 (IV) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A LENDER
35 WHO TAKES ACTION TO PROTECT OR PRESERVE A MORTGAGE OR DEED OF TRUST
36 ON A SITE OR A SECURITY INTEREST IN PROPERTY LOCATED ON A SITE AT WHICH A
37 DISCHARGE OF OIL HAS OCCURRED, BY STABILIZING, CONTAINING, REMOVING, OR
38 PREVENTING THE DISCHARGE OF OIL IN A MANNER THAT DOES NOT CAUSE OR
39 CONTRIBUTE TO A DISCHARGE OF OIL IF:

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1 1. THE LENDER PROVIDES ADVANCE WRITTEN NOTICE OF
2 ITS ACTIONS TO THE DEPARTMENT OR IN THE EVENT OF AN EMERGENCY IN WHICH
3 ACTION IS REQUIRED WITHIN 2 HOURS, PROVIDES NOTICE BY TELEPHONE;

4 2. THE LENDER, PREVIOUS TO TAKING THE ACTION, IS NOT
5 A PERSON RESPONSIBLE FOR THE DISCHARGE AT THE SITE; AND

6 3. THE ACTION DOES NOT VIOLATE A PROVISION OF THIS
7 ARTICLE.

8 (3) A LENDER TAKING ACTION TO PROTECT OR PRESERVE A
9 MORTGAGE OR DEED OF TRUST OR SECURITY INTEREST IN PROPERTY LOCATED ON
10 A SITE, WHO CAUSES OR CONTRIBUTES TO A DISCHARGE OF OIL SHALL BE LIABLE
11 SOLELY FOR COSTS INCURRED IN RESPONSE TO THE DISCHARGE WHICH THE
12 LENDER CAUSED OR TO WHICH THE LENDER CONTRIBUTED UNLESS THE LENDER
13 WAS A PERSON RESPONSIBLE FOR THE DISCHARGE BEFORE ACQUIRING A
14 MORTGAGE, DEED OF TRUST, OR SECURITY INTEREST IN THE SITE OR PROPERTY
15 LOCATED ON THE SITE.

16 (L) "LENDER" MEANS A PERSON WHO IS:

17 (1) A HOLDER OF A MORTGAGE OR DEED OF TRUST ON A SITE OR A
18 SECURITY INTEREST IN PROPERTY LOCATED ON A SITE; OR

19 (2) A HOLDER OF A MORTGAGE OR DEED OF TRUST WHO ACQUIRES
20 TITLE THROUGH FORECLOSURE OR DEED IN LIEU OF FORECLOSURE.

21 7-201.

22 (N-1) "LENDER" MEANS A PERSON WHO IS:

23 (1) A HOLDER OF A MORTGAGE OR DEED OF TRUST ON A SITE OR A
24 SECURITY INTEREST IN PROPERTY LOCATED ON A SITE; OR

25 (2) A HOLDER OF A MORTGAGE OR DEED OF TRUST WHO ACQUIRES
26 TITLE THROUGH FORECLOSURE OR DEED IN LIEU OF FORECLOSURE.

27 (x) (1) "Responsible person" means any person who:

28 (i) Is the owner or operator of a vehicle or a site containing a
29 hazardous substance;

30 (ii) At the time of disposal of any hazardous substance, was the owner
31 or operator of any site at which the hazardous substance was disposed;

32 (iii) By contract, agreement, or otherwise, arranged for disposal or
33 treatment, or arranged with a transporter for transport for disposal or treatment, of a
34 hazardous substance owned or possessed by such person, by any other party or entity, at
35 any site owned or operated by another party or entity and containing such hazardous
36 substances; or

37 (iv) Accepts or accepted any hazardous substance for transport to a
38 disposal or treatment facility or any sites selected by the person.

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1 (2) "Responsible person" does not include:

2 (i) A person who can establish by a preponderance of the evidence
 3 that at the time the person acquired an interest in a site containing a hazardous substance
 4 the person did not know and had no reason to know that any hazardous substance which
 5 is the subject of the release or threatened release was disposed of on, in, or at the site;
 6 however, any person claiming an exemption from liability under this subparagraph must
 7 establish that the person had no reason to know, in accordance with § 101(35)(B) of the
 8 federal act, and that the person satisfied the requirements of § 107(b)(3)(a) of the federal
 9 act;

10 (ii) A person who acquired a property containing a hazardous
 11 substance by inheritance or bequest at the death of the transferor;

12 (iii) A person who, without participating in the day-to-day
 13 management of a site containing a hazardous substance, holds indicia of ownership in the
 14 site or in property located on the site primarily to protect a valid and enforceable lien
 15 unless that person directly causes the discharge of a hazardous substance on or from the
 16 site;

17 (iv) A holder of a mortgage or deed of trust on a site containing a
 18 hazardous substance or a holder of a security interest in property located on the site who
 19 does not participate in the day-to-day management of the site unless that holder directly
 20 causes the discharge of a hazardous substance on or from the site;

21 (v) A fiduciary who has legal title to a site containing a hazardous
 22 substance or to property located on the site containing a hazardous substance for purpose
 23 of administering an estate or trust of which the site or property located on the site is a
 24 part unless the fiduciary:

25 1. Participates in the day-to-day management of the site or
 26 property; or

27 2. Directly causes the discharge of a hazardous substance on or
 28 from the site;

29 (vi) A holder of a mortgage or deed of trust who acquires title to a site
 30 containing a hazardous substance through foreclosure or deed in lieu of foreclosure who:

31 1. Does not participate in the day-to-day management of the
 32 site; and

33 2. Does not directly cause the discharge of a hazardous
 34 substance on or from the site; [or]

35 (vii) Except in the case of gross negligence or willful misconduct, an
 36 owner or operator who is:

37 1. A state, county, or municipal government;

38 2. Any other political subdivision of the State; or

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1 3. Any unit of a state, county, or municipal government or any
2 other political subdivision;

3 (VIII) A HOLDER OF A MORTGAGE OR DEED OF TRUST WHO
4 ACQUIRES TITLE TO AN ELIGIBLE PROPERTY AS DEFINED IN SUBTITLE 5 OF THIS
5 TITLE SUBJECT TO A WRITTEN AGREEMENT IN ACCORDANCE WITH SUBTITLE 5 OF
6 THIS TITLE PROVIDED THAT THE HOLDER COMPLIES WITH THE REQUIREMENTS,
7 PROHIBITIONS, AND CONDITIONS OF THE AGREEMENT;

8 (IX) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A LENDER
9 WHO EXTENDS CREDIT FOR THE PERFORMANCE OF REMOVAL OR REMEDIAL
10 ACTIONS CONDUCTED IN ACCORDANCE WITH REQUIREMENTS IMPOSED UNDER
11 THIS TITLE WHO:

12 1. HAS NOT CAUSED OR CONTRIBUTED TO A RELEASE OF
13 HAZARDOUS SUBSTANCES; AND

14 2. PREVIOUS TO EXTENDING THAT CREDIT, IS NOT A
15 RESPONSIBLE PERSON AT THE SITE;

16 (X) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A LENDER
17 WHO TAKES ACTION TO PROTECT OR PRESERVE A MORTGAGE OR DEED OF TRUST
18 ON A SITE OR A SECURITY INTEREST IN PROPERTY LOCATED ON A SITE AT WHICH A
19 RELEASE OR THREATENED RELEASE OF A HAZARDOUS SUBSTANCE HAS
20 OCCURRED, BY STABILIZING, CONTAINING, REMOVING, OR PREVENTING THE
21 RELEASE OF A HAZARDOUS SUBSTANCE IN A MANNER THAT DOES NOT CAUSE OR
22 CONTRIBUTE TO A RELEASE OR SIGNIFICANTLY INCREASE THE THREAT OF
23 RELEASE OF A HAZARDOUS SUBSTANCE AT THE SITE IF:

24 1. THE LENDER PROVIDES ADVANCE WRITTEN NOTICE OF
25 ITS ACTIONS TO THE DEPARTMENT OR IN THE EVENT OF AN EMERGENCY IN WHICH
26 ACTION IS REQUIRED WITHIN 2 HOURS, PROVIDES NOTICE BY TELEPHONE;

27 2. THE LENDER, PREVIOUS TO TAKING THE ACTION, IS NOT
28 A RESPONSIBLE PERSON FOR THE SITE; AND

29 3. THE ACTION TAKEN DOES NOT VIOLATE A PROVISION OF
30 THIS ARTICLE; OR

31 (XI) A PERSON WHO RECEIVES A RESPONSE ACTION PLAN
32 APPROVAL LETTER AS AN INCULPABLE PERSON OR THE PERSON'S SUCCESSOR IN
33 TITLE WHO IS ALSO AN INCULPABLE PERSON UNDER SUBTITLE 5 OF THIS TITLE AND
34 WHO DOES NOT CAUSE OR CONTRIBUTE TO NEW CONTAMINATION OR EXACERBATE
35 EXISTING CONTAMINATION AS PROVIDED IN §§ 7-505 AND 7-514 OF THIS TITLE.

36 (3) A LENDER TAKING ACTION TO PROTECT OR PRESERVE A
37 MORTGAGE OR DEED OF TRUST OR SECURITY INTEREST IN A PROPERTY LOCATED
38 ON A SITE, WHO CAUSES OR CONTRIBUTES TO A RELEASE OF A HAZARDOUS
39 SUBSTANCE SHALL BE LIABLE SOLELY FOR COSTS INCURRED AS A RESULT OF THE
40 RELEASE WHICH THE LENDER CAUSED OR TO WHICH THE LENDER CONTRIBUTED
41 UNLESS THE LENDER WAS A RESPONSIBLE PERSON PRIOR TO TAKING THE ACTION.

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1 [(3)] (4) (i) Paragraph (2)(i) of this subsection does not affect the
2 liability of a previous owner or previous operator of a site containing a hazardous
3 substance if the previous owner or previous operator is a responsible person under
4 paragraph (1)(ii) of this subsection.

5 (ii) Notwithstanding paragraph (2)(i) of this subsection, a person shall
6 be treated as a responsible person if the person:

7 1. Obtained actual knowledge of the release or threatened
8 release of a hazardous substance at a site when the person owned the real property; and

9 2. Transferred ownership of the property after June 30, 1991
10 without disclosing this knowledge to the transferee.

11 (iii) Nothing in paragraph (2)(i) of this subsection shall affect the
12 liability under this subtitle of a person who, by any act or omission, caused or contributed
13 to the release or threatened release of a hazardous substance at a site which is the subject
14 of the action relating to the site if at the time of the act or omission the person knew or
15 had reason to know that the act or omission would cause or contribute to the release or
16 threatened release of a hazardous substance.

17 [(4)] (5) Notwithstanding paragraph (2)(ii) of this subsection, a person shall
18 be treated as a responsible person if the person:

19 (i) Knew or had reason to know of the release or threatened release
20 of a hazardous substance at the site; and

21 (ii) Transferred ownership of the property after June 30, 1991 without
22 disclosing this knowledge to the transferee.

23 [(5)] (6) (i) For purposes of paragraph (2)(iii), (iv), (v), and (vi) of this
24 subsection, "management" means directing or controlling operations, production or
25 treatment of a hazardous substance, storage or disposal of a hazardous substance, or
26 remediation of a hazardous substance release.

27 (ii) "Management" does not include rendering advice on financial
28 matters, rendering financial assistance, or actions taken to protect or secure the site or
29 property located on the site if the advice, assistance, or actions do not involve the
30 treatment, storage, or disposal of a hazardous substance or remediation of a hazardous
31 substance release.

32 SUBTITLE 5. VOLUNTARY CLEANUP PROGRAM.

33 7-501. DEFINITIONS.

34 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
35 INDICATED.

36 (B) (1) "ACTIVE ENFORCEMENT" MEANS AFTER THE DEPARTMENT HAS
37 ISSUED A NOTICE OF VIOLATION, ORDER, CONSENT ORDER, OR OTHER
38 ENFORCEMENT ACTION OF THE DEPARTMENT AND UNTIL COMPLETION OF
39 ACTIVITIES REQUIRED BY THAT ACTION.

1 (2) FOR PURPOSES OF PARAGRAPH (1) OF THIS SUBSECTION, "OTHER
2 ENFORCEMENT ACTION" DOES NOT INCLUDE A SITE COMPLAINT.

3 (C) "APPLICANT" MEANS A PERSON WHO APPLIES TO PARTICIPATE IN THE
4 VOLUNTARY CLEANUP PROGRAM.

5 (D) "BACKGROUND LEVEL" MEANS THE LEVEL OF A SUBSTANCE OCCURRING
6 NATURALLY AT THE SITE PRIOR TO ANY MANMADE SPILL OR RELEASE.

7 (E) "CONTAMINATION" MEANS A RELEASE, DISCHARGE, OR THREATENED
8 RELEASE OF A CONTROLLED HAZARDOUS SUBSTANCE, AS DEFINED IN § 7-201 OF
9 THIS TITLE.

10 (F) "ELIGIBLE APPLICANT" MEANS:

11 (1) A RESPONSIBLE PERSON WHO HAS NOT KNOWINGLY OR WILLFULLY
12 VIOLATED ANY LAW OR REGULATION CONCERNING CONTROLLED HAZARDOUS
13 SUBSTANCES; OR

14 (2) AN INculpABLE PERSON.

15 (G) (1) "ELIGIBLE PROPERTY" MEANS PROPERTY THAT IS CONTAMINATED
16 OR PERCEIVED TO BE CONTAMINATED.

17 (2) "ELIGIBLE PROPERTY" DOES NOT INCLUDE PROPERTY THAT IS:

18 (I) ON THE NATIONAL PRIORITIES LIST UNDER § 105 OF THE
19 FEDERAL ACT;

20 (II) UNDER ACTIVE ENFORCEMENT; OR

21 (III) SUBJECT TO A CONTROLLED HAZARDOUS SUBSTANCES
22 PERMIT ISSUED IN ACCORDANCE WITH TITLE 7 OF THIS ARTICLE.

23 (3) "ELIGIBLE PROPERTY" INCLUDES SITES LISTED ON THE
24 COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY
25 INFORMATION SYSTEM.

26 (H) "FEDERAL ACT" HAS THE MEANING STATED IN § 7-201(K) OF THIS TITLE.

27 (I) "IMMINENT AND SUBSTANTIAL ENDANGERMENT" MEANS A RELEASE OR
28 THREATENED RELEASE OF A HAZARDOUS SUBSTANCE THAT MAY POSE A RISK OF
29 SIGNIFICANT HARM TO THE PUBLIC HEALTH OR THE ENVIRONMENT AT SOME
30 FORESEEABLE TIME IN THE FUTURE AND IS NOT LIMITED TO AN EMERGENCY
31 SITUATION.

32 (J) (1) "INculpABLE PERSON" MEANS A PERSON WHO:

33 (I) HAS NO PRIOR OR CURRENT OWNERSHIP INTEREST IN AN
34 ELIGIBLE PROPERTY AT THE TIME OF APPLICATION TO PARTICIPATE IN THE
35 VOLUNTARY CLEANUP PROGRAM; AND

1 (II) HAS NOT CAUSED OR CONTRIBUTED TO CONTAMINATION AT
2 THE ELIGIBLE PROPERTY AT THE TIME OF APPLICATION TO PARTICIPATE IN THE
3 VOLUNTARY CLEANUP PROGRAM.

4 (2) "INCULPABLE PERSON" INCLUDES A SUCCESSOR IN INTEREST IN AN
5 ELIGIBLE PROPERTY ACQUIRED FROM AN INCULPABLE PERSON, AS DEFINED IN
6 PARAGRAPH (1) OF THIS SUBSECTION, IF THE SUCCESSOR IN INTEREST DOES NOT
7 HAVE A PRIOR OWNERSHIP INTEREST IN THE ELIGIBLE PROPERTY AND, OTHER
8 THAN BY VIRTUE OF OWNERSHIP OF THE ELIGIBLE PROPERTY, IS NOT OTHERWISE A
9 RESPONSIBLE PERSON AT THE ELIGIBLE PROPERTY.

10 (K) "PARTICIPANT" MEANS AN APPLICANT ACCEPTED INTO THE VOLUNTARY
11 CLEANUP PROGRAM.

12 (L) "PREVIOUSLY UNDISCOVERED CONTAMINATION" MEANS
13 CONTAMINATION AT AN ELIGIBLE PROPERTY WHICH WAS NOT IDENTIFIED OR
14 ADDRESSED IN A NOTICE OF NO FURTHER REQUIREMENTS OR RESPONSE ACTION
15 PLAN.

16 (M) "PROGRAM" MEANS THE VOLUNTARY CLEANUP PROGRAM ESTABLISHED
17 UNDER THIS SUBTITLE.

18 (N) "RESPONSIBLE PERSON" HAS THE MEANING STATED IN § 7-201(X) OF THIS
19 TITLE.

20 7-502. AUTHORITY OF DEPARTMENT.

21 (A) IN ADDITION TO THE POWERS SET FORTH ELSEWHERE IN THIS ARTICLE,
22 THE DEPARTMENT MAY:

23 (1) ACCEPT AND ADMINISTER LOANS AND GRANTS FROM THE FEDERAL
24 GOVERNMENT AND OTHER SOURCES, PUBLIC OR PRIVATE, TO CARRY OUT ANY OF
25 ITS FUNCTIONS UNDER THIS SUBTITLE; AND

26 (2) ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS
27 SUBTITLE.

28 (B) TO IMPLEMENT THE REQUIREMENTS OF THIS SUBTITLE, THE
29 DEPARTMENT SHALL DEVELOP AND USE STANDARDIZED APPLICATIONS,
30 CERTIFICATES OF COMPLETION, AND OTHER FORMS.

31 7-503. VOLUNTARY CLEANUP PROGRAM.

32 (A) THERE IS A VOLUNTARY CLEANUP PROGRAM IN THE DEPARTMENT.

33 (B) THE PURPOSE OF THE VOLUNTARY CLEANUP PROGRAM IS TO:

34 (1) ENCOURAGE THE INVESTIGATION OF ELIGIBLE PROPERTIES WITH
35 KNOWN OR PERCEIVED CONTAMINATION;

36 (2) PROTECT PUBLIC HEALTH AND THE ENVIRONMENT WHERE
37 CLEANUP PROJECTS ARE BEING PERFORMED OR NEED TO BE PERFORMED;

38 (3) ACCELERATE CLEANUP OF ELIGIBLE PROPERTIES; AND

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1 (4) PROVIDE PREDICTABILITY AND FINALITY TO THE CLEANUP OF
2 ELIGIBLE PROPERTIES.

3 7-504. VOLUNTARY CLEANUP FUND.

4 (A) (1) THERE IS A VOLUNTARY CLEANUP FUND ESTABLISHED AS A
5 NONLAPSING, REVOLVING SPECIAL FUND.

6 (2) MONEYS CREDITED AND ANY INTEREST ACCRUED TO THE FUND:

7 (I) SHALL REMAIN AVAILABLE UNTIL EXPENDED; AND

8 (II) MAY NOT BE REVERTED TO THE GENERAL FUND UNDER ANY
9 OTHER PROVISION OF LAW.

10 (B) ALL APPLICATION FEES AND OTHER MONEYS COLLECTED BY THE
11 DEPARTMENT UNDER THIS SUBTITLE FROM APPLICANTS IN THE PROGRAM SHALL
12 BE PAID TO THE VOLUNTARY CLEANUP FUND.

13 (C) MONEYS APPROPRIATED, GRANTED, LOANED, OR OTHERWISE PROVIDED
14 TO THE DEPARTMENT FOR THE SUPPORT OF THE PROGRAM SHALL BE PAID TO THE
15 VOLUNTARY CLEANUP FUND.

16 (D) THE DEPARTMENT MAY USE:

17 (1) THE APPLICATION FEES IN THE VOLUNTARY CLEANUP FUND FOR
18 ACTIVITIES RELATED TO THE REVIEW OF PROPOSED VOLUNTARY CLEANUP
19 PROJECTS AND THE DIRECT ADMINISTRATIVE OVERSIGHT OF VOLUNTARY
20 CLEANUP PROJECTS, INCLUDING COST RECOVERY AND PROGRAM DEVELOPMENT;
21 AND

22 (2) ANY MONEYS, OTHER THAN APPLICATION FEES, IN THE
23 VOLUNTARY CLEANUP FUND FOR ANY ACTIVITIES RELATING TO THE VOLUNTARY
24 CLEANUP PROGRAM.

25 7-505. LIABILITY OF INculpABLE PERSON.

26 (A) IF THE DEPARTMENT APPROVES AN APPLICANT'S STATUS AS AN
27 INculpABLE PERSON UNDER § 7-506(B)(1)(I)1 OF THIS SUBTITLE, THE PARTICIPANT'S
28 STATUS AS AN INculpABLE PERSON CONTINUES UPON ACQUIRING AN INTEREST IN
29 THE ELIGIBLE PROPERTY.

30 (B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, AN
31 INculpABLE PERSON IS NOT LIABLE FOR EXISTING CONTAMINATION AT THE
32 ELIGIBLE PROPERTY.

33 (C) AN INculpABLE PERSON SHALL BE LIABLE FOR:

34 (1) NEW CONTAMINATION THAT THE PERSON CAUSES OR
35 CONTRIBUTES TO AT THE ELIGIBLE PROPERTY; AND

36 (2) EXACERBATION OF EXISTING CONTAMINATION AT THE ELIGIBLE
37 PROPERTY.

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1 7-506. APPLICATION REQUIREMENTS.

2 (A) TO PARTICIPATE IN THE PROGRAM, AN APPLICANT SHALL:

3 (1) SUBMIT AN APPLICATION, ON A FORM PROVIDED BY THE
4 DEPARTMENT, THAT INCLUDES:

5 (I) INFORMATION DEMONSTRATING TO THE SATISFACTION OF
6 THE DEPARTMENT THAT THE CONTAMINATION DID NOT RESULT FROM THE
7 APPLICANT KNOWINGLY OR WILLFULLY VIOLATING ANY LAW OR REGULATION
8 CONCERNING CONTROLLED HAZARDOUS SUBSTANCES;

9 (II) INFORMATION DEMONSTRATING THE PERSON'S STATUS AS A
10 RESPONSIBLE PERSON OR AN INculpABLE PERSON;

11 (III) INFORMATION DEMONSTRATING THAT THE PROPERTY IS AN
12 ELIGIBLE PROPERTY AS DEFINED IN § 7-501 OF THIS SUBTITLE;

13 (IV) A DETAILED REPORT WITH ALL AVAILABLE RELEVANT
14 INFORMATION ON ENVIRONMENTAL CONDITIONS INCLUDING CONTAMINATION AT
15 THE ELIGIBLE PROPERTY KNOWN TO THE APPLICANT AT THE TIME OF THE
16 APPLICATION;

17 (V) AN ENVIRONMENTAL SITE ASSESSMENT THAT INCLUDES
18 ESTABLISHED PHASE I AND PHASE II SITE ASSESSMENT STANDARDS AND FOLLOWS
19 PRINCIPLES ESTABLISHED BY THE AMERICAN SOCIETY FOR TESTING AND
20 MATERIALS AND THAT DEMONSTRATES TO THE SATISFACTION OF THE
21 DEPARTMENT THAT THE ASSESSMENT HAS ADEQUATELY INVESTIGATED ALL
22 POTENTIAL SOURCES AND AREAS OF CONTAMINATION; AND

23 (VI) A DESCRIPTION, IN SUMMARY FORM, OF A PROPOSED
24 VOLUNTARY CLEANUP PROJECT THAT INCLUDES THE PROPOSED CLEANUP
25 CRITERIA UNDER § 7-508 OF THIS SUBTITLE AND THE PROPOSED FUTURE USE OF
26 THE PROPERTY, IF APPROPRIATE; AND

27 (2) PAY TO THE DEPARTMENT AN APPLICATION FEE OF \$6,000.

28 (B) (1) (I) THE DEPARTMENT SHALL NOTIFY THE APPLICANT IN
29 WRITING, WITHIN 60 DAYS AFTER RECEIPT OF THE APPLICATION, WHETHER:

30 1. THE APPLICATION, INCLUDING THE APPLICANT'S STATUS
31 AS A RESPONSIBLE PERSON OR AN INculpABLE PERSON, IS APPROVED;

32 2. THE APPLICATION IS DENIED; OR

33 3. THE DEPARTMENT HAS NO FURTHER REQUIREMENTS
34 RELATED TO THE INVESTIGATION OF CONTROLLED HAZARDOUS SUBSTANCES AT
35 THE ELIGIBLE PROPERTY AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION.

36 (II) IF THE DEPARTMENT DENIES THE APPLICATION, THE
37 DEPARTMENT SHALL PROVIDE TO THE APPLICANT THE REASONS FOR ITS DECISION
38 IN WRITING.

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1 (2) (I) AN APPLICANT MAY RESUBMIT AN APPLICATION WITHIN 60
2 DAYS AFTER RECEIPT OF NOTICE OF THE DEPARTMENT'S DECISION TO DENY THE
3 INITIAL APPLICATION.

4 (II) THE DEPARTMENT SHALL APPROVE OR DENY A RESUBMITTED
5 APPLICATION WITHIN 30 DAYS AFTER RECEIPT.

6 (3) IF THE DEPARTMENT NOTIFIES THE APPLICANT THAT THE
7 DEPARTMENT HAS NO FURTHER REQUIREMENTS AT THE ELIGIBLE PROPERTY IN
8 ACCORDANCE WITH PARAGRAPH (1)(I)3 OF THIS SUBSECTION, THE DEPARTMENT
9 SHALL INCLUDE A STATEMENT THAT THIS NOTICE DOES NOT:

10 (I) SUBJECT TO THE PROVISIONS OF § 7-505 OF THIS SUBTITLE,
11 PREVENT THE DEPARTMENT FROM TAKING ACTION AGAINST ANY PERSON TO
12 PREVENT OR ABATE AN IMMINENT AND SUBSTANTIAL ENDANGERMENT TO THE
13 PUBLIC HEALTH OR THE ENVIRONMENT AT THE ELIGIBLE PROPERTY;

14 (II) REMAIN IN EFFECT IF THE NOTICE OF NO FURTHER
15 REQUIREMENTS IS OBTAINED THROUGH FRAUD OR A MATERIAL
16 MISREPRESENTATION;

17 (III) AFFECT THE AUTHORITY OF THE DEPARTMENT TO TAKE ANY
18 ACTION AGAINST A RESPONSIBLE PERSON CONCERNING PREVIOUSLY
19 UNDISCOVERED CONTAMINATION AT AN ELIGIBLE PROPERTY AFTER A NO
20 FURTHER REQUIREMENTS NOTICE HAS BEEN ISSUED BY THE DEPARTMENT; OR

21 (IV) AFFECT THE AUTHORITY OF THE DEPARTMENT TO REQUIRE
22 ADDITIONAL CLEANUP FOR FUTURE ACTIVITIES AT THE SITE THAT RESULT IN
23 CONTAMINATION BY HAZARDOUS SUBSTANCES.

24 (C) (1) THE DEPARTMENT SHALL DENY AN APPLICATION IF:

25 (I) THE APPLICANT IS NOT AN ELIGIBLE APPLICANT;

26 (II) THE PROPERTY IS NOT AN ELIGIBLE PROPERTY; OR

27 (III) THE PROPERTY WAS INITIALLY CONTAMINATED BY A
28 RELEASE OF HAZARDOUS SUBSTANCES AFTER OCTOBER 1, 1997 UNLESS:

29 1. THE PROPERTY IS ACQUIRED BY AN INCULPABLE
30 PERSON; OR

31 2. THE CONTAMINATION WAS CAUSED BY AN ACT OF GOD.

32 (2) FOR THE PURPOSES OF PARAGRAPH (1) (III) OF THIS SUBSECTION,
33 ANY PROPERTY IDENTIFIED IN THE COMPREHENSIVE ENVIRONMENTAL RESPONSE,
34 COMPENSATION AND LIABILITY INFORMATION SYSTEM IN ACCORDANCE WITH THE
35 FEDERAL ACT AS OF OCTOBER 1, 1997 IS PRESUMED TO HAVE BEEN INITIALLY
36 CONTAMINATED ON OR BEFORE OCTOBER 1, 1997.

37 (D) (1) IF THE DIRECT COSTS OF REVIEW OF THE APPLICATION AND
38 ADMINISTRATION AND OVERSIGHT OF THE RESPONSE ACTION PLAN EXCEED \$6,000,

13

1 THE DEPARTMENT SHALL REQUIRE AN APPLICANT OR PARTICIPANT TO PAY TO THE
2 DEPARTMENT THE ADDITIONAL COSTS INCURRED BY THE DEPARTMENT.

3 (2) IF THE DIRECT COSTS OF REVIEW OF THE APPLICATION AND
4 ADMINISTRATION AND OVERSIGHT OF THE RESPONSE ACTION PLAN ARE LESS
5 THAN \$6,000, THE DEPARTMENT SHALL REFUND TO THE APPLICANT OR
6 PARTICIPANT THE DIFFERENCE BETWEEN THE COSTS INCURRED AND THE
7 APPLICATION FEE.

8 (E) (1) WITHIN 30 DAYS AFTER RECEIVING NOTIFICATION OF APPROVAL OF
9 AN APPLICATION, A PARTICIPANT SHALL INFORM THE DEPARTMENT IN WRITING
10 WHETHER THE PARTICIPANT INTENDS TO PROCEED OR WITHDRAW FROM THE
11 PROGRAM.

12 (2) IF A PARTICIPANT DOES NOT NOTIFY THE DEPARTMENT OF THE
13 PARTICIPANT'S INTENT TO PROCEED OR WITHDRAW IN ACCORDANCE WITH
14 PARAGRAPH (1) OF THIS SUBSECTION, THE APPLICATION WILL BE DEEMED TO BE
15 WITHDRAWN.

16 7-507. REQUEST FOR DETERMINATION OF BROWNFIELDS REVITALIZATION
17 INCENTIVE ELIGIBILITY.

18 WHEN AN APPLICANT SUBMITS AN APPLICATION UNDER § 7-506 OF THIS
19 SUBTITLE, THE APPLICANT ALSO MAY SUBMIT A REQUEST TO THE DEPARTMENT OF
20 BUSINESS AND ECONOMIC DEVELOPMENT TO DETERMINE THE APPLICANT'S
21 ELIGIBILITY TO QUALIFY FOR FINANCIAL INCENTIVES FOR THE REDEVELOPMENT
22 OF A BROWNFIELDS SITE IN ACCORDANCE WITH ARTICLE 83A, TITLE 3, SUBTITLE 9
23 OF THE CODE.

24 7-508. REQUIREMENTS OF RESPONSE ACTION PLAN.

25 (A) AFTER THE DEPARTMENT APPROVES AN APPLICATION IN ACCORDANCE
26 WITH § 7-506 OF THIS SUBTITLE, THE PARTICIPANT SHALL DEVELOP A RESPONSE
27 ACTION PLAN THAT INCLUDES:

28 (1) A PLAN FOR ALL WORK NECESSARY TO PERFORM THE PROPOSED
29 RESPONSE ACTION PLAN, INCLUDING LONG-TERM MONITORING AND
30 MAINTENANCE OF THE SITE, IF NECESSARY;

31 (2) A DEMONSTRATION TO THE SATISFACTION OF THE DEPARTMENT
32 THAT THE PROPOSED RESPONSE ACTION PLAN:

33 (I) WILL ACHIEVE THE APPROPRIATE CRITERIA UNDER
34 SUBSECTION (B) OF THIS SECTION; AND

35 (II) WILL PROTECT PUBLIC HEALTH AND THE ENVIRONMENT
36 ONCE COMPLETED;

37 (3) A CERTIFIED WRITTEN STATEMENT THAT THE PROPERTY MEETS
38 ALL APPLICABLE COUNTY AND MUNICIPAL ZONING REQUIREMENTS; AND

14

1 (4) ANY OTHER INFORMATION RELATED TO THE PROPOSED RESPONSE
2 ACTION PLAN THAT THE DEPARTMENT MAY REASONABLY REQUIRE TO DETERMINE
3 THAT THE PLAN MEETS THE REQUIREMENTS OF THIS SUBTITLE.

4 (B) A PARTICIPANT SHALL SELECT ONE OR MORE OF THE FOLLOWING
5 CRITERIA THAT PROTECTS PUBLIC HEALTH AND THE ENVIRONMENT, AS MAY BE
6 APPROPRIATE WHEN PROPOSING A RESPONSE ACTION PLAN:

7 (1) UNIFORM NUMERIC RISK-BASED STANDARDS;

8 (2) STANDARDS BASED ON SITE-SPECIFIC RISK ASSESSMENTS;

9 (3) BACKGROUND LEVELS;

10 (4) FEDERAL OR STATE SOIL STANDARDS OR WATER QUALITY
11 STANDARDS;

12 (5) STANDARDS BASED ON FEDERAL OR STATE MAXIMUM
13 CONTAMINANT LEVELS (MCLS); OR

14 (6) ANY OTHER FEDERAL OR STATE STANDARDS.

15 (C) THE RESPONSE ACTION PLAN SHALL:

16 (1) ENUMERATE THE RESPONSIBILITIES AND DUTIES OF THE
17 DEPARTMENT AND THE PARTICIPANT;

18 (2) INCLUDE A SCHEDULE FOR THE IMPLEMENTATION AND
19 COMPLETION OF THE RESPONSE ACTION PLAN;

20 (3) INCLUDE A WRITTEN AGREEMENT THAT IF THE RESPONSE ACTION
21 PLAN IS APPROVED, THE PARTICIPANT AGREES, SUBJECT TO THE WITHDRAWAL
22 PROVISIONS SET FORTH IN § 7-512 OF THIS SUBTITLE, TO COMPLY WITH THE
23 PROVISIONS OF THE PLAN; AND

24 (4) INCLUDE A PROPOSAL FOR THE FILING OF A PERFORMANCE BOND
25 OR OTHER SECURITY IN ACCORDANCE WITH THE REQUIREMENTS OF SUBSECTION
26 (D) OF THIS SECTION.

27 (D) (1) A PARTICIPANT SHALL FILE A PERFORMANCE BOND OR OTHER
28 SECURITY WITH THE DEPARTMENT WITHIN 10 DAYS AFTER RECEIVING THE
29 DEPARTMENT'S APPROVAL OF A RESPONSE ACTION PLAN AND BEFORE THE
30 PARTICIPANT MAY PERFORM ANY WORK ON THE SITE.

31 (2) (I) THE PERFORMANCE BOND REQUIRED UNDER PARAGRAPH (1)
32 OF THIS SUBSECTION SHALL BE IN AN AMOUNT DETERMINED BY THE DEPARTMENT
33 TO BE NECESSARY TO SECURE AND STABILIZE THE SITE BASED ON THE EXTENT OF
34 CONTAMINATION AT THE SITE.

35 (II) THE MARKET VALUE OF OTHER SECURITY DEPOSITED UNDER
36 THIS SECTION MAY NOT BE LESS THAN THE AMOUNT SPECIFIED IN SUBPARAGRAPH
37 (I) OF THIS PARAGRAPH.

15

1 (3) THE OBLIGATION OF THE BOND FILED UNDER THIS SECTION SHALL
2 BE VOID UPON THE ISSUANCE OF A CERTIFICATE OF COMPLETION TO THE
3 PARTICIPANT OR, IF THE PARTICIPANT WITHDRAWS FROM THE PROGRAM, 16
4 MONTHS AFTER THE DATE OF WITHDRAWAL.

5 (4) THE OBLIGATION OF THE PARTICIPANT UNDER THE BOND OR
6 OTHER SECURITY SHALL BECOME DUE AND PAYABLE UPON NOTIFICATION BY THE
7 DEPARTMENT THAT ACTIONS MUST BE TAKEN TO FULFILL THE REQUIREMENTS OF
8 § 7-512 OF THIS SUBTITLE TO THE EXTENT THE REQUIREMENTS OF § 7-512 OF THIS
9 SUBTITLE APPLY TO THE PARTICIPANT.

10 (E) (1) THE DEPARTMENT MAY ADOPT UNIFORM NUMERIC RISK-BASED
11 STANDARDS BY REGULATION BASED ON RESIDENTIAL AND INDUSTRIAL USES
12 UNDER SUBSECTION (B) OF THIS SECTION.

13 (2) THE DEPARTMENT SHALL REVIEW UNIFORM NUMERIC RISK-BASED
14 STANDARDS EVERY 4 YEARS AND MAY REVISE THE STANDARDS.

15 (F) THIS SECTION MAY NOT BE CONSTRUED TO ELIMINATE OR OTHERWISE
16 AFFECT ANY OTHER PROVISION OF LAW REQUIRING A PERSON TO REPORT A
17 RELEASE OR A THREAT OF A RELEASE OF A CONTROLLED HAZARDOUS SUBSTANCE
18 ON A SITE.

19 7-509. PUBLIC PARTICIPATION.

20 (A) UPON SUBMISSION OF A PROPOSED RESPONSE ACTION PLAN, THE
21 PARTICIPANT:

22 (1) SHALL PUBLISH A NOTICE OF A PROPOSED RESPONSE ACTION PLAN
23 ONCE A WEEK FOR 2 CONSECUTIVE WEEKS IN A DAILY OR WEEKLY NEWSPAPER OF
24 GENERAL CIRCULATION IN THE GEOGRAPHICAL AREA IN WHICH THE ELIGIBLE
25 PROPERTY IS LOCATED THAT SHALL INCLUDE:

26 (I) A SUMMARY OF THE PROPOSED RESPONSE ACTION PLAN;

27 (II) THE NAME AND ADDRESS OF THE PARTICIPANT AND ELIGIBLE
28 PROPERTY;

29 (III) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE
30 OFFICE WITHIN THE DEPARTMENT FROM WHICH INFORMATION ABOUT THE
31 PROPOSED RESPONSE ACTION PLAN MAY BE OBTAINED;

32 (IV) AN ADDRESS TO WHICH PERSONS MAY SUBMIT WRITTEN
33 COMMENTS ABOUT THE PROPOSED RESPONSE ACTION PLAN OR REQUEST A PUBLIC
34 INFORMATIONAL MEETING; AND

35 (V) A DEADLINE FOR THE CLOSE OF THE PUBLIC COMMENT
36 PERIOD BY WHICH WRITTEN COMMENTS OR REQUESTS FOR A PUBLIC
37 INFORMATIONAL MEETING MUST BE RECEIVED BY THE DEPARTMENT; AND

38 (2) SHALL POST AT THE ELIGIBLE PROPERTY A NOTICE OF INTENT TO
39 CONDUCT A RESPONSE ACTION PLAN AT THAT PROPERTY.

16

1 (B) THE DEPARTMENT SHALL RECEIVE WRITTEN COMMENTS FROM THE
2 PUBLIC FOR 30 DAYS AFTER PUBLICATION REQUIRED UNDER THIS SECTION.

3 (C) THE DEPARTMENT SHALL HOLD A PUBLIC INFORMATIONAL MEETING ON
4 THE PROPOSED RESPONSE ACTION PLAN AT THE PARTICIPANT'S EXPENSE WITHIN 30
5 DAYS AFTER THE DEPARTMENT RECEIVES A WRITTEN REQUEST FOR A MEETING
6 FROM THE APPLICANT OR THE PUBLIC.

7 7-510. STANDARDS FOR APPROVAL OF RESPONSE ACTION PLAN.

8 (A) THE DEPARTMENT SHALL APPROVE A RESPONSE ACTION PLAN IF THE
9 DEPARTMENT DETERMINES THAT THE RESPONSE ACTION PLAN PROTECTS PUBLIC
10 HEALTH AND THE ENVIRONMENT.

11 (B) IN MAKING A DETERMINATION AS TO WHETHER THE CRITERIA
12 SELECTED BY THE PARTICIPANT AND REMEDIAL ACTIONS IN A PROPOSED
13 RESPONSE ACTION PLAN PROTECT PUBLIC HEALTH AND THE ENVIRONMENT, THE
14 DEPARTMENT SHALL CONSIDER WHETHER THE ELIGIBLE PROPERTY IS:

15 (1) LOCATED IN AN INDUSTRIAL AREA AND USED FOR INDUSTRIAL
16 PURPOSES;

17 (2) LOCATED IN A RESIDENTIAL AREA AND USED FOR INDUSTRIAL
18 PURPOSES; OR

19 (3) LOCATED IN A RESIDENTIAL AREA AND USED FOR RESIDENTIAL OR
20 OTHER PURPOSES THAT REQUIRE UNLIMITED PUBLIC ACCESS.

21 (C) THE FAILURE OF THE DEPARTMENT TO ADOPT FINAL REGULATIONS
22 UNDER THIS SUBTITLE MAY NOT PREVENT THE DEPARTMENT FROM APPROVING A
23 RESPONSE ACTION PLAN ON AN INDIVIDUAL PLAN BASIS.

24 7-511. DECISION ON RESPONSE ACTION PLAN AND RESPONSE ACTION PLAN LETTER.

25 (A) WITHIN 120 DAYS AFTER THE DEPARTMENT HAS RECEIVED A PROPOSED
26 RESPONSE ACTION PLAN, THE DEPARTMENT, AFTER CONSIDERING ANY COMMENTS
27 THE DEPARTMENT HAS RECEIVED UNDER § 7-509 OF THIS SUBTITLE, SHALL NOTIFY
28 THE PARTICIPANT IN WRITING THAT:

29 (1) THE RESPONSE ACTION PLAN HAS BEEN APPROVED; OR

30 (2) THE RESPONSE ACTION PLAN HAS BEEN REJECTED AND SHALL
31 STATE THE MODIFICATIONS IN THE RESPONSE ACTION PLAN THAT ARE NECESSARY
32 TO RECEIVE THE DEPARTMENT'S APPROVAL.

33 (B) (1) (I) IF THE DEPARTMENT NOTIFIES A PARTICIPANT THAT
34 MODIFICATIONS IN A RESPONSE ACTION PLAN ARE NECESSARY TO RECEIVE THE
35 DEPARTMENT'S APPROVAL, THE PARTICIPANT MAY RESUBMIT THE PLAN WITHIN 120
36 DAYS AFTER RECEIPT OF THE DEPARTMENT'S NOTIFICATION.

37 (II) IF THE PARTICIPANT DOES NOT RESUBMIT THE PLAN WITHIN
38 120 DAYS UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE PARTICIPANT WILL
39 BE CONSIDERED TO HAVE WITHDRAWN THE PARTICIPANT'S APPLICATION IN
40 ACCORDANCE WITH § 7-512 OF THIS SUBTITLE.

17

1 (2) WITHIN 30 DAYS AFTER RECEIPT OF A RESUBMITTED PLAN UNDER
2 PARAGRAPH (1) OF THIS SUBSECTION, THE DEPARTMENT SHALL NOTIFY THE
3 PARTICIPANT WHETHER THE PLAN HAS BEEN APPROVED.

4 (C) THE RESPONSE ACTION PLAN APPROVAL LETTER SHALL STATE THAT,
5 SUBJECT TO THE REQUIREMENTS OF § 7-514 OF THIS SUBTITLE:

6 (1) NO FURTHER ACTION WILL BE REQUIRED TO ACCOMPLISH THE
7 OBJECTIVES SET FORTH IN THE APPROVED RESPONSE ACTION PLAN OTHER THAN
8 THOSE ACTIONS DESCRIBED IN THE APPROVED RESPONSE ACTION PLAN; AND

9 (2) THE PARTICIPANT WILL RECEIVE A CERTIFICATE OF COMPLETION
10 SUBJECT TO THE CONDITIONS AND REQUIREMENTS OF § 7-514(B) OF THIS SUBTITLE
11 IF:

12 (I) THE APPROVED RESPONSE ACTION PLAN IS IMPLEMENTED TO
13 THE SATISFACTION OF THE DEPARTMENT; AND

14 (II) THE RESPONSE ACTION PLAN HAS ACHIEVED THE CLEANUP
15 CRITERIA.

16 (D) A RESPONSE ACTION PLAN APPROVAL LETTER MAY INCLUDE A
17 LIMITATION ON THE PERMISSIBLE USES OF THE PROPERTY THAT IS CONSISTENT
18 WITH THE RESPONSE ACTION PLAN.

19 7-512. WITHDRAWAL PROVISIONS; FAILURE TO COMPLY WITH SCHEDULE.

20 (A) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS SECTION, A
21 PARTICIPANT MAY WITHDRAW AN APPLICATION OR RESPONSE ACTION PLAN AT
22 ANY TIME UNDER THE PROGRAM, INCLUDING AFTER RECEIVING A CERTIFICATE OF
23 COMPLETION, AND MAY NOT BE OBLIGATED TO COMPLETE AN APPLICATION OR A
24 RESPONSE ACTION PLAN IF THE PARTICIPANT:

25 (1) PROVIDES 10 DAYS WRITTEN NOTICE OF THE ANTICIPATED
26 WITHDRAWAL TO THE DEPARTMENT;

27 (2) STABILIZES AND SECURES THE ELIGIBLE PROPERTY TO THE
28 SATISFACTION OF THE DEPARTMENT TO ENSURE PROTECTION OF THE PUBLIC
29 HEALTH AND THE ENVIRONMENT; AND

30 (3) FORFEITS ANY APPLICATION AND OVERSIGHT FEES.

31 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN
32 INCULPABLE PERSON WHO WITHDRAWS FROM THE PROGRAM MAY NOT BE
33 REQUIRED BY THE DEPARTMENT TO CLEANUP THE ELIGIBLE PROPERTY.

34 (2) IF AN INCULPABLE PERSON WITHDRAWS FROM THE PROGRAM, THE
35 INCULPABLE PERSON SHALL BE LIABLE FOR NEW CONTAMINATION OR THE
36 EXACERBATION OF EXISTING CONTAMINATION AT THE ELIGIBLE PROPERTY AS
37 PROVIDED IN § 7-505 OF THIS SUBTITLE.

38 (C) IF A RESPONSIBLE PERSON WITHDRAWS FROM THE PROGRAM, THE
39 DEPARTMENT MAY TAKE ANY APPLICABLE ENFORCEMENT ACTION AUTHORIZED
40 UNDER THIS TITLE.

18

1 (D) IF A PARTICIPANT FAILS TO MEET THE SCHEDULE FOR IMPLEMENTATION
2 AND COMPLETION OF THE RESPONSE ACTION PLAN THAT IS SET FORTH IN THE
3 PLAN, THE DEPARTMENT MAY:

4 (1) REACH AN AGREEMENT WITH THE PARTICIPANT TO REVISE THE
5 SCHEDULE OF COMPLETION IN THE RESPONSE ACTION PLAN; OR

6 (2) IF AN AGREEMENT CANNOT BE REACHED UNDER PARAGRAPH (1)
7 OF THIS SUBSECTION, WITHDRAW APPROVAL OF THE RESPONSE ACTION PLAN.

8 (E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF
9 THE DEPARTMENT WITHDRAWS APPROVAL OF AN INCULPABLE PERSON'S RESPONSE
10 ACTION PLAN UNDER SUBSECTION (B)(2) OF THIS SECTION, THE INCULPABLE
11 PERSON MAY NOT BE REQUIRED BY THE DEPARTMENT TO COMPLETE THE
12 RESPONSE ACTION PLAN.

13 (2) IF THE DEPARTMENT WITHDRAWS APPROVAL OF AN INCULPABLE
14 PERSON'S RESPONSE ACTION PLAN UNDER SUBSECTION (B)(2) OF THIS SECTION, THE
15 INCULPABLE PERSON:

16 (I) SHALL STABILIZE AND SECURE THE ELIGIBLE PROPERTY TO
17 ENSURE PROTECTION OF THE PUBLIC HEALTH AND THE ENVIRONMENT; AND

18 (II) SHALL BE LIABLE FOR NEW CONTAMINATION OR THE
19 EXACERBATION OF EXISTING CONTAMINATION AT THE ELIGIBLE PROPERTY AS
20 PROVIDED IN § 7-505 OF THIS SUBTITLE.

21 (3) IF THE DEPARTMENT WITHDRAWS APPROVAL OF A RESPONSIBLE
22 PERSON'S RESPONSE ACTION PLAN, THE DEPARTMENT MAY TAKE ANY APPLICABLE
23 ENFORCEMENT ACTION AUTHORIZED UNDER THIS TITLE.

24 (F) IF AN APPLICATION, A RESPONSE ACTION PLAN, OR CERTIFICATE OF
25 COMPLETION IS WITHDRAWN UNDER THIS SECTION:

26 (1) ANY LETTER OR CERTIFICATE OF COMPLETION ISSUED TO AN
27 APPLICANT OR A PARTICIPANT UNDER THIS SUBTITLE SHALL BE VOID; AND

28 (2) ANY BOND OR OTHER SECURITY SHALL BE MAINTAINED FOR A
29 PERIOD NOT TO EXCEED 16 MONTHS FROM THE DATE THE RESPONSE ACTION PLAN
30 IS WITHDRAWN.

31 7-513. ISSUANCE OF CERTIFICATE OF COMPLETION.

32 (A) (1) UPON COMPLETION OF THE REQUIREMENTS OF THE RESPONSE
33 ACTION PLAN, THE PARTICIPANT SHALL NOTIFY THE DEPARTMENT IN WRITING
34 THAT THE RESPONSE ACTION PLAN HAS BEEN COMPLETED.

35 (2) WITHIN 30 DAYS AFTER RECEIPT OF THE NOTICE OF COMPLETION
36 UNDER PARAGRAPH (1) OF THIS SUBSECTION:

37 (I) THE DEPARTMENT SHALL REVIEW THE IMPLEMENTATION
38 AND COMPLETION OF THE RESPONSE ACTION PLAN AT THE ELIGIBLE PROPERTY;
39 AND

19

1 (II) IF THE DEPARTMENT DETERMINES THAT THE REQUIREMENTS
2 OF THE RESPONSE ACTION PLAN HAVE BEEN COMPLETED TO THE SATISFACTION OF
3 THE DEPARTMENT AND THE RESPONSE ACTION PLAN HAS ACHIEVED THE CLEANUP
4 CRITERIA, THE DEPARTMENT SHALL ISSUE A CERTIFICATE OF COMPLETION.

5 (B) THE CERTIFICATE OF COMPLETION SHALL STATE THAT, SUBJECT TO THE
6 REQUIREMENTS OF § 7-514 (B) OF THIS SUBTITLE:

7 (1) THE REQUIREMENTS OF THE RESPONSE ACTION PLAN HAVE BEEN
8 COMPLETED;

9 (2) THE PARTICIPANT HAS DEMONSTRATED THAT THE
10 IMPLEMENTATION OF THE RESPONSE ACTION PLAN AT THE ELIGIBLE PROPERTY
11 HAS ACHIEVED THE CLEANUP CRITERIA SELECTED UNDER § 7-508 (B) OF THIS
12 SUBTITLE;

13 (3) THE DEPARTMENT MAY NOT BRING AN ENFORCEMENT ACTION
14 AGAINST THE PARTICIPANT AT THE ELIGIBLE PROPERTY; AND

15 (4) THE PARTICIPANT:

16 (I) IS RELEASED FROM FURTHER LIABILITY FOR THE
17 REMEDIATION OF THE ELIGIBLE PROPERTY UNDER THIS TITLE FOR ANY
18 CONTAMINATION IDENTIFIED IN THE ENVIRONMENTAL SITE ASSESSMENT; AND

19 (II) MAY NOT BE SUBJECT TO A CONTRIBUTION ACTION
20 INSTITUTED BY A RESPONSIBLE PERSON.

21 (C) A REQUIREMENT FOR LONG-TERM MONITORING AND MAINTENANCE IN
22 THE APPROVED RESPONSE ACTION PLAN MAY NOT DELAY THE ISSUANCE OF THE
23 CERTIFICATE OF COMPLETION UNDER SUBSECTION (A) OF THIS SECTION.

24 7-514. EFFECT OF RESPONSE ACTION PLAN APPROVAL LETTER AND CERTIFICATE OF
25 COMPLETION ON DEPARTMENT'S AUTHORITY AND PARTICIPANT'S LIABILITY.

26 (A) A RESPONSE ACTION PLAN APPROVAL LETTER DOES NOT:

27 (1) SUBJECT TO THE PROVISIONS OF § 7-505 OF THIS SUBTITLE, PREVENT
28 THE DEPARTMENT FROM TAKING ACTION AGAINST ANY PERSON TO PREVENT OR
29 ABATE AN IMMINENT AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH
30 OR THE ENVIRONMENT AT THE ELIGIBLE PROPERTY;

31 (2) REMAIN IN EFFECT IF THE RESPONSE ACTION PLAN APPROVAL
32 LETTER IS OBTAINED THROUGH FRAUD OR A MATERIAL MISREPRESENTATION;

33 (3) AFFECT THE AUTHORITY OF THE DEPARTMENT TO TAKE ANY
34 ACTION AGAINST ANY PERSON CONCERNING NEW CONTAMINATION OR THE
35 EXACERBATION OF EXISTING CONTAMINATION AT AN ELIGIBLE PROPERTY AFTER
36 A RESPONSE ACTION PLAN APPROVAL LETTER HAS BEEN ISSUED BY THE
37 DEPARTMENT;

38 (4) AFFECT THE AUTHORITY OF THE DEPARTMENT TO TAKE ANY
39 ACTION AGAINST A RESPONSIBLE PERSON CONCERNING PREVIOUSLY

20

1 UNDISCOVERED CONTAMINATION AT AN ELIGIBLE PROPERTY AFTER A RESPONSE
2 ACTION PLAN APPROVAL LETTER HAS BEEN ISSUED BY THE DEPARTMENT;

3 (5) PREVENT THE DEPARTMENT FROM TAKING ACTION AGAINST ANY
4 PERSON WHO AGREES TO PERFORM THE LONG-TERM MONITORING AND
5 MAINTENANCE AS PROVIDED IN THE RESPONSE ACTION PLAN; OR

6 (6) PREVENT THE DEPARTMENT FROM TAKING ACTION AGAINST ANY
7 PERSON WHO DOES NOT COMPLY WITH CONDITIONS ON THE PERMISSIBLE USE OF
8 THE ELIGIBLE PROPERTY CONTAINED IN THE RESPONSE ACTION PLAN APPROVAL
9 LETTER.

10 (B) A CERTIFICATE OF COMPLETION DOES NOT:

11 (1) SUBJECT TO THE PROVISIONS OF § 7-505 OF THIS SUBTITLE, PREVENT
12 THE DEPARTMENT FROM TAKING ACTION AGAINST ANY PERSON TO PREVENT OR
13 ABATE AN IMMINENT AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH
14 OR THE ENVIRONMENT AT THE ELIGIBLE PROPERTY;

15 (2) REMAIN IN EFFECT IF THE CERTIFICATE OF COMPLETION IS
16 OBTAINED THROUGH FRAUD OR A MATERIAL MISREPRESENTATION;

17 (3) AFFECT THE AUTHORITY OF THE DEPARTMENT TO TAKE ANY
18 ACTION AGAINST ANY PERSON CONCERNING NEW CONTAMINATION OR
19 EXACERBATION OF EXISTING CONTAMINATION AT AN ELIGIBLE PROPERTY AFTER
20 A CERTIFICATE OF COMPLETION HAS BEEN ISSUED BY THE DEPARTMENT;

21 (4) AFFECT THE AUTHORITY OF THE DEPARTMENT TO TAKE ANY
22 ACTION AGAINST ANY RESPONSIBLE PERSON CONCERNING PREVIOUSLY
23 UNDISCOVERED CONTAMINATION AT AN ELIGIBLE PROPERTY AFTER A
24 CERTIFICATE OF COMPLETION HAS BEEN ISSUED BY THE DEPARTMENT;

25 (5) PREVENT THE DEPARTMENT FROM TAKING ACTION AGAINST ANY
26 PERSON WHO IS RESPONSIBLE FOR LONG-TERM MONITORING AND MAINTENANCE
27 FOR FAILURE TO COMPLY WITH THE RESPONSE ACTION PLAN;

28 (6) PREVENT THE DEPARTMENT FROM TAKING ACTION AGAINST ANY
29 PERSON WHO DOES NOT COMPLY WITH CONDITIONS ON THE PERMISSIBLE USE OF
30 THE ELIGIBLE PROPERTY CONTAINED IN THE CERTIFICATE OF COMPLETION; OR

31 (7) PREVENT THE DEPARTMENT FROM REQUIRING ANY PERSON TO
32 TAKE FURTHER ACTION IF THE ELIGIBLE PROPERTY FAILS TO MEET THE
33 APPLICABLE CLEANUP CRITERIA SET FORTH IN THE RESPONSE ACTION PLAN
34 APPROVED BY THE DEPARTMENT.

35 (C) A RESPONSE ACTION PLAN APPROVAL LETTER OR A CERTIFICATE OF
36 COMPLETION MAY BE TRANSFERRED TO ANY PERSON WHOSE ACTIONS DID NOT
37 CAUSE OR CONTRIBUTE TO THE CONTAMINATION.

38 (D) (1) IF A CERTIFICATE OF COMPLETION IS CONDITIONED ON THE
39 PERMISSIBLE USE OF THE PROPERTY FOR INDUSTRIAL OR COMMERCIAL PURPOSES,
40 THE PARTICIPANT SHALL RECORD THE CERTIFICATE OF COMPLETION IN THE LAND

21

1 RECORDS OF THE LOCAL JURISDICTION WITHIN 30 DAYS AFTER RECEIVING THE
2 CERTIFICATE.

3 (2) IF THE CERTIFICATE OF COMPLETION HAS A CONDITIONED USE
4 AND THE PARTICIPANT FAILS TO RECORD THE CERTIFICATE OF COMPLETION IN
5 THE LAND RECORDS IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION,
6 THE CERTIFICATE OF COMPLETION SHALL BE VOID.

7 (E) IF AN OWNER OF AN ELIGIBLE PROPERTY THAT HAS LIMITED
8 PERMISSIBLE USES WANTS TO CHANGE THE USE OF THE ELIGIBLE PROPERTY, THE
9 OWNER, SUBJECT TO APPROVAL BY THE DEPARTMENT, IS RESPONSIBLE FOR THE
10 COST OF CLEANING UP THE ELIGIBLE PROPERTY TO THE APPROPRIATE STANDARD.

11 7-515. ENFORCEMENT PROVISIONS.

12 THE PROVISIONS OF §§ 7-256 THROUGH 7-268 OF THIS TITLE SHALL BE USED
13 AND SHALL APPLY TO ENFORCE VIOLATIONS OF:

14 (1) THIS SUBTITLE; OR

15 (2) ANY REGULATION ADOPTED UNDER THIS SUBTITLE.

16 7-516. APPLICATION OF SUBTITLE.

17 (A) THIS SUBTITLE DOES NOT AFFECT, AND MAY NOT BE CONSTRUED AS
18 AFFECTING, THE PLANNING OR ZONING AUTHORITY OF A COUNTY OR MUNICIPAL
19 CORPORATION.

20 (B) THIS SUBTITLE DOES NOT AFFECT, AND MAY NOT BE CONSTRUED AS
21 AFFECTING, ANY TORT ACTION AGAINST ANY APPLICANT.

22 **Article 83A - Department of Business and Economic Development**

23 SUBTITLE 9. BROWNFIELDS REVITALIZATION INCENTIVE PROGRAM.

24 3-901. DEFINITIONS.

25 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
26 INDICATED.

27 (B) (1) "BROWNFIELDS SITE" MEANS:

28 (I) AN ELIGIBLE PROPERTY, AS DEFINED IN § 7-501 OF THE
29 ENVIRONMENT ARTICLE, THAT IS:

30 1. OWNED OR OPERATED BY AN INCULPABLE PERSON, AS
31 DEFINED IN § 7-501 OF THE ENVIRONMENT ARTICLE; AND

32 2. LOCATED IN A TAXING JURISDICTION THAT HAS
33 ELECTED TO PARTICIPATE IN THE BROWNFIELDS REVITALIZATION INCENTIVE
34 PROGRAM IN ACCORDANCE WITH § 9-109 OF THE TAX - PROPERTY ARTICLE; OR

35 (II) PROPERTY WHERE THERE IS A RELEASE, DISCHARGE, OR
36 THREATENED RELEASE OF OIL, AS DEFINED IN § 4-401 OF THE ENVIRONMENT
37 ARTICLE, THAT IS:

1 1. SUBJECT TO A CORRECTIVE ACTION PLAN APPROVED BY
2 THE DEPARTMENT OF THE ENVIRONMENT IN ACCORDANCE WITH TITLE 4 OF THE
3 ENVIRONMENT ARTICLE; AND

4 2. LOCATED IN A TAXING JURISDICTION THAT HAS
5 ELECTED TO PARTICIPATE IN THE BROWNFIELDS REVITALIZATION INCENTIVE
6 PROGRAM IN ACCORDANCE WITH § 9-109 OF THE TAX - PROPERTY ARTICLE.

7 (2) "BROWNFIELDS SITE" DOES NOT INCLUDE PROPERTY THAT IS
8 OWNED OR OPERATED BY A RESPONSIBLE PERSON.

9 (C) "QUALIFIED BROWNFIELDS SITE" MEANS A BROWNFIELDS SITE THAT HAS
10 BEEN DETERMINED BY THE DEPARTMENT OF BUSINESS AND ECONOMIC
11 DEVELOPMENT TO BE ELIGIBLE FOR FINANCIAL INCENTIVES UNDER § 3-903 OF THIS
12 SUBTITLE.

13 (D) "RESPONSIBLE PERSON" HAS THE MEANING STATED IN § 7-201 OF THE
14 ENVIRONMENT ARTICLE.

15 3-902. BROWNFIELDS REVITALIZATION INCENTIVE PROGRAM.

16 (A) THERE IS A BROWNFIELDS REVITALIZATION INCENTIVE PROGRAM IN
17 THE DEPARTMENT.

18 (B) THE PURPOSE OF THE BROWNFIELDS REVITALIZATION INCENTIVE
19 PROGRAM IS TO:

20 (1) PROVIDE FINANCIAL INCENTIVES FOR REDEVELOPMENT OF
21 PROPERTIES PREVIOUSLY USED FOR COMMERCIAL OR INDUSTRIAL PURPOSES;

22 (2) PROVIDE FINANCIAL INCENTIVES FOR REDEVELOPMENT OF
23 PROPERTIES WITHIN LOCALLY DESIGNATED GROWTH AREAS;

24 (3) PREVENT URBAN SPRAWL;

25 (4) ENCOURAGE ECONOMIC REVITALIZATION;

26 (5) EXPAND EMPLOYMENT OPPORTUNITIES; AND

27 (6) PROVIDE FINANCIAL INCENTIVES FOR LISTED BROWNFIELDS SITES.

28 3-903. DETERMINATION OF ELIGIBILITY AS BROWNFIELDS SITE.

29 (A) (1) AT THE TIME A PERSON APPLIES TO PARTICIPATE IN THE
30 VOLUNTARY CLEANUP PROGRAM UNDER TITLE 7, SUBTITLE 5 OF THE
31 ENVIRONMENT ARTICLE OR RECEIVES APPROVAL FROM THE DEPARTMENT OF THE
32 ENVIRONMENT FOR THE IMPLEMENTATION OF A CORRECTIVE ACTION PLAN
33 UNDER TITLE 4 OF THE ENVIRONMENT ARTICLE THE PERSON MAY SUBMIT A
34 REQUEST TO THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT TO
35 DETERMINE WHETHER THE PERSON QUALIFIES FOR FINANCIAL INCENTIVES FOR
36 THE POTENTIAL REDEVELOPMENT OF A BROWNFIELDS SITE.

37 (2) (I) WITHIN 30 DAYS AFTER RECEIPT OF A REQUEST UNDER
38 PARAGRAPH (1) OF THIS SUBSECTION, THE DEPARTMENT SHALL NOTIFY AN

23

1 APPLICANT WHETHER, IF APPROVED TO PARTICIPATE IN THE VOLUNTARY
2 CLEANUP PROGRAM OR A CORRECTIVE ACTION PLAN, THE APPLICANT QUALIFIES
3 FOR FINANCIAL INCENTIVES FOR THE REDEVELOPMENT OF A BROWNFIELDS SITE.

4 (II) IN THE DEPARTMENT'S NOTICE OF AN APPLICANT'S
5 QUALIFICATION FOR FINANCIAL INCENTIVES UNDER SUBPARAGRAPH (I) OF THIS
6 PARAGRAPH, THE DEPARTMENT SHALL SPECIFY WHICH OF THE CRITERIA SET
7 FORTH IN PARAGRAPH (4) THE APPLICANT MET.

8 (3) THE DEPARTMENT SHALL DETERMINE THE ELIGIBILITY OF A SITE
9 AS A QUALIFIED BROWNFIELDS SITE BASED ON WHETHER:

10 (I) THE PROPERTY IS LOCATED IN A DENSELY POPULATED URBAN
11 CENTER AND IS SUBSTANTIALLY UNDERUTILIZED; OR

12 (II) THE PROPERTY IS AN EXISTING OR FORMER INDUSTRIAL OR
13 COMMERCIAL SITE THAT POSES A THREAT TO PUBLIC HEALTH OR THE
14 ENVIRONMENT.

15 (4) THE DEPARTMENT MAY CONSIDER THE FOLLOWING CRITERIA
16 WHEN SELECTING A QUALIFIED BROWNFIELDS SITE:

17 (I) THE FEASIBILITY OF REDEVELOPMENT;

18 (II) THE PUBLIC BENEFIT PROVIDED TO THE COMMUNITY AND
19 THE STATE THROUGH THE REDEVELOPMENT OF THE PROPERTY;

20 (III) THE EXTENT OF RELEASES OR THREATENED RELEASES AT
21 THE SITE AND THE DEGREE TO WHICH THE CLEANUP AND REDEVELOPMENT OF
22 THE SITE WILL PROTECT PUBLIC HEALTH OR THE ENVIRONMENT;

23 (IV) THE POTENTIAL TO ATTRACT OR RETAIN MANUFACTURING
24 OR OTHER ECONOMIC BASE-TYPE EMPLOYERS;

25 (V) THE ABSENCE OF IDENTIFIABLE AND FINANCIALLY SOLVENT
26 RESPONSIBLE PERSONS; OR

27 (VI) ANY OTHER FACTOR RELEVANT AND APPROPRIATE TO
28 ECONOMIC DEVELOPMENT.

29 (B) DURING THE COURSE OF EVALUATING POTENTIAL QUALIFIED
30 BROWNFIELDS SITES, THE DEPARTMENT SHALL CONSULT WITH:

31 (1) THE DEPARTMENT OF THE ENVIRONMENT, THE OFFICE OF
32 PLANNING, AND RELEVANT LOCAL OFFICIALS;

33 (2) THE NEIGHBORING COMMUNITY AND ANY CITIZEN GROUPS
34 LOCATED IN THE COMMUNITY;

35 (3) REPRESENTATIVES OF STATE AND LOCAL ENVIRONMENTAL
36 ORGANIZATIONS;

37 (4) PUBLIC HEALTH EXPERTS; AND

24

1 (5) ANY OTHER PERSON THE DEPARTMENT CONSIDERS APPROPRIATE.

2 (C) THE DEPARTMENT SHALL DEVELOP A PROGRAM OF FINANCIAL
3 INCENTIVES, INCLUDING LOW-INTEREST LOANS AND GRANTS, TO ASSIST PERSONS
4 WHO PARTICIPATE IN THE BROWNFIELDS REVITALIZATION INCENTIVE PROGRAM.

5 3-904. BROWNFIELDS REVITALIZATION INCENTIVE FUND.

6 (A) THERE IS A BROWNFIELDS REVITALIZATION INCENTIVE FUND IN THE
7 DEPARTMENT THAT IS ESTABLISHED AS A NONLAPSING, REVOLVING SPECIAL FUND.

8 (B) THE FUND CONSISTS OF:

9 (1) MONEYS COLLECTED UNDER § 9-109 OF THE TAX - PROPERTY
10 ARTICLE;

11 (2) MONEYS MADE AVAILABLE TO THE FUND THROUGH FEDERAL
12 PROGRAMS OR PRIVATE CONTRIBUTIONS;

13 (3) INCOME FROM INVESTMENTS THAT THE STATE TREASURER MAKES
14 FROM MONEYS IN THE FUND;

15 (4) REPAYMENTS OF PRINCIPAL AND INTEREST FROM LOANS MADE
16 FROM THE FUND;

17 (5) PROCEEDS FROM THE SALE, DISPOSITION, LEASE, OR RENTAL BY
18 THE DEPARTMENT OF COLLATERAL RELATED TO ANY FINANCING PROVIDED BY
19 THE DEPARTMENT UNDER THIS SUBTITLE; AND

20 (6) ANY OTHER MONEYS AVAILABLE TO THE FUND.

21 (C) THE DEPARTMENT SHALL USE THE FUND TO PROVIDE FINANCIAL
22 INCENTIVES FOR THE REDEVELOPMENT OF BROWNFIELDS SITES AS PROVIDED IN §
23 3-903(C) OF THIS SUBTITLE.

24 3-905. APPLICATION OF SUBTITLE.

25 THIS SUBTITLE DOES NOT AFFECT, AND MAY NOT BE CONSTRUED AS
26 AFFECTING, THE PLANNING AND ZONING AUTHORITY OF A COUNTY OR MUNICIPAL
27 CORPORATION.

28 **Article - Tax - Property**

29 9-109. FINANCIAL INCENTIVES FOR QUALIFIED BROWNFIELDS SITES.

30 (A) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
31 INDICATED.

32 (B) "QUALIFIED BROWNFIELDS SITE" HAS THE MEANING STATED IN ARTICLE
33 83A, § 3-901(C) OF THE CODE.

34 (C) "TAXING JURISDICTION" MEANS:

35 (1) THE STATE;

36 (2) A COUNTY OR BALTIMORE CITY; OR

25

1 (3) A MUNICIPAL CORPORATION.

2 (D) (1) A TAXING JURISDICTION MAY ELECT TO PARTICIPATE IN THE
3 BROWNFIELDS REVITALIZATION INCENTIVE PROGRAM UNDER ARTICLE 83A, TITLE
4 3, SUBTITLE 9 OF THE CODE.

5 (2) IF A TAXING JURISDICTION ELECTS TO PARTICIPATE IN THE
6 BROWNFIELDS REVITALIZATION INCENTIVE PROGRAM, THE TAXING JURISDICTION
7 SHALL:

8 (I) ENACT THE NECESSARY LEGISLATION TO GRANT THE
9 PROPERTY TAX CREDITS ESTABLISHED UNDER THIS SECTION; AND

10 (II) NOTIFY THE DEPARTMENT OF BUSINESS AND ECONOMIC
11 DEVELOPMENT.

12 (E) FOR EACH OF THE 5 TAXABLE YEARS IMMEDIATELY FOLLOWING THE
13 FIRST REVALUATION OF THE PROPERTY AFTER COMPLETION OF A VOLUNTARY
14 CLEANUP OR CORRECTIVE ACTION PLAN OF A BROWNFIELDS SITE, EACH TAXING
15 JURISDICTION WHERE A QUALIFIED BROWNFIELDS SITE IS LOCATED SHALL:

16 (1) GRANT A PROPERTY TAX CREDIT AGAINST THE PROPERTY TAX
17 IMPOSED ON THE QUALIFIED BROWNFIELDS SITE IN AN AMOUNT EQUAL TO 50% OF
18 THE PROPERTY TAX ATTRIBUTABLE TO THE INCREASE IN THE ASSESSMENT OF THE
19 QUALIFIED BROWNFIELDS SITE, INCLUDING IMPROVEMENTS ADDED TO THE SITE
20 WITHIN THE 5-YEAR PERIOD AS PROVIDED UNDER THIS SUBSECTION, OVER THE
21 ASSESSMENT OF THE QUALIFIED BROWNFIELDS SITE BEFORE THE VOLUNTARY
22 CLEANUP; AND

23 (2) CONTRIBUTE TO THE BROWNFIELDS REVITALIZATION INCENTIVE
24 FUND UNDER ARTICLE 83A, § 3-904 OF THE CODE, 30% OF THE PROPERTY TAX
25 ATTRIBUTABLE TO THE INCREASE IN THE ASSESSMENT OF THE BROWNFIELDS SITE,
26 INCLUDING IMPROVEMENTS ADDED TO THE SITE WITHIN THE 5-YEAR PERIOD AS
27 PROVIDED UNDER THIS SUBSECTION, OVER THE ASSESSMENT OF THE QUALIFIED
28 BROWNFIELDS SITE BEFORE THE VOLUNTARY CLEANUP.

29 (F) A TAXING JURISDICTION MAY GRANT A PROPERTY TAX CREDIT UP TO AN
30 ADDITIONAL 20% OF THE REMAINING PROPERTY TAX ATTRIBUTABLE TO THE
31 INCREASE IN THE ASSESSMENT OF THE QUALIFIED BROWNFIELDS SITE INCLUDING
32 IMPROVEMENTS ADDED TO THE SITE OVER THE ASSESSMENT OF THE QUALIFIED
33 BROWNFIELDS SITE BEFORE THE VOLUNTARY CLEANUP.

34 (G) (1) A CREDIT UNDER THIS SECTION MAY NOT BE CALCULATED ON AN
35 INCREASE IN ASSESSMENT DUE TO THE TERMINATION OF A USE VALUE UNDER §§
36 8-209 THROUGH 8-217 OR §§ 8-220 THROUGH 8-225 OF THIS ARTICLE.

37 (2) IF THE QUALIFIED BROWNFIELDS SITE ON WHICH THE VOLUNTARY
38 CLEANUP IS COMPLETED HAD A USE VALUE IMMEDIATELY BEFORE THE CLEANUP,
39 THE CREDIT SHALL BE CALCULATED ON AN ASSESSMENT AS IF THE PARCEL HAD
40 BEEN VALUED AT MARKET VALUE.

26

1 (H) IN A DESIGNATED ENTERPRISE ZONE, THE STATE OR A TAXING
2 JURISDICTION MAY EXTEND THE TAX CREDIT AUTHORIZED UNDER THIS SECTION
3 UP TO AN ADDITIONAL 5 YEARS.

4 (I) A PROPORTIONAL SHARE OF A TAXING JURISDICTION'S CONTRIBUTION
5 FOR EACH QUALIFIED BROWNFIELDS SITE TO THE BROWNFIELDS REVITALIZATION
6 FUND UNDER SUBSECTION (E)(2) OF THIS SECTION SHALL BE DESIGNATED FOR
7 FINANCIAL INCENTIVES TO BE PROVIDED FOR QUALIFIED BROWNFIELDS SITES IN
8 THE JURISDICTION MAKING THAT CONTRIBUTION.

9 14-902. TAX ABATEMENT.

10 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
11 INDICATED.

12 (2) "QUALIFIED BROWNFIELDS SITE" HAS THE MEANING STATED IN
13 ARTICLE 83A, § 3-901(C) OF THE CODE.

14 (3) "TAX" HAS THE MEANING STATED IN § 14-801(C) OF THIS TITLE.

15 (B) THE GOVERNING BODY OF A COUNTY OR MUNICIPAL CORPORATION
16 MAY GRANT, BY LAW, A TAX ABATEMENT AGAINST THE OVERDUE COUNTY OR
17 MUNICIPAL CORPORATION PROPERTY TAXES IMPOSED ON REAL PROPERTY THAT IS
18 DESIGNATED AS A QUALIFIED BROWNFIELDS SITE.

19 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of the
20 Environment shall report to the Governor and, subject to § 2-1312 of the State
21 Government Article, to the House Environmental Matters Committee and the Senate
22 Economic and Environmental Affairs Committee:

23 1. On or before July 1 of 1998, 1999, and 2000, on:

24 a. The reasonableness of the fees, the use of the Voluntary Cleanup Fund
25 established under this Act and whether the Voluntary Cleanup Fund is fully self-funded;
26 and

27 b. The geographic location and other characteristics of applicants to the
28 Voluntary Cleanup Program, the number of applications and response action plans
29 approved and denied, and the reasons for the Department's denial; and

30 2. On or before July 1, 2000, on the status of the Voluntary Cleanup Program
31 established under this Act, including the impact of having a cut-off date for eligibility on
32 the effectiveness of the Program and on the ability of the Program to encourage the
33 cleanup of the optimum number of contaminated sites.

34 SECTION 3. AND BE IT FURTHER ENACTED, That the Department of
35 Business and Economic Development shall report to the Governor and, subject to §
36 2-1312 of the State Government Article, to the House Environmental Matters Committee
37 and the Senate Economic and Environmental Affairs Committee on or before July 1 of
38 1998, 1999, and 2000, on:

39 1. The geographic location and other characteristics of applicants to the
40 Brownfields Revitalization Incentive Program, the number of requests to participate in

27

1 the Program approved and denied, and the Department's reasons for the Department's
2 denial;

3 2. The availability of financial incentives to qualified Brownfields sites, including
4 information on the types of incentives available as well as on the amount of assistance
5 provided under those incentives; and

6 3. The advisability of making responsible persons who did not cause or
7 contribute to the contamination of a potential Brownfields site eligible to participate in
8 the Brownfields Revitalization Incentive Program.

9 SECTION 4. AND BE IT FURTHER ENACTED, That Subtitle 5 of the
10 Environment Article does not affect, and may not be construed as affecting, any civil
11 action pending against any applicant in the Voluntary Cleanup Program on the effective
12 date of this Act.

13 SECTION 5. AND BE IT FURTHER ENACTED, That the first \$100,000
14 contributed to the Brownfields Revitalization Incentive Fund under § 9-109 of the Tax -
15 Property Article shall be transferred to the State Hazardous Substance Control Fund
16 under Title 7, Subtitle 2 of the Environment Article to be used by the Department of the
17 Environment for costs incurred by the Department in the oversight and administration of
18 cleanup activities under the State Hazardous Substance program for which the
19 Department is currently restricted in its use of bond funds as a result of a ruling by the
20 Internal Revenue Service.

21 SECTION 6. AND BE IT FURTHER ENACTED, That the catchlines contained in
22 this Act are not law and may not be considered to be enacted as part of this Act.

23 SECTION 7. AND BE IT FURTHER ENACTED, That this Act is an emergency
24 measure, is necessary for the immediate preservation of the public health and safety, has
25 been passed by a ye and nay vote supported by three-fifths of all the members elected to
26 each of the two Houses of the General Assembly, and shall take effect from the date it is
27 enacted.