HOUSE BILL 294

2004 Regular Session

M3

ENROLLED BILL

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


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_______

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

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

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

BY repealing and reenacting, with amendments,
Article - Real Property
Section 12-111(f)
Annotated Code of Maryland
(2003 Replacement Volume and 2003 Supplement)
Article 83A - Business and Economic Development
Section 5-1401(j) and 5-1408(a)
Annotated Code of Maryland
(2003 Replacement Volume)

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

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

Article - Environment

7-266.1.

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

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

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

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

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

(A) IN ADDITION TO BEING SUBJECT TO PENALTIES UNDER §§ 7-266 AND 7-267
OF THIS SUBTITLE AND COST RECOVERY UNDER § 7-221 OF THIS SUBTITLE, A
RESPONSIBLE PERSON WHO FAILS WITHOUT SUFFICIENT CAUSE TO COMPLY WITH A
FINAL ORDER ISSUED UNDER THIS SUBTITLE IS SUBJECT TO PUNITIVE DAMAGES,
NOT EXCEEDING THREE TIMES THE AMOUNT OF ANY COSTS THAT ARE INCURRED BY
THE STATE:
AFTER THE DATE OF THE FINAL DECISION AS PROVIDED IN
SUBSECTION (B) OF THIS SECTION; AND

AS A RESULT OF THE RESPONSIBLE PERSON'S FAILURE TO COMPLY
WITH THE FINAL ORDER.

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

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

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

7-501.

"Contamination" means a release, discharge, or threatened release of:
[a] A controlled hazardous substance, as defined in § 7-201 of this
title; OR

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

"Eligible property" means property OR A PORTION OF A PROPERTY
that is contaminated or perceived to be contaminated.

"Eligible property" does not include property that is:
(i) On the national priorities list under § 105 of the federal act;
(ii) [Under] EXCEPT AS PROVIDED IN PARAGRAPH (3)(I) OF THIS
SUBSECTION, UNDER active enforcement; or
(iii) Subject to a controlled hazardous substances permit issued in
accordance with Title 7 of this article.

"ELIGIBLE PROPERTY" MAY INCLUDE INCLUDES A SITE UNDER
ACTIVE ENFORCEMENT IF:

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

2. ANY RESPONSE ACTION PLAN AND CLEANUP CRITERIA
APPROVED BY THE DEPARTMENT UNDER THIS SUBTITLE ARE AT LEAST AS
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PROTECTIVE OF PUBLIC HEALTH AND THE ENVIRONMENT AS THE REQUIREMENTS OF ANY OUTSTANDING ACTIVE ENFORCEMENT ACTION.

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

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

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

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

(2) "Inculpable person" includes:

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

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

7-505.

(a) (1) If the Department approves an applicant's status as an inculpable person under § 7-506(b)(1)(i) of this subtitle, the participant's status as an inculpable person continues upon acquiring an interest in the eligible property.

(2) IF THE APPLICANT MEETS THE REQUIREMENTS OF § 7-506(A) OF THIS SUBTITLE, THE DEPARTMENT SHALL APPROVE OR DISAPPROVE AN APPLICANT'S STATUS AS AN INCULPABLE PERSON WITHIN 5 BUSINESS DAYS OF RECEIVING:

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

(II) A FEE OF $2,000.

(3) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, THE DEPARTMENT'S APPROVAL OF A PERSON'S STATUS AS AN INCULPABLE PERSON EXPIRES IF THE APPLICATION, INCLUDING ANY APPLICABLE FEES, REQUIRED UNDER THIS SUBTITLE IS NOT FILED WITHIN 6 MONTHS AFTER THE APPROVAL OF A PERSON'S STATUS AS AN INCULPABLE PERSON.
(b) Except as provided in subsection (c) of this section, an inculpable person is not liable for existing contamination at the eligible property.

(c) An inculpable person shall be liable for:

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

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

7-506.

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

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

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

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

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

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

(v) An environmental site assessment that includes:

[A. ESTABLISHED Phase I [and Phase II] site assessment standards and follows principles established by the American Society for Testing and Materials and that demonstrates to the satisfaction of the Department that the assessment has BEEN CONDUCTED IN ACCORDANCE WITH THOSE STANDARDS AND PRINCIPLES; AND

B. A PHASE II SITE ASSESSMENT IF UNLESS THE DEPARTMENT CONCLUDES, AFTER REVIEW OF THE PHASE I SITE ASSESSMENT, ANY PUBLIC COMMENTS SUBMITTED DURING THE PUBLIC COMMENT PERIOD, AND INFORMATION IN THE DEPARTMENT'S FILES, THAT THERE IS SUFFICIENT INFORMATION TO DETERMINE THAT THERE ARE NO RECOGNIZED ENVIRONMENTAL CONDITIONS, AS DEFINED BY THE AMERICAN SOCIETY FOR TESTING AND MATERIALS; AND...
2. FOR AN APPLICATION FOR A PORTION OF A PROPERTY IN ACCORDANCE WITH § 7-501(G)(1) OF THIS SUBTITLE, AN ENVIRONMENTAL SITE ASSESSMENT THAT HAS BEEN CONDUCTED FOR THE ENTIRE PROPERTY; and

(vi) A description, in summary form, of a proposed voluntary cleanup project that includes the proposed cleanup criteria under § 7-508 of this subtitle and the proposed future use of the property, if appropriate; and

(2) Pay to the Department:

(I) [an] AN INITIAL application fee of $6,000[, unless the Department determines that a lesser fee would be sufficient to cover the costs described in subsection (d) of this section] WHICH THE DEPARTMENT MAY REDUCE ON A DEMONSTRATION OF FINANCIAL HARDSHIP IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION; AND

(II) AN APPLICATION FEE OF $2,000 FOR EACH APPLICATION SUBMITTED SUBSEQUENT TO THE INITIAL APPLICATION FOR THE SAME PROPERTY;

(III) AN APPLICATION FEE OF $2,000 FOR EACH APPLICATION SUBMITTED SUBSEQUENT TO THE INITIAL APPLICATION FOR CONTIGUOUS OR ADJACENT PROPERTIES THAT ARE PART OF THE SAME PLANNED UNIT DEVELOPMENT OR A SIMILAR DEVELOPMENT PLAN.

(B) THE DEPARTMENT SHALL ADOPT REGULATIONS TO ESTABLISH CRITERIA FOR DETERMINING WHETHER AN APPLICANT'S STATUS FOR A DEMONSTRATION OF APPLICANT HAS DEMONSTRATED FINANCIAL HARDSHIP.

(C) (1) THE APPLICANT MAY DELAY SUBMITTING THE PHASE II SITE ASSESSMENT UNTIL AFTER THE APPLICATION AND APPLICABLE FEES ARE SUBMITTED.

(2) IF AN APPLICANT DELAYS FILING A PHASE II SITE ASSESSMENT, ALL RELATED DEADLINES FOR PUBLIC NOTICE AND ACTION BY THE DEPARTMENT SHALL BE EXTENDED AND CONFORM WITH THE DATE THE PHASE II SITE ASSESSMENT IS SUBMITTED AND THE APPLICATION IS COMPLETE.

(D) (1) ON SUBMISSION OF THE APPLICATION, THE DEPARTMENT SHALL PUBLISH A NOTICE OF THE APPLICATION ON ITS WEBSITE AND THE APPLICANT SHALL POST NOTICE AT THE PROPERTY THAT IS THE SUBJECT OF THE APPLICATION.

(2) THE NOTICES REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE:

(I) THE NAME AND ADDRESS OF THE APPLICANT AND THE PROPERTY; AND
(II) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE OFFICE WITHIN THE DEPARTMENT FROM WHICH INFORMATION ABOUT THE APPLICATION MAY BE OBTAINED; AND

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

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

1. The application, including the applicant's status as a responsible person or an inculpable person, is approved;
2. The application is denied or incomplete; or
3. The Department has no further requirements related to the investigation of controlled hazardous substances at the eligible property as provided in paragraph (3) of this subsection.

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

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

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

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

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

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

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

(iv) Affect the authority of the Department to require additional cleanup for future activities at the site that result in contamination by hazardous substances.
(4) THE NO FURTHER REQUIREMENTS NOTICE SHALL PROVIDE THE SAME LIABILITY PROTECTIONS AS PROVIDED IN § 7-513(B)(3) AND (4) OF THIS SUBTITLE.

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

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

(i) The applicant is not an eligible applicant;

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

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

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

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

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

[(d)]  (2) If the direct costs of review of the application and administration and oversight of the response action plan exceed the application fee, the Department shall require an applicant or participant to pay to the Department the additional costs incurred by the Department.

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

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

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

[(f)]  (H) A determination by the Department that it has no further requirements may be transferred to a subsequent purchaser of the property provided that the subsequent purchaser did not cause or contribute to the contamination.
If a determination by the Department that it has no further requirements is conditioned on certain uses of the property or on the maintenance of certain conditions, the participant shall record the determination in the land records of the local jurisdiction within 30 days after receiving the determination.

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

If a determination by the Department that it has no further requirements at a property is conditioned on certain uses of the property or on the maintenance of certain conditions, the participant shall send a copy of the determination to a One-Call System as defined in § 12-101 of the Public Utility Companies Article.

Any obligation for the participant to send the information required under § 7-506(D)(2) subparagraph (I) of this section paragraph does not negate the obligation of an owner as defined in § 12-101(F) of the Public Utility Companies Article to become a member of the One-Call System under Title 12 of the Public Utility Companies Article.

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

If a determination by the Department that it has no further requirements is conditioned on certain uses of the property or on the maintenance of certain conditions, the participant shall pay to the Department a fee of $2,000.

If a certificate of completion is conditioned on the permissible use of the property, the participant shall pay to the Department a fee of $2,000.

On a request by a participant to alter a record of determination in the land records for an eligible property with conditions in accordance with § 7-506(I) or § 7-514(D) of this subtitle, the participant shall pay to the Department a fee of $2,000.

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

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

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

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

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

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

(VI) THE DATE AND LOCATION OF THE PUBLIC INFORMATIONAL MEETING; AND

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

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

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

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

(2) THE DEPARTMENT SHALL APPROVE A RESPONSE ACTION PLAN FOR A PORTION OF THE PROPERTY IN ACCORDANCE WITH § 7-501(G)(1) OF THIS SUBTITLE, UNLESS THE DEPARTMENT DETERMINES THAT CONTAMINATION ON THE REMAINDER OF THE PROPERTY REPRESENTS AN IMMINENT AND SUBSTANTIAL ENDANGERMENT TO PUBLIC HEALTH OR THE ENVIRONMENT.
Within [120] 75 days after the Department has received a proposed response action plan, the Department, after considering any comments the Department has received under § 7-509 of this subtitle, shall notify the participant in writing that:

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

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

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

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

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

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

A response action plan approval letter does not:

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

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

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

(4) Affect the authority of the Department to take any action against a responsible person concerning previously undiscovered contamination at an eligible property after a response action plan approval letter has been issued by the Department;
(5) Prevent the Department from taking action against any person who is responsible for long-term monitoring and maintenance as provided in the response action plan; or

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

(b) A certificate of completion does not:

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

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

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

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

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

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

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

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

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

(2) If the certificate of completion has a conditioned use and the participant fails to record the certificate of completion in the land records in
accordance with paragraph (1) of this subsection, the certificate of completion shall be
void.

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

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

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

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

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

(1) This subtitle; or

(2) Any regulation adopted under this subtitle.

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

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

(2) RELIEVE ANY PERSON WHO IS THE SUBJECT OF AN ACTIVE
ENFORCEMENT ACTION FROM LIABILITY FOR PENALTIES UNDER THE
ENFORCEMENT ACTION.
Article - Real Property

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

Article 83A - Business and Economic Development

(j) (1) "Brownfields site" means:

(i) An eligible property, as defined in § 7-501 of the Environment Article, that is:

1. Owned or operated by:

A. An inculpable person, as defined in § 7-501 of the Environment Article; or

B. An innocent purchaser that meets the requirements set forth in § 7-201(x)(2)(i) of the Environment Article; and

2. Located in a county or municipal corporation that has elected to participate in the Brownfields Revitalization Incentive Program in accordance with § 5-1408(a) of this subtitle; or

(ii) Property where there is a release, discharge, or threatened release of oil, as defined in § 4-401 of the Environment Article, that is:
1. Subject to [a corrective action plan approved by the
Department of the Environment in accordance with] THE PROVISIONS OF Title 4 of
the Environment Article; and

2. Located in a county or municipal corporation that has
elected to participate in the Brownfields Revitalization Incentive Program in
accordance with § 5-1408(a) of this subtitle.

(2) "Brownfields site" does not include property that is owned or
operated by a responsible person or a person responsible for the discharge.

5-1408.

(a) A county or municipal corporation may elect to participate in the
Brownfields Revitalization Incentive Program by:

(1) (I) Submitting to the Department a list of potential Brownfields
sites in the county or municipal corporation, ranked in the order of priority for
redevelopment recommended by the county or municipal corporation; and

[[2]] (II) Annually updating the list submitted under [paragraph (1)]
ITEM (I) of this [subsection] ITEM; OR

(2) (I) ENACTING LEGISLATION GRANTING PROPERTY TAX CREDITS
IN ACCORDANCE WITH THE REQUIREMENTS OF § 9-229 OF THE TAX - PROPERTY
ARTICLE; AND

(II) NOTIFYING THE DEPARTMENT OF THE LEGISLATION.

Article - Tax - Property

9-229.

(g) A [proportional share of a] taxing jurisdiction's contribution for each
qualified Brownfields site to the Maryland Economic Development Assistance Fund
under subsection (c)(2) of this section shall be [designated for financial incentives to
be provided for qualified Brownfields sites in the jurisdiction making that
contribution] USED ONLY FOR BROWNFIELDS SITES IN THE TAXING JURISDICTIONS
THAT HAVE ENACTED A BROWNFIELDS PROPERTY TAX CREDIT ORDINANCE.

SECTION 2. AND BE IT FURTHER ENACTED, That the Department of the
Environment shall convene a work group from representatives of the Department of
Planning, the Department of Business and Economic Development, various sectors of
local government, real estate professionals, the business community, the banking
industry, the environmental community, and members of the public and undertake a
review of the Universal Environmental Covenants Act proposed by the National
Conference of Commissioners on Uniform State Laws. The work group shall make
recommendations to the Department of the Environment, and, in accordance with §
2-1246 of the State Government Article, the Senate Education, Health, and
Environmental Affairs Committee and the House Environmental Matters Committee on or before December 31, 2004.

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