

MODEL BROWNFIELDS LEGISLATION

A BILL

IN THE LEGISLATURE OF [STATE]

To authorize the [Environmental/Health Agency] of [State] to take certain actions to facilitate cleanup and redevelopment of contaminated properties in [State].

BE IT ENACTED BY THE LEGISLATURE OF [STATE], That this Act may be cited as the “Brownfield Revitalization Act of 200-.”

**SECTION 1: GENERAL PROVISIONS**

**(a) Purposes and Findings**

(1) The purposes of this Act are to:

- (A) eliminate public health and environmental risks on property within [State];
- (B) create incentives for the voluntary cleanup and redevelopment of contaminated property;
- (C) develop effective and consistent environmental cleanup standards and cleanup processes for the [State];
- (D) ensure public involvement and public accountability in the cleanup and redevelopment of contaminated property; and
- (E) ensure that those responsible for contamination of property in the [State] are accountable for their actions.

(2) The Legislature of the [State] finds that:

- (A) contamination of property in the [State] has hampered redevelopment, which in turn has limited job creation and improvement of the state’s tax base;
- (B) a comprehensive program addressing assessment and cleanup of contaminated property is essential to protect public health, welfare and the environment consistently and fairly throughout the [State];

- (C) the public is entitled to understand how cleanup standards are applied to a facility through a plain language description of contamination present at a facility, the risk that it may present, and how any proposed response action will abate that risk; and
- (D) cleanup of contaminated land can and should be coordinated with plans for redevelopment and sustainable reuse of land whenever possible.

**(b) Definitions** – For purposes of this Act:

- (1) the term “act of God” means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight;
- (2) the term “applicant” means a person or persons who submit an application to participate in the voluntary program established in section 6;
- (3) the term “Clean Land Fund” means the Clean Land Fund established by section 8(b);
- (4) the term “completion report” means a report submitted to the [Environmental/Health Agency] pursuant to the procedures established in section 6(d) of this Act;
- (5) the term “[General Counsel/Attorney General]” means the office of [General Counsel/Attorney General] within the executive branch of the [State] government;
- (6) the term “due diligence” means the degree of care in evaluating property for past uses and other potential evidence of contamination prior to purchase consistent with sound commercial practices at the time of purchase considering the value of the property and the sophistication of the purchaser;
- (7) the term “engineering control” means any method of managing environmental and health risks at a facility by placing a barrier between contamination and the rest of a facility, thus limiting exposure pathways;
- (8) the term “Environmental Response Trust Fund” means the Environmental Response Trust Fund established by section 8(a) of this Act;
- (9) the term “facility” means (1) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, truck, trailer, motor vehicle, rolling stock, aircraft, (2) any site or area where a hazardous substance has been deposited, stored, disposed

- of, or placed, or otherwise come to be located, or (3) any watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. The term “facility” does not include any consumer product in consumer use;
- (10) the term “federal Superfund Act” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, United States Code, title 42, section 9601 et seq., as amended;
- (11) the term “hazardous substance” under this Act means any substance defined as a “hazardous substance” by either (1) section 101(14) of the federal Superfund Act; or (2) substances designated by the [Environmental/Health Agency] pursuant to regulations adopted under this Act;
- (12) the term “Hazardous Substances Response Plan” means the Plan established pursuant to regulations under section 5(b) of this Act;
- (13) the term “institutional control” means a legal, institutional, or administrative mechanism designed to protect public health by reducing the potential for exposure to hazardous substances, including any measure to ensure that the use of a facility after completion of a response action under this Act continues to be compatible with the levels of any residual hazardous substances left in place at the facility.
- (14) the term “investigation” means a facility evaluation conducted for purposes of determining the extent, if any, of contamination on that facility;
- (15) the term “[Administrator]” means the [Administrator] of the [Environmental/Health Agency] of the [State] or any official or office designated by the [Administrator] for the purposes of administering this Act or any provision thereof;
- (16) the term “owner or operator” means “owner or operator” as that term is defined in section 101(20) of the federal Superfund Act;
- (17) the term “participant” means a person who submits a cleanup plan or completion report approved by the [Administrator] pursuant to the procedures for the voluntary program established in section 6 of this Act;
- (18) the term “person” means an individual, firm, corporation, association, partnership, consortium, joint venture, or commercial entity, the United States government and its entities,

departments, and agencies, entities of the states, territories and other offices of the United States, or the [State] including its departments, agencies and other entities;

(19) the term “prospective purchaser” is a person not otherwise liable for a release who seeks to purchase property on which a release has occurred;

(20) the term “release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other receptacles containing any hazardous substance). The term does not include:

(A) any release that results in exposure to persons solely within a workplace, with respect to a claim that such persons may assert against their employer;

(B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; or

(C) the normal application of fertilizer;

(21) the terms “respond” or “response” mean:

(A) to clean up or remove, or the cleanup or removal of, a released hazardous substance from the environment; or

(B) to take such actions, as may be necessary:

(i) to prevent or minimize the release or threat of release of a hazardous substance;

(ii) to investigate, monitor, survey, test, assess, and evaluate the release or threat of release of a hazardous substance;

(iii) to prevent, minimize, or mitigate damage to public health, welfare or the environment that may result from a release or threat of release, including but not limited to, storage, confinement, perimeter protection, fencing, limiting access, collection of leachate and runoff, neutralization, segregation of wastes, recycling or reuse, diversion, destruction, treatment, offsite transport, incineration, dredging or excavation, repair or replacement of leaking containers, restoration of groundwater or surface water, providing alternative water supplies, temporary evacuation and housing or relocation of threatened individuals, and any other emergency assistance necessary to reduce risk to public health, welfare or the environment;

(iv) to dispose, or the disposal of, removed material; and

- (v) to carry out administration, planning, oversight, enforcement, and cost recovery activities related thereto;
- (22) the term “responsible person” means any person liable pursuant to section 3(a);
- (23) the term “run with the land” means the attachment of a notice, restriction, easement, limitation or order on a property that survives the transfer or assignment of interest in all or part of that property;
- (24) the term “Scientific Advisory Panel” means the advisory panel that may advise the [Administrator] regarding the development of cleanup standards under section 4, the development of the Hazardous Substances Response Plan under section 5, review of cleanup plans under section 6, and perform any other functions the [Administrator] determines to be appropriate; and
- (25) the term “treatment” means to physically, chemically or biologically alter any substance or material for the purpose of reducing exposure or risk of harm to public health, welfare or the environment.

## **SECTION 2: GENERAL DUTIES AND POWERS**

- (a) The [Administrator] shall have the authority to carry out and enforce the provisions of this Act and the rules, regulations, policies and orders adopted or issued under this Act.
- (b) The [Administrator] shall have authority to adopt rules and regulations for purposes of implementing this Act;
- (c) The [Administrator] shall have authority to designate offices or personnel of the [State] to have specific responsibilities and perform specific functions under this Act and to delegate such responsibilities and functions.
- (d) The [Administrator] shall have authority to advise, consult, contract, and cooperate with the federal government, other state and interstate agencies, affected individuals or organizations, and industries to carry out the provisions of this Act.
- (e) The [Administrator] shall have authority to enter into cooperative agreements, cost-sharing and other agreements for which states are eligible under the federal Superfund Act and other federal statutes in order to further the purposes of this Act.

- (f) The [Administrator] shall have authority to delegate and assign, by contract or otherwise, duties or powers imposed on the [Administrator] by the provisions of this Act.

### **SECTION 3: LIABILITY**

**(a) Liability** – Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in this section, any person who:

- (1) owns or operates a facility;
- (2) at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substance was disposed of;
- (3) by contract, agreement, or otherwise arranged for disposal or treatment of a hazardous substance, or arranged with a transporter to transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other person or entity, at any facility owned or operated by another person and containing such hazardous substances; or
- (4) accepts or accepted any hazardous substance for transport to disposal, treatment or incineration facilities selected by such person,

from which a release or threat of a release of a hazardous substance occurred or may occur or that contributes to a release or threat of a release of a hazardous substance, shall be jointly, severally, and strictly liable, for the following:

- (A) carrying out a response action not inconsistent with the Hazardous Substances Response Plan;
  - (B) all costs, including interest thereon, of response incurred by the [State] or any other person pursuant to this Act and not inconsistent with the Hazardous Substances Response Plan; and
  - (C) the costs, including interest thereon, of any health assessment performed by the [State] or its designee that is not inconsistent with the Hazardous Substances Response Plan.
- (5) It is the intention of the Legislature of the [State] that this Act creates retroactive civil liability on responsible persons, as is consistent with the [State's] legal rights to abate public nuisance.

**(b) Defenses to Liability** – There shall be no liability under section 3(a) for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused by:

- (1) an act of God;
- (2) an act of war;
- (3) hazardous substances releases at a facility owned or operated by a third person, with whom the person asserting this defense has no relationship, that have migrated, flowed or moved onto the property of the person asserting the defense;
- (4) an act or omission of an unrelated third person, but only where the person asserting this defense also establishes by a preponderance of the evidence that he took reasonable precautions to prevent foreseeable acts or omissions by third parties;
- (5) an act or omission by a third person with whom the person asserting the defense has a contractual relationship and where the person establishes by a preponderance of the evidence that the acts or omissions are sufficiently outside the scope of the relationship that he could not have reasonably foreseen or prevented them;
- (6) acts or omissions that occurred prior to acquisition of an ownership interest in the property by the person asserting this defense, but only where the person also establishes by a preponderance of the evidence that he exercised due diligence in investigating the possible existence of releases before acquiring the property and that the releases were not discovered;
- (7) acts or omissions that occurred prior to acquisition of an ownership interest in the property, where the person asserting the defense is an agency or unit of the government of the [State] or a qualified economic or industrial development corporation and the person acquired an ownership interest through foreclosure for tax delinquency or condemnation to respond to blight or other threats to public health, safety and welfare; or
- (8) acts or omissions that occurred prior to acquisition of an ownership interest in the property by the person asserting this defense, where the person acquired the facility by inheritance or bequest.

#### **SECTION 4: CLEANUP STANDARDS**

The [Administrator] shall promulgate or adopt by reference standards in regulations that are based on sound science for cleanups that will protect public health, welfare and the environment.

**(a) Standards** – Such standards shall include:

(1) [State]-wide numerical or performance standards describing concentrations of hazardous substances in groundwater, surface water and soils that will allow the facility to be used for any purpose.

(2) procedures that the [Administrator] shall use to establish, review and approve site-specific standards based on assessments of health and environmental risks at a facility.

(A) Such standards may rely on engineering or institutional controls protective of public health, welfare and the environment.

(B) The [Administrator] may designate through policy or regulation particularly described institutional or engineering controls that protect public health, welfare and the environment in specified circumstances, taking into account both the kind and extent of hazardous substances and the proposed land use, to be presumptive remedies. Persons proposing to utilize a presumptive remedy shall not be required to conduct a risk assessment prior to seeking approval of a proposed cleanup plan.

**(b) Scientific Advisory Panel** – The [Administrator] may seek the advice of the Scientific Advisory Panel during the development of such standards.

**(c) Interim Cleanup Standards** – Until such time that the cleanup standards required by Section 4(a) of this Act are adopted, the following standards shall apply to cleanups conducted under this Act:

(1) for hazardous substances in groundwater, maximum contaminant levels established pursuant to the federal Safe Drinking Water Act;

(2) for hazardous substances in any media, cleanup standards based on any rule or policy put into effect prior to the effective date of this Act by the [Administrator] of the [State] under the authority of any [State] environmental law; and

(3) for hazardous substances in any media for which no interim standard can be identified under subsections (1) or (2) of this section, cleanup standards established by application of the risk assessment regulations of the [State's] leaking underground storage tank program.

## **SECTION 5: RESPONSE ACTIONS**

### **(a) Notification of Release**

- (1) All persons in charge of a facility from which there is a release of a hazardous substance after the effective date of this act, except a federally- or [State]-permitted release, in quantities equal to or greater than those determined in regulations promulgated by the [Administrator], must report such release immediately to the [Administrator]. For hazardous substances that are subject to release reporting requirements under section 103(a) of the federal Superfund Act, the reportable quantities for this section shall be the same as those specified by the United States Environmental Protection Agency unless or until superseded by regulation issued by the [Administrator].
- (2) The notice required under this section shall identify:
  - (A) the location, title, and condition of the facility;
  - (B) all information provided to the National Response Center or to the United States Environmental Protection Agency pertaining to such release or facility; and
  - (C) such other information as the [Administrator], by regulation, shall prescribe.
- (3) A person in charge of a facility from which a reportable release occurs who fails to notify the [Administrator] of the release as required by section 5(a) of this section, or who provides knowingly or negligently false information, may be liable for a fine of up to \$25,000 per day and imprisonment not to exceed 3 years (or 5 years in the event of a second or subsequent conviction) or both.

### **(b) Hazardous Substances Response Plan**

- (1) Within one year of enactment of this Act, the [Administrator] shall, after notice and opportunity for public comment, publish in regulations a Hazardous Substances Response Plan. The [Administrator] may seek the advice of the Scientific Advisory Panel in developing the Hazardous Substances Response Plan.
- (2) Such Plan shall include, at a minimum, for cleanups under section 5(c):
  - (A) policies and procedures to require those persons responsible for a release to take or fund all response actions that may be necessary to protect public health, welfare, or the environment;
  - (B) policies and procedures describing site-assessment and characterization methodologies;

- (C) appropriate roles and responsibilities for the [State] government, non-governmental entities, the federal government, and other persons in effectuating the Plan;
  - (D) policies and procedures to ensure effective public involvement in response actions;
  - (E) policies and procedures for evaluating the effectiveness of engineering and institutional controls at facilities with residual contamination that otherwise may threaten public health, welfare or the environment;
  - (F) procedures for identification, procurement, maintenance, and storage of response equipment and supplies;
  - (G) procedures to inventory and catalog release sites and set criteria based on protection of public health, welfare, and the environment for determining priorities among releases or threatened releases within the [State] for the purpose of taking response action, including methods for discovering and investigating facilities at which hazardous substances have been disposed of or otherwise come to be located; and
  - (H) procedures to address response emergencies.
- (3) Such Plan shall include, at a minimum, for voluntary cleanups conducted under the voluntary cleanup program established in section 6:
- (A) establishment of a multi-disciplinary team comprising representatives of appropriate [State] agencies to assist developers and property owners in working through the [State's] cleanup and redevelopment processes;
  - (B) policies and procedures to coordinate permitting activities of several [State] agencies to create expedited permitting processes for voluntary cleanups and redevelopments; and
  - (C) policies and procedures to implement the voluntary cleanup program set forth in this Act including the issuance of prospective purchaser agreements.
- (4) The [Administrator] may revise and republish such Plan.

**(c) [State] Authority and Remedies**

(1) Access to Information

- (A) If there may be, or may have been, a release or threat of release of a hazardous substance, the [Administrator] may request or order any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to:

- (i) the identification, nature, and quantity of materials that have been or are generated, stored, treated, or disposed of at a facility or transported to a facility;
- (ii) the nature or extent of a release or threatened release of a hazardous substance from a facility; and
- (iii) the ability of a person to pay for or perform a cleanup.

(B) In addition, in response to a request or an order providing reasonable notice, a person either shall:

- (i) grant the [Administrator] access at all reasonable times to any facility, establishment, place, property, or location to inspect and copy all documents or records relating to such matters; or
- (ii) copy and furnish to the [Administrator] all such documents or records at the option and expense of such person.

(C) Confidentiality of Information

- (i) Any records, reports, or information obtained from any person under this section shall be available to the public except upon a showing satisfactory to the [Administrator] by any person that records, reports, or information or parts thereof (other than health or safety effects data) if made public would divulge methods or processes entitled to protection as trade secrets. Such information or portions thereof shall be considered confidential except that such record, report, document or information may be disclosed by the [Administrator] when relevant in any proceeding under this chapter.
- (ii) No person required to provide information under this section may claim that the information is entitled to protection unless the request for confidentiality is made in writing at the time the record, report, or information is submitted to the [Administrator].

(2) Entry, Inspection and Sampling – If there may be, or may have been, a release or threat of release of a hazardous substance, the [Administrator] is authorized to enter at reasonable times, and to issue orders as necessary to gain entry, to inspect and obtain samples from, any facility, establishment, or other place or property where:

- (A) any hazardous substance may be, has been, or may have been generated, stored, treated, released, disposed of, or transported from; or

- (B) entry is needed to determine the need for response, the appropriate response, or to effectuate a response action under this Act. Any such inspection and entry shall be completed with reasonable promptness.
- (3) Compliance Orders – The [Administrator] may request [General Counsel/Attorney General] to commence a civil action to compel compliance with an order issued under (1) or (2) of this section. Where there may be a release or threat of a release of a hazardous substance, the court may take the following actions:
- (A) in the case of interference with entry or inspection, the court may enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection, unless under the circumstances of the case the order for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law; and
- (B) in the case of information or document orders, the court may enjoin interference with such information or document orders, or direct compliance with the orders to provide such information or documents, unless under the circumstances of the case the order for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.
- (4) The [Administrator] may request [General Counsel/Attorney General] to commence a civil action for civil penalties for failure to comply with an order issued under (1) or (2) of this section. The court may assess a civil penalty not to exceed \$25,000 for each day of non-compliance against any person who unreasonably fails to comply with an order issued under paragraphs (1) or (2) of this subsection.
- (5) Other Authority – Nothing in this section shall preclude the [Administrator] from securing access or obtaining information in any other lawful manner.
- (6) Response Action Authority – General
- (A) Whenever there is a release or threat of release of a hazardous substance that results or may result in an exceedance of the cleanup standards established in this Act, the [Administrator] shall have authority to issue orders directing responsible persons to take response actions to address the release or threat of release of a hazardous substances.
- (B) After an order becomes final:

- (i) the [Administrator] is authorized to request [General Counsel/Attorney General] to bring an action in a court of competent jurisdiction, to compel compliance with the order; or
    - (ii) upon failure of a person to comply with an order, the [Administrator] may take any response actions consistent with the Hazardous Substances Response Plan that are necessary to protect public health, welfare or the environment, and the [Administrator] is authorized to request [General Counsel/Attorney General] to bring an action in a court of competent jurisdiction to recover from such person the costs of the response action taken under this paragraph.
  - (C) Any person who without sufficient cause willfully violates, or fails or refuses to comply with, any final order of the [Administrator] issued pursuant to this section, may be liable for:
    - (i) a civil penalty not to exceed \$25,000 for each day in which such violation occurs or such failure to comply continues;
    - (ii) an amount not to exceed three times the amount of any costs expended from the Environmental Response Trust Fund as a result of such failure to take proper action.
  - (D) Notwithstanding any other provisions of this section, the [Administrator] may take any response action consistent with the Hazardous Substances Response Plan necessary to protect public health, welfare and the environment without having first issued an order when the [Administrator] is unable to identify a responsible person. The [Administrator] is authorized to request [General Counsel/Attorney General] to bring an action in a court of competent jurisdiction to recover the costs of the response action taken under this paragraph if the [Administrator] identifies a responsible person after initiating a response action.
- (7) Imminent and Substantial Endangerment Response Action Authority
- (A) When the [Administrator] determines there may be an imminent and substantial endangerment to the public health, welfare or environment because of a release or threat of release of a hazardous substance from a facility, he may issue such orders as may be necessary to protect public health, welfare and the environment and may request the

[General Counsel/Attorney General] to commence a civil action in a court of competent jurisdiction to compel compliance with any such final order.

- (B) The [Administrator] may take any response actions consistent with the Hazardous Substances Response Plan that are necessary to protect public health, welfare or the environment, where an order has been issued to a responsible person and there has not been compliance with the order, or it is impracticable to issue an order to a responsible person and the [Administrator] is authorized to request [General Counsel/Attorney General] to bring an action in a court of competent jurisdiction to recover from such person the costs of the response action taken under this paragraph.
- (C) Any person who without sufficient cause willfully violates, or fails or refuses to comply with, any order of the [Administrator] issued pursuant to this section, may be liable for:
- (i) a civil penalty not to exceed \$25,000 for each day in which such violation occurs or such failure to comply continues;
  - (ii) an amount equal to three times the amount of any costs expended from the Environmental Response Trust Fund as a result of such failure to take proper action.
- (D) Any person who receives and complies with the terms of any order issued under this section may within 60 days after completion of the required action, petition the [Administrator] for reimbursement from the Environmental Response Trust Fund for the reasonable costs of such action, plus interest. To obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that:
- (i) it is not liable for response costs under section 3 of this Act and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order; or
  - (ii) that the response action required by the order was inconsistent with the Hazardous Substances Response Plan, provided that reimbursement shall be limited to costs incurred under the order that are inconsistent with the Hazardous Substances Response Plan.
- (E) If the [Administrator] refuses to grant all or part of a petition made under this section, the petitioner may within 30 days of issuance of the [Administrator's] decision file an appeal in a court of competent jurisdiction.

- (8) The [Administrator] shall make best efforts to identify, and seek response actions from, as many responsible persons as is reasonable under the circumstances when issuing an order under (6) and (7) of this section.
- (9) Limitations on Response Authority – Unless the [Administrator] determines that a release or threat of a release presents an imminent and substantial endangerment to public health, welfare or the environment and no other person with authority and capability to respond will do so in a timely manner, the [Administrator] shall not provide for a response action under this section to a release or threat of release:
- (A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;
  - (B) from products which are part of the structure of, and result in exposure within, residential buildings, businesses or community structures; or
  - (C) into public or private drinking water supplies or sewage systems due to deterioration of the system through ordinary use.
- (10) Settlement Authority – The [Administrator], in his discretion, may enter into an agreement with any person, including a responsible person under Section 3, to perform response action if the [Administrator] determines that such action will be done properly by such person.
- (A) Such agreements shall be subject to public notice and comment.
  - (B) Such agreements may include limited covenants not to sue for contamination addressed in compliance with the terms of the agreement and may provide that the person or persons shall not be liable to any other person for any response costs relating to any contamination addressed in compliance with the terms of the agreement.
  - (C) As part of such agreements, the [Administrator] may find a person eligible to participate in the voluntary cleanup under Section 6.
- (11) Contribution Actions – Any person may seek contribution from any other person who is liable under section 3 of this Act during or following any civil action under the Act. Such claims shall be brought in a court of competent jurisdiction and shall be governed by [State] law. In resolving contribution claims the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this section shall diminish the right of any person to bring an action for contribution in the

absence of a civil action under section 5(c) of this Act. A person who has resolved its liability to the [State] in an administrative or judicially approved settlement or has been issued a certificate of completion under section 6 shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any other responsible persons unless its terms provide, but it reduces the liability of the others by the amount of the settlement.

(12) Citizen Suits

- (A) Any person may commence an action to compel the [Administrator] to perform any nondiscretionary duty under this Act. At least 60 days before commencing the action, the person shall give written notice of intent to sue by registered or certified mail or personal delivery of such notice to the [Administrator] and [General Counsel/Attorney General]. The court may award attorney's fees and other costs to a substantially prevailing party in the action.
- (B) Any person may commence a civil action on his own behalf against any person, including the [State], the United States, and any other governmental instrumentality or agency, to the extent permitted by the Eleventh Amendment to the Constitution, who is alleged to be in violation of any standard, regulation, requirement or order which has become effective pursuant to this Act. At least sixty days before commencing the action, the person shall give written notice of the violation in the manner prescribed in subsection (1) of this section to the [Administrator] and any alleged violator of the standard, regulation requirement or order. No action may be commenced if the [Administrator] has commenced and is diligently prosecuting an action under this Act or any other law to require compliance with the standard, regulation, requirement or order concerned.

(13) Statute of Limitations

- (A) An action by or on behalf of the [Administrator] to recover the costs of response action under this section must be commenced within 6 years after the initiation of physical on-site response work.
- (B) An action to compel the [Administrator] or any other person to perform a duty brought under this section must be commenced within 2 years after the date that the duty became nondiscretionary.

(14) Relationship with Other Law – It is the intention of the Legislature of the [State] that this Act is complementary of other laws in the [State] relating to the protection of the environment and public health. Nothing in this Act shall prevent the [Administrator] or other authorized official of the [State] from responding to any actual or threatened release of any hazardous substance to the environment, or any noncompliance with any law established for the protection of the environment or public health, pursuant to any other applicable law in lieu of or in addition to the provisions of this Act.

## **SECTION 6: VOLUNTARY CLEANUP**

### **(a) Eligibility**

- (1) No person shall be eligible to conduct a voluntary cleanup of a facility pursuant to this section unless he first submits an application to the [Administrator] using procedures established in the Hazardous Substances Response Plan.
- (2) The [Administrator] may deny an application to conduct a voluntary cleanup pursuant to this section if the [Administrator] determines that:
  - (A) the facility is listed on the National Priorities List of the federal Superfund Act or is the subject of an ongoing enforcement proceeding under a [State] or federal environmental statute or program; or
  - (B) there are grounds to believe that the applicant lacks the intent or ability to implement a response action that will protect public health, welfare and the environment.

**(b) Voluntary Cleanup Standards** – All cleanups conducted under this Act shall protect public health, welfare and the environment. This standard may be met by either meeting:

- (1) [State]-wide numerical standards established by the [Administrator] in accordance with the procedures and methods in section 4; or
- (2) site-specific standards established or approved by the [Administrator] in accordance with the procedures and methods established pursuant to section 4.

### **(c) Cleanup Plans and Procedures**

- (1) An applicant shall submit to the [Administrator] a proposed cleanup plan that demonstrates how it will achieve the applicable cleanup standards. The applicant shall provide notice of the proposed plan as provided in section 6(j). The proposed plan shall conform to any

applicable requirements for voluntary cleanups set forth in the Hazardous Substances Response Plan and shall include sufficient information about the future use of the facility and the long-term reliability of any engineering and institutional controls for the [Administrator] to determine whether the plan will meet the applicable cleanup standards. The proposed plan shall also include a brief description of the location of the facility, and a site characterization report.

(2) Review and Approval of Cleanup Plans

- (A) The [Administrator] shall review the proposed cleanup plan within 90 days and may approve the plan if the plan demonstrates that the cleanup will achieve the applicable standards and all applicable requirements set forth in the Hazardous Substances Response Plan. The [Administrator] may consult the Scientific Advisory Panel concerning the adequacy of a proposed cleanup plan. The [Administrator] may request the applicant to provide additional information if necessary to make a determination as to whether the plan will achieve the applicable standards. The 90 day review period will toll upon issuance of a request for additional information and resume when the requested information is received from the participant.
- (B) The [Administrator] shall consider any comments received pursuant to section 6(j) on the proposed plan in determining if the proposed plan should be approved.
- (C) The [Administrator] shall determine whether the proposed plan will achieve the applicable standards and any applicable requirements of the Hazardous Substances Response Plan and shall provide a written explanation of the determination, including responses to comments, which shall be provided to the applicant and made available to the public.
- (D) The applicant may submit a revised cleanup plan at any time for review pursuant to this section.
- (E) If the [Administrator] does not provide a written explanation of his determination under section (2)(C) of this section within 90 days of the filing of a proposed plan, a participant, upon request, is entitled to a meeting with the [Administrator] for purposes of determining the status of the proposed plan and the [Administrator's] timetable for

completing review of the proposed plan. Such meeting shall be held within 10 days after the request for a meeting has been filed.

**(d) Oversight and Review of Cleanups**

(1) A participant shall grant right of access to the facility to the [Administrator] for the purpose of verifying progress in meeting the cleanup plan.

(2) Completion Reports and Certificates of Completion

(A) The participant shall submit a completion report to the [Administrator] upon completion of cleanup activities and installation of any engineering and institutional controls that are necessary to achieve the applicable standards. The completion report shall include attainment sampling results, a description of the measures taken to achieve the applicable standards, any engineering and institutional controls used to achieve the applicable standards and the measures that will be necessary to maintain those controls, a brief description of the location of the facility, a listing of any hazardous substances involved, a description of the intended future use of the facility for employment opportunities, housing, open space, recreation or other uses.

(B) The applicant shall sign a statement that the completion report is true and accurate to the best of the applicant's knowledge and belief.

(C) The applicant shall provide notice of the completion report as provided in section 6(j).

(D) The [Administrator] shall consider any comments received pursuant to section 6(j) on the completion report in determining if the completion report should be approved.

(E) The [Administrator] shall review the completion report within 90 days and if he finds that the cleanup has been completed in accordance with the approved plan, that the applicable standards have been met, and that all necessary engineering and institutional controls have been installed and implemented, the [Administrator] may approve the report and may grant the applicant a Certificate of Completion as provided in section 6(f) of this Act. The [Administrator] shall provide a written explanation of the determination, including responses to comments, which shall be provided to the applicant and made available to the public.

(F) If the [Administrator] does not provide a written explanation of his determination under section (2)(E) of this section within 90 days of the filing of a completion report, a participant, upon request, is entitled to a meeting with the [Administrator] for purposes of determining the status of the completion report and the [Administrator's] timetable for completing review of the completion report. Such hearing shall be held within 10 days after the request for a meeting is filed.

**(e) Emergency Response** – The provisions of this Act shall not prevent or impede the immediate response of the [Administrator] or any responsible person to a release or threat of a release that presents an imminent and substantial endangerment to public health, welfare or the environment.

**(f) Cleanup Liability Protection**

(1) A Certificate of Completion granted pursuant to section 6(d) of this Act shall:

(A) state that the cleanup has been completed in accordance with the cleanup plan; that the applicable standards have been met; and that the applicable requirements of the Hazardous Substances Response Plan have been met;

(B) state that the applicant is released from further liability for cleanup of the facility under this Act and other laws of the [State] for any contamination identified in the cleanup plan;

(C) provide that the recipient shall not be liable to any other person for any response costs relating to any contamination identified in the cleanup plan; and

(D) provide that the Certificate is transferable to successors in interest.

(2) Any person who holds a Certificate of Completion and is relieved of liability under this Act shall not be required to undertake additional response actions unless the [Administrator] demonstrates that:

(A) the applicant, its successors and assigns, has failed to maintain and operate engineering or institutional controls required by the approved cleanup plan;

(B) fraud was committed in demonstrating attainment of a standard at the facility that resulted in avoiding the need for further cleanup of the facility, or in obtaining approval of the cleanup plan;

(C) new information establishes the existence of hazardous substances that were not identified in the approved cleanup plan;

- (D) the cleanup fails to continue to meet the applicable standards;
- (E) the level of risk has increased, or is reasonably likely to increase, beyond the level determined by the [Administrator] in accordance with the Hazardous Substances Response Plan to be acceptable at a facility due to substantial changes in exposure conditions due to a change in land use. A change in use that would increase the level of risk to beyond the level determined by the [Administrator] to be acceptable shall not be permitted unless and until the person proposing the change in use undertakes such response actions as the [Administrator] determines are necessary to meet the applicable standards under this Act. The [Administrator] may also require that person to modify or implement any institutional controls that the [Administrator] determines are necessary to protect public health, welfare or the environment; or
- (F) the level of risk has increased, or is reasonably likely to increase, beyond the level determined by the [Administrator] in accordance with the Hazardous Substances Response Plan to be acceptable at a facility, due to substantial changes in exposure conditions as a result of new information about a hazardous substance that revises exposure assumptions beyond an acceptable range.
- (3) A Certificate of Completion shall not prevent the [Administrator] from taking action to require any person to comply with institutional controls required by the cleanup plan.
- (4) A person shall not be considered a person responsible for a release or a threatened release of a hazardous substance simply by virtue of conducting an environmental assessment or transaction screen on a property. Nothing in this section relieves a person of any liability for failure to exercise due care in performing an environmental assessment or transaction screen.
- (5) Nothing in this Act shall relieve a person from liability under this Act for the release of a hazardous substance later caused by that person at that facility.
- (6) Except for the performance of further response action at the facility, nothing in this Act shall affect the liability or authority of any person to seek any relief available against any person who may have liability with respect to the facility. This Act shall not affect the ability or authority of any person to seek contribution from another person who may have liability with respect to the facility and did not receive liability protection under this Act.

(7) If the [Administrator] changes the applicable standard or the acceptable level of risk after issuance of the Certificate of Completion and determines that additional response action is necessary, then the [Administrator] shall be responsible for any additional response action that is necessary, unless the current owner of the facility refuses to allow access to the facility as necessary to conduct the response action, in which case the [Administrator] may issue an order under section 5(c) of this Act to the owner to take whatever response action is necessary to achieve the applicable standard.

**(g) Lender Liability** – No person shall be considered a responsible person under this Act by virtue of holding a security interest in a facility unless they meet the definition of an owner and operator under section 101(20) of the federal Superfund Act.

**(h) Prospective Purchaser Liability** – No person otherwise liable under section 3(a) of this Act shall be liable if that person has received a prospective purchaser agreement from the [State] under the policies and procedures of the Hazardous Substances Response Plan that relieves such person of liability. A prospective purchaser agreement may be issued to a prospective purchaser of a property:

(A) where the [Administrator] has reason to believe that, based on a binding legal agreement with one or more responsible persons, the facility will be cleaned up in accordance with the Hazardous Substances Response Plan, or where the [Administrator] has determined that a facility will be cleaned up with funds from the Hazardous Substances Response Fund; or

(B) in such circumstances identified as appropriate in the Hazardous Substances Response Plan.

**(i) Filing of Performance Bond or Other Security**

(1) A participant shall file a performance bond or other security with the [Administrator] within 10 days after receiving the [Administrator's] approval of a cleanup plan and before the participant may perform any work on the facility.

(2) The performance bond required shall be in an amount determined by the [Administrator] to be necessary to secure and stabilize the facility if the cleanup plan is not completed consistent with subsection (h) below.

- (3) The market value of other securities deposited may not be less than the amount specified in subsection (2) of this section.
- (4) The obligation of the performance bond filed under this section shall be void upon the issuance of a Certificate of Completion to the participant or, if the participant withdraws from the program, 16 months after the date of withdrawal.
- (5) The obligation of the participant under the performance bond or other security shall become due and payable upon notification by the [Administrator] that action must be taken to fulfill the withdrawal requirements in section 6(h) of this Act for stabilizing a facility.

**(j) Withdrawal from Program**

- (1) A participant may withdraw from a voluntary cleanup at any stage before or after approval of the cleanup plan. To withdraw from the program, the participant must:
  - (A) file notice of intent to withdraw with the [Administrator];
  - (B) stabilize the facility by taking those actions necessary to ensure that work conducted at the facility has not caused greater risk to public health, welfare and the environment than existed before the cleanup commenced, and to ensure the facility will not pose an imminent and substantial threat to public health, welfare or the environment; and
  - (C) pay all outstanding fees associated accrued by the [Administrator] in connection with participation in the voluntary cleanup, including fees associated with facility stabilization.
- (2) A person that meets the requirements of subsection (1) of this section and that was not a responsible person as defined in section 3 of this Act with respect to a facility shall not become a responsible person solely as a result of participation in or withdrawal from a voluntary cleanup under this Act.

**(k) Technical Assistance, Review, Investigation and Oversight**

- (1) The [Administrator] may, upon request, assist a person in identifying Brownfields sites in the [State] and options for their redevelopment, and in determining whether real property has been the site of a release or threatened release of a hazardous substance. The [Administrator] may also assist in or supervise the development and implementation of reasonable and necessary response actions. Assistance may include review of agency records and files, and review of a requester's investigation plans and proposed cleanup plans.

- (2) The person requesting assistance under this subdivision shall pay the [Administrator] for the [Administrator's] costs of providing assistance to the person after the person files a formal application for participation in the program. Persons receiving assistance are not required to pay for assistance received prior to the filing of an application.

**(I) Public Involvement, Notice and Review**

- (1) Plain language – Cleanup plans and reports submitted by participants shall contain a summary that includes a plain language description of the information in order to enhance the opportunity for public involvement in, and understanding of, the cleanup process.

- (2) Notice and review for proposed cleanup plan or completion reports

The following notice and review provisions apply each time a proposed cleanup plan or completion report is submitted to the [Administrator]:

- (A) a participant that submits a proposed cleanup plan or completion report under this Act to the [Administrator], shall cause to be published a notice of the availability of the report or plan in the [Register] and in the local and regional paper. The notices required by this subsection shall state that a 30-day comment period will be afforded and provide the address to which comments may be sent and identify the 30 days during which comments will be accepted.

- (B) the [Administrator] shall receive all comments on proposed cleanup plans and completion reports and shall provide copies to the applicant.

- (i) The applicant shall review and consider all comments on the proposed cleanup plan, shall modify the proposed cleanup plan as appropriate and shall provide to the [Administrator] a summary of the actions it proposes to take in response to public comments, including why it has chosen not to act, if applicable.

- (ii) The [Administrator] shall review and consider all comments on the completion report and may take action, or may request that the applicant take appropriate action, to respond to the comments.

- (3) Public Involvement Plans – Persons cleaning up facilities under this Act are required to develop a public involvement plan that involves the public in the cleanup and proposed use of the facility. The plan shall propose measures to involve the public in the development and review of the cleanup plan and completion report. Depending on the facility involved,

measures may include techniques such as: developing a pro-active community information and consultation program that includes door-step notice of activities related to cleanup; holding public meetings and roundtable discussions; establishing convenient location where documents related to a cleanup can be made available to the public; designating a single contact person to whom community residents can ask questions; forming a community-based group that is used to solicit suggestions and comments on the various reports required by this section; and if needed, retaining trained, independent third parties to facilitate meetings and discussion and perform mediation services.

**(m) Fees**

- (1) The [Administrator] shall collect fees to cover the costs of implementing the provisions of this Act. The [Administrator] shall establish by regulation a fee structure for purposes of collecting these fees, and shall, to extent feasible, set a standard fee per facility. The [Administrator] may at his discretion cap the amount of costs charged to a participant.
- (2) Fees imposed under this section shall be deposited in the [General Fund and re-allocated] to the Clean Land Fund established in section 8 of this Act.

**(n) Relationship to Federal and [State] Programs** – The [Administrator] is authorized to enter into cooperative agreements with the United States Environmental Protection Agency for receiving grants, technical assistance and liability protection under federal law to those granted liability protection under this Act.

**(o) Enforcement**

- (1) General – The [Administrator] is authorized to use the enforcement and penalty provisions applicable to the environmental medium or activity of concern established under the laws of the [State].
- (2) No Defense to Illegal activities – The provisions of this Act do not create a defense against the imposition of criminal or civil fines or penalties or administrative penalties otherwise authorized by law and imposed as the result of the illegal disposal of waste or for the pollution of the land, air or waters of the [State] on the identified facility.
- (3) Fraud – Any person who willfully commits fraud in connection with any submission to the [Administrator] required under this section shall, upon conviction, be subject to an additional

penalty for each separate offense or to imprisonment for a period of not more than one year for each separate offense, or both. Each day shall constitute a separate offense.

(4) Persons who have no responsibility for contamination at a facility and participate in environmental cleanup activities under this Act shall not be responsible for paying any fines or penalties levied against any person responsible for contamination on the facility.

**(p) Financial Incentives for Voluntary Cleanup** – The [Administrator] shall develop a financial incentive package for purposes of encouraging the cleanup and redevelopment of contaminated property in [State] that may include, but is not limited to, the use of revenue bonds, property tax abatements against the value of improvements, income tax credits, grants, and low-interest loans.

## **SECTION 7: INSTITUTIONAL CONTROLS**

**[State Property Laws should be checked to verify enforceability of easements mentioned in this section]**

**(a) Records, Information and Education** – The [Administrator] is authorized to create, modify, maintain, and disseminate any and all records, informational systems, educational materials and other mechanisms that are necessary to protect public health, welfare, and the environment at facilities cleaned up under this Act, including providing information to the public through any means the [Administrator] determines to be appropriate.

**(b) Authorization of Institutional Controls** – In order to manage threats to public health, welfare and the environment at facilities cleaned up under this Act, the following written instruments are authorized, and may be issued by the [Administrator], or other appropriate person, as part of a cleanup plan approved under section 6(c) or otherwise after reasonable notice has been provided to affected persons. All offices of [State] are authorized to take any actions necessary to implement these instruments:

(1) Notice of Residual Risk, which shall describe the residual hazardous substances and their locations at a facility and any engineering or institutional controls that are in place at the facility;

(2) Residual Risk Use Restriction, which may apply, as appropriate, to the use of real property, or to the use of specified resources, including surface water, groundwater, and soils. Residual

Risk Use Restrictions shall restrict the use of property to uses that protect public health, welfare and the environment and are consistent with the level and location of residual hazardous substances at the facility and with any engineering and institutional controls in place at that facility; Residual Risk Use Restrictions shall be designed to allow as much flexibility in use as is consistent with protecting public health, welfare, and the environment;

- (3) Hazardous Substance Easement, which may authorize the [Administrator] or other person to have access to a facility for the purpose of monitoring residual hazardous substances at that facility, including monitoring the maintenance and functioning of engineering and institutional controls; a Hazardous Substance Easement may also restrict use of a facility, or specified resources, to uses that protect public health, welfare and the environment and are consistent with the concentration and location of residual hazardous substances at the facility and with any engineering or institutional controls in place at that facility. The [Administrator] or any organization or person that has the capacity to carry out the responsibilities of a holder of an easement is authorized to hold a Hazardous Substance Easement; and
- (4) Order that runs with the land, which the [Administrator] is authorized to issue to the owner of a facility cleaned up under this Act, or to other property that is adversely affected by residual hazardous substances that exceed applicable standards and have migrated outside the boundaries of a facility cleaned up under this Act. No Order shall be issued unless the instruments in (1) - (3) of this section are not sufficient to protect public health, welfare and the environment. An Order issued to an owner of property not the subject of a response conducted under this Act shall be designed to allow as much flexibility in use of the property or specified resources as is consistent with protecting public health, welfare and the environment, and if a responsible person has been determined to be liable for the hazardous substances that are the subject of the Order, that responsible person shall be required to pay the owner of the property subject to such Order for the fair market value of the restriction on use or for any other compensation that is required as a result of the Order.
- (c) Recording Instruments** – The [County Recorder or Equivalent] is authorized to record in the registry of deeds any Notice of Residual Risk, Residual Risk Use Restriction, Hazardous Substance Easement, or Order issued under this section with the deed to the property to

which it attaches in such a way as to be discoverable whenever a search is conducted for the subject property.

- (d) Modification, Rescission, and Extinguishment** – Any Notice of Residual Risk, Residual Risk Use Restriction, Hazardous Substance Easement or Order issued under this section shall run with the land, shall not be declared unenforceable due to a lack of property interest in a particular parcel of land or to lack of privity of estate or contract, or to lack of a benefit to a particular parcel of land, and shall not be subject to any rule against unreasonable restraints on alienation or transfer of property. The [Administrator] is authorized to modify, rescind, or extinguish any instrument authorized by this section for good cause, consistent with the purposes of this Act. An instrument authorized under this section may be modified, rescinded, or extinguished only after the [Administrator] finds that, in the case of a modification, such modification will protect public health, welfare and the environment, or, in the case of rescission or extinguishment, such instrument is no longer necessary to protect public health, welfare or the environment. Prior to modifying, rescinding, or extinguishing any instrument authorized under this section, the [Administrator] shall provide notice to the public and an opportunity to comment on any proposal to modify, rescind, or extinguish such instrument.
- (e) Enforcement of Institutional Controls** – The [Administrator] or any other person is authorized to enforce by order or by a civil action commenced in a court of competent jurisdiction any instrument issued under this section or any other institutional control established pursuant to this Act. The [Administrator] is authorized to take any action necessary to prevent, modify or stop any use or proposed use of a facility cleaned up under this Act that is or would be incompatible with any residual hazardous substance left in place at the facility or any engineering or institutional control at the facility or that may expose users of the facility to risks that exceed the applicable standard. A cause of action in favor of the government and the people of the [State] is authorized to compel compliance with any instrument issued under this section and to require the implementation of any institutional control that is necessary to protect public health, welfare or the environment.
- (f) Operation and Maintenance of Engineering and Institutional Controls** – The participant, its successors and assigns shall be responsible for maintaining all engineering and

institutional controls applicable to the facility, except those solely within the control of the [Administrator] or another person or those specifically exempted by the terms of a prospective purchaser agreement, for as long as they are necessary to achieve the applicable cleanup standards. The [Administrator] shall inspect and monitor all engineering and institutional controls to ensure that they continue to operate and function as designed so that the standards continue to be met. The owner of a facility cleaned up under this Act shall allow the [Administrator] access to the facility documents and records as necessary to inspect and monitor engineering and institutional controls at the facility.

## **SECTION 8: ENVIRONMENTAL RESPONSE TRUST FUND AND CLEAN LAND FUND**

### **(a) Environmental Response Trust Fund**

- (1) There is hereby established within the [Treasury] a revolving fund to be known as the “Environmental Response Trust Fund (“Trust Fund”).
- (2) Purpose – The Trust Fund shall be used for the following purposes:
  - (A) to conduct facility investigations, studies and designs related to cleanups conducted under this Act;
  - (B) to pay [State’s] governmental response costs incurred pursuant to the federal Superfund Act, including emergency response, operation and maintenance costs;
  - (C) to administer and enforce the [State’s] Clean Land Act and Hazardous Substances Response Plan; and
  - (D) to reimburse persons for monies expended in conducting a response action at the order of the [Administrator] who were subsequently determined, pursuant to section 5(c)(7) not to be a responsible person under this Act.
- (3) Proceeds of the Trust Fund may be invested in a prudent and reasonable manner consistent with applicable [State] government policies and procedures.
- (4) The Trust Fund shall be continuing. Revenues deposited into the Trust Fund shall not revert to the [General Fund] at the end of any fiscal year or at any other time and shall be continually available to the [Administrator] for the uses and purposes set forth in this Act.

- (5) The Trust Fund shall receive all funds recovered from responsible persons conducting response actions under section 5 of this Act, and all other revenue collected by the [State] as a result of fines or penalties for violation of the statutes administered by the [Administrator], determined to be appropriate by the [Administrator].
- (6) The Trust Fund shall be available without fiscal-year limitation and shall be used by the [Administrator] to meet the [State's] obligations under this act described in Section 8(a)(2).

**(b) Clean Land Fund**

- (1) There is hereby established within the [State Treasury] a revolving fund to be known as the “Clean Land Fund.”
- (2) Purpose – The Fund shall be used to receive and disburse funds from appropriations, income from operations, fees, gifts by devise or bequest, donations, grants, investments, and revenue from any and all sources pursuant to the provisions of section 6 of this Act which establishes a Voluntary Cleanup Program.
- (3) Revenue deposited into the Fund is specifically designated to be expended by the [Administrator] for the administration, improvement, and maintenance of the Voluntary Cleanup Program created pursuant to section 6 of this Act.
- (4) Proceeds of the Fund may be invested in a prudent and reasonable manner consistent with applicable [State] government policies and procedures.
- (5) The Fund shall be continuing. Revenues deposited into the Fund shall not revert to the [General Fund] at the end of any fiscal year or at any other time shall be continually available to the [Administrator] for the uses and purposes set for the in section 6 of this Act.
- (6) The Fund shall be available without fiscal-year limitation and shall be used by the [Administrator] to maintain the [State's] Voluntary Cleanup Program in accordance with section 6 of this Act. The accounting for the Fund shall be maintained on the accrual basis, including provision for employees' accrued annual leave and depreciation of fixed assets, and financial reports shall be prepared on the basis of such accounting.

**SECTION 9: ADMINISTRATIVE AND JUDICIAL REVIEW**

- (a) A person who receives an order from or is issued a decision by a designee of the [Administrator] under this Act may seek review by the [Administrator] of such decision or order.
- (b) Any order or decision issued by a designee of the [Administrator] that is affirmed by the [Administrator] becomes a final order and may be appealed to a court of competent jurisdiction by the person subject to the order.
- (c) The court shall consider the appeal based on the record developed before the [Administrator] and shall affirm the decision unless the court finds that the [Administrator's] decision was arbitrary and capricious or not in accordance with law.

## **SECTION 10: MISCELLANEOUS PROVISIONS**

### **(a) Rights Reserved**

- (1) This Act does not preempt other statutes of the [State] except where the terms of this Act may specifically conflict with such other statutes, in which case the specific terms of this Act will govern.
- (2) Remedies at law related to nuisance actions are not preempted by this Act.
- (3) Remedies available under this Act are intended to be additional to other current remedies at law.
- (4) Federal – The provisions of this Act shall not prevent the [State] from enforcing specific numerical cleanup standards or monitoring or compliance requirements specifically required by the federal government to be enforced as a condition to receive program authorization, delegation, primacy or federal funds.
- (5) Oil Spill Response – This Act shall not apply to the removal of a discharge under section 4201 of the Oil Pollution Act of 1990 (P.L.101-380, 104 Stat. 484).

### **(b) Severability**

To the extent that any provision of this statute is invalidated by a court with cognizant jurisdiction, all other provisions of this Act will remain in effect.

### **(c) Rewards**

The [Administrator] shall pay reward to a person who provides information leading to the successful prosecution and conviction of any person who fails to provide notice of a release in accordance with section 5(a) of this Act. The amount of the reward shall be one third of the fine collected as a result of such conviction, but not less than \$100.