DISTRICT OF COLUMBIA

OFFICIAL CODE

TITLE 8.
ENVIRONMENTAL AND ANIMAL CONTROL AND PROTECTION.

CHAPTER 6A.
BROWNFIELD REVITALIZATION.

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DISTRICT OF COLUMBIA OFFICIAL CODE

CHAPTER 6A. BROWNFIELD REVITALIZATION.

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CHAPTER 6A. BROWNFIELD REVITALIZATION.

SUBCHAPTER I. PURPOSES, FINDINGS, DEFINITIONS.

§ 8-631.01. FINDINGS AND DECLARATION OF PURPOSE.

The Council finds that the public interest is best served when the public health and the environment are protected by the cleanup of contaminated properties. Accordingly, the Council declares its policy is to:

(1) Create incentives for the voluntary cleanup and redevelopment of contaminated property;

(2) Develop effective and consistent cleanup standards and processes;

(3) Ensure public involvement in the cleanup and redevelopment of contaminated properties;

(4) Ensure that those responsible for the contamination of a property are held accountable;

(5) Promote economic development by encouraging the reuse of contaminated properties;

(6) Eliminate public health and environmental risks on properties;

(7) Ensure the cleanup of contaminated properties is coordinated with plans for redevelopment and the sustainable reuse of the properties;

(8) Provide for a comprehensive program to consistently and fairly assess the cleanup of contaminated properties; and

(9) Provide for regulatory and voluntary cleanup programs.

(June 13, 2001, D.C. Law 13-312, § 101, 48 DCR 3804.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

Law 13-312, the "Brownfield Revitalization Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-531, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on January 22, 2001, it was assigned Act No. 13-576 and transmitted to both Houses of Congress for its review. D.C. Law 13-312 became effective on June 13, 2001.

§ 8-631.02. DEFINITIONS.

For the purposes of this chapter, the term:

(1) "Applicant" means a person who submits an application to participate in the Voluntary Cleanup Program established by § 8-633.01.

(1A) "Bona fide prospective purchaser" means a person, or tenant of a person, who acquires ownership of a facility after June 13, 2001 and establishes by a preponderance of the evidence that:

(A) All disposal of hazardous substances at the facility occurred before the person acquired the facility;

(B) The person undertook, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability, taking into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such

contamination by appropriate inspection; provided, that in the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph;

(C) The person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility;

(D) The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to:

(i) Stop any continuing release;

(ii) Prevent any threatened future release; and

(iii) Prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance;

(E) The person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at a vessel or facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the vessel or facility);

(F) The person is in compliance with any institutional controls established or relied on in connection with the response action at the facility;

(G) The person does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action;

(H) The person complies with any request for information or administrative subpoena issued by the Mayor under this chapter;

(I) The person is not potentially liable, or affiliated with any other person that is potentially liable, for response costs at the facility through a familial, contractual, corporate, or financial relationship, other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services; and

(J) The person is not the result of a reorganization of a business entity that was potentially liable; provided, that a bona fide prospective purchaser may know, or have reason to know, of the contamination at the facility at or before the time of acquisition and still be eligible for a defense to liability under this chapter.

(2) "Brownfield" means abandoned, idled property or industrial property where expansion or redevelopment is complicated by actual or perceived environmental contamination.

(3) "Contamination" means a release, discharge, or threatened release of a hazardous substance.

(4) "DDOE" means the District Department of the Environment.

(5) "Eligible property" means a brownfield or any contaminated property that is not listed on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, approved December 11, 1980 (94 Stat. 2767; 42 U.S.C. 9601 *et seq.*), and is not the subject of a current cleanup action by the Environmental Protection Agency or the DDOE.

(6) "EPA" means the United States Environmental Protection Agency or its successor agency.

(6A)(A) "Facility" means:

(i) A building, structure, installation, equipment, pipe, pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) A site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(B) The term "facility" shall not include a consumer product in consumer use or any vessel.

(7) "Federal Act" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, approved December 11, 1980 (94 Stat. 2767; 42 U.S.C. 9601 *et seq.*).

(8) "Hazardous substance" means any substance designated as a hazardous substance pursuant to section 101(14) of the Federal Act, or any substance identified as a hazardous substance by the DDOE in regulations adopted pursuant to this chapter.

(8A) "Hazardous Substances Response Plan" means the Mayor's plan, including policies and procedures, for responding to, and evaluating, hazardous substance releases that may threaten public health, welfare, and the environment, and that is consistent with the provisions of this chapter.

(9) "Non-responsible person" means a person:

(A) With no prior or current ownership interest in an eligible property at the time of making application to participate in the Voluntary Cleanup Program, and who has not caused or contributed to the contamination of an eligible property; or

(B) Who is a successor in interest in an eligible property acquired from a non-responsible person, if the successor in interest does not have a prior ownership in the eligible property and is not otherwise a responsible person concerning the eligible property other than by virtue of ownership of the eligible property.

(10) "Institutional control" means any legal, institutional, or administrative mechanisms meant to prevent contamination or the potential exposure to hazardous substances, including any measure to ensure that use of the property, after completion of response or cleanup action pursuant to this chapter, remains in conformity with the levels of any residual hazardous substance left on the property.

(11) "Participant" means an applicant accepted into the Voluntary Cleanup Program.

(12) "Person" means any individual, partnership, corporation, trust, association, firm, joint-stock company, organization, commission, independent authority of the District government, or District, state, or federal government agency.

(13) "Program" means the Voluntary Cleanup Program established pursuant to§ 8- 633.01.

(14) "Release" means the addition, introduction, leaking, pumping, spilling, emitting, discharging, escaping, dumping, injecting, disposing or leaching of any hazardous substance into the environment, including the abandoning or discarding of barrels, containers, and other closed receptacles containing any hazardous substance.

(14A) "Response" means an action necessary to cleanup or otherwise prevent, minimize, or mitigate damage to the public health or welfare or to the environment from the release or threatened release of a hazardous substance, including a temporary or permanent measure and related enforcement activity.

(15) "Responsible person" means a person who is liable pursuant to§ 8-632.01.

(June 13, 2001, D.C. Law 13-312, § 102, 48 DCR 3804; Mar. 13, 2004, D.C. Law 15-105, § 51, 51 DCR 881; Apr. 8, 2011, D.C. Law 18-369, § 2(a), (b), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 15-105, in par. (12), validated a previously made technical correction.

D.C. Law 18-369 substituted "DDOE" for "EHA" throughout the section; added pars. (1A), (6A), (8A), and (14A); rewrote par. (4); in par. (12), substituted "independent authority of the District government, or District, state, or federal government agency" for "or government agency". Prior to amendment, par. (4) read as follows:

"(4) 'EHA' means the District's Environmental Health Administration or its successor agency."

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(a), (b) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

Law 15-105, the "Technical Amendments Act of 2003", was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Law 18-369, the "Brownfield Revitalization Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-1092, which was referred to the Committee Government Operations and the Enviironment. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 27, 2011, it was assigned Act No. 18-720 and transmitted to both Houses of Congress for its review. D.C. Law 18- 369 became effective on April 8, 2011.

SUBCHAPTER II. LIABILITIES AND DEFENSES.

§ 8-632.01. LIABILITIES.

(a) It shall be unlawful to release any hazardous substance in the District, unless the release is in quantities permitted by federal or District law or by regulations promulgated by the Mayor to implement this chapter.

A lawful release of a hazardous substance shall be reported to the Mayor within 24 hours of the release. The notification to the Mayor shall state the location and condition of the property where the hazardous substance was released and the type of hazardous substance that was released. A violation of this subsection shall be punishable by a fine not to exceed $50,000 or imprisonment not to exceed 5 years, or both. Each violation of this subsection shall constitute a separate offense and the penalties prescribed in this subsection shall apply separately to each offense.

(b) A responsible person shall be strictly liable, jointly and severally, for:

(1) The costs, including the interest on the costs, of an abatement action;

(2) The costs of a remedial cleanup and a health or any other risk assessment;

(3) The costs of any other response action; and

(4) Damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing the injury, destruction, or loss resulting from the release of the hazardous substance.

(c) For the purposes of this chapter, "a responsible person" is a person who, with regard to a property from which there is a release or threatened release of a hazardous substance that causes or contributes to the incurrence of a response cost:

(1) Is the owner or operator;

(2) At the time of contamination, was the owner or operator;

(3) By contract, or an agreement, arranged for the release, disposal or treatment of a hazardous substance on a property;

(4) Arranged for, or was responsible for the transportation of a hazardous substance for release, disposal or treatment at a property;

(5) By an act or an omission, caused or contributed to the contamination of a property if at the time of the act or omission, the person knew or had reason to know that the act or omission would cause the contamination of the property; or

(6) Knew or had reason to know that a property is contaminated and transferred ownership of the contaminated property after June 13, 2001, except if it is established by a preponderance of the evidence that the person did not participate in the management of the property, did not directly cause the contamination, and that the person:

(A) Acquired the contaminated property by inheritance or bequest;

(B) Holds ownership in the contaminated property or in property located on the contaminated property primarily to protect a valid and enforceable lien;

(C) Is a holder of a valid mortgage or deed of trust on a contaminated property, or a holder of a security interest in property located on a contaminated property;

(D) Is a fiduciary who has legal title to a contaminated property or to a property located on a contaminated property for purposes of administering an estate or trust of which the contaminated property or a property located on the contaminated property is a part;

(E) Is a holder of a mortgage or deed of trust who acquired title to a contaminated property through foreclosure, deed in lieu of foreclosure, or a tax sale;

(F) Except in the case of gross negligence or willful misconduct is an agency of the District government;

(G) Is a lender who extends credit for the performance of voluntary cleanup actions performed in accordance with the requirements of this chapter; or

(H) Is a lender who takes action to protect or preserve a mortgage or a deed of trust on a contaminated property or a security interest in property located on a contaminated property, by stabilizing, containing, removing, or preventing the contamination in a manner that does not cause or contribute to a contamination or significantly increase the threat of contamination. The lender must provide advance written notice of its actions to DDOE, or in the event of an emergency in which action is required within 12 hours, provides notice by telephone. The lender, prior to taking the action, is not a responsible party, and the action taken does not violate any provision of this chapter. Except that if the lender shall contribute to or cause further contamination to the property while taking any action pursuant to this subparagraph, the lender shall be liable solely for costs incurred as a result of the contamination which the lender caused or to which the lender contributed.

(7) A person shall not be considered a responsible person by virtue of conducting an environmental assessment on a property.

(d) To establish that a person did not know or did not have reason to know, as provided in subsections (c)(5) and (6) of this section, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. To determine that a person did not know or did not

have reason to know, a court shall consider any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or the likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

(June 13, 2001, D.C. Law 13-312, § 201, 48 DCR 3804; Apr. 8, 2011, D.C. Law 18-369, § 2(a), (c), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-369 substituted "DDOE" for EHA"; rewrote subsec. (b); in the lead-in text of subsec. (c), substituted "who, with regard to a property from which there is a release or threatened release of a hazardous substance that causes or contributes to the incurrence of a response cost" for "who"; and, in subsec. (c)(1) and (2), substituted "operator" for "operator of a contaminated property". Prior to amendment, subsec. (b) read as follows:

"(b) Any person who causes or contributes to the contamination of a property shall be strictly, jointly and severally, liable for the costs, including the interests on the costs of abatement actions, remedial cleanup, health or any other risk assessment or any other responsive actions taken by the District."

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(a), (c) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

For history of Law 18-369, see notes under § 8-631.02.

Delegation of Authority

Delegation of Authority pursuant to D.C. Law 13-312, the "Brownfield Revitalization Amendment Act of 2000", see Mayor's Order 2003-41, March 27, 2003 (50 DCR 2898).

§ 8-632.02. DEFENSES.

(a) A person shall not be liable pursuant to § 8-632.01(b) if the person establishes, by a preponderance of the evidence, that the release or contamination was caused by any of the following:

(1) An act of God;

(2) An act of war;

(3) The migration, flow, or movement of hazardous substances from property owned by a person unrelated to the person asserting the defense;

(4) An act or omission of an unrelated third party, if reasonable precautions were taken to prevent foreseeable releases;

(5) An act or omission of a third party if the act or omission was reasonably outside the scope of a prior or an existing contractual relationship and the person asserting the defense could not have reasonably foreseen or prevented the act or omission; or

(6) An act or omission that occurred prior to the acquisition of the property if due diligence had been exercised in investigating the possible existence of a release or contamination, except that due diligence shall not be required if the property was acquired by inheritance or bequest, through a foreclosure for tax delinquency, or by condemnation for blight or other threats to public health, safety, and welfare.

(b)(1) Notwithstanding § 8-632.01, a bona fide prospective purchaser whose potential liability for a release or threatened release is based solely on the purchaser being considered to be an owner or operator of a facility shall not be liable as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

(2) If there are unrecovered response costs incurred by the District at a facility for which an owner of the facility is not liable by reason of paragraph (1) of this subsection, and if each of the conditions described in paragraph (3) of this subsection is met, the District shall have a lien on the facility, or may by agreement with the owner, obtain from the owner a lien on any other property or other assurance of payment satisfactory to the Mayor, for the unrecovered response costs.

(3) The conditions referred to in paragraph (2) of this subsection are the following:

(A) A response action for which there are unrecovered costs of the District is carried out at the

facility; and

(B) The response action increases the fair market value of the facility above the fair market value of the facility that existed before the response action was initiated.

(4) A lien under paragraph (2) of this subsection shall:

(A) Be in an amount not to exceed the increase in fair market value of the property attributable to the response action at the time of a sale or other disposition of the property;

(B) Arise at the time at which costs are first incurred by the District with respect to a response action at the facility;

(C) Be subject to the requirements of subsection (1)(3) of this section; and

(D) Continue until satisfaction of the lien by sale or other means.

(June 13, 2001, D.C. Law 13-312, § 202, 48 DCR 3804; Apr. 8, 2011, D.C. Law 18-369, § 2(d), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-369 rewrote the section, which formerly read:

"A person shall not be liable pursuant to § 8-632.01(b), if the person establishes by a preponderance of the evidence, that the release or contamination was caused by any of the following:

"(1) An act of God;

"(2) An act of war;

"(3) The migration, flow, or movement of hazardous substances from property owned by a person unrelated to the person asserting the defense;

"(4) An act or omission of an unrelated third party, where reasonable precautions were taken to prevent foreseeable releases;

"(5) An act or omission of a third party where the act or omission was reasonably outside the scope of a prior or an existing contractual relationship, and the person asserting the defense could not have reasonably foreseen or prevented the act or omission; or

"(6) An act or omission that occurred prior to the acquisition of the property where due diligence had been exercised in investigating the possible existence of a release or contamination, except that if the property was acquired by inheritance or bequest, or through a foreclosure for tax delinquency or condemnation for blight or other threats to public health, safety, and welfare."

D.C. Law 18-369 rewrote the section, which formerly read:

"A person shall not be liable pursuant to § 8-632.01(b), if the person establishes by a preponderance of the evidence, that the release or contamination was caused by any of the following:

"(1) An act of God;

"(2) An act of war;

"(3) The migration, flow, or movement of hazardous substances from property owned by a person unrelated to the person asserting the defense;

"(4) An act or omission of an unrelated third party, where reasonable precautions were taken to prevent foreseeable releases;

"(5) An act or omission of a third party where the act or omission was reasonably outside the scope of a prior or an existing contractual relationship, and the person asserting the defense could not have reasonably foreseen or prevented the act or omission; or

"(6) An act or omission that occurred prior to the acquisition of the property where due diligence had been exercised in investigating the possible existence of a release or contamination, except that if the property was acquired by inheritance or bequest, or through a foreclosure for tax delinquency or condemnation for blight or other threats to public health, safety, and welfare."

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(d) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

For history of Law 18-369, see notes under § 8-631.02.

§ 8-632.03. LIABILITY OF A NON-RESPONSIBLE PERSON.

(a) If DDOE approves an applicant's status as a non-responsible person pursuant to § 8-633.02, the participant's status as a non-responsible person continues upon acquiring an interest in the eligible property.

(b) Except as provided in subsection (c) of this section, a non-responsible person is not liable for existing contamination at the eligible property.

(c) A non-responsible person shall be liable for new contamination that the person causes or contributes to, and any exacerbation of existing contamination at the eligible property.

(June 13, 2001, D.C. Law 13-312, § 203, 48 DCR 3804; Apr. 8, 2011, D.C. Law 18-369, § 2(a), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-369 substituted "DDOE" for "EHA" wherever it appeared.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(a) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

For history of Law 18-369, see notes under § 8-631.02.

SUBCHAPTER III. VOLUNTARY CLEANUP PROGRAM.

§ 8-633.01. ESTABLISHMENT.

(a) There is hereby established a Voluntary Cleanup Program ("Program") within DDOE to encourage the private voluntary cleanup of contaminated properties. The DDOE shall administer the Program and shall be responsible for:

(1) Investigating brownfield and other properties with known or perceived contamination;

(2) Determining the eligibility for voluntary cleanups and brownfield redevelopment incentives;

(3) Protecting the public health and the environment where cleanups are being performed or need to be performed;

(4) Determining cleanup standards;

(5) The oversight of cleanup activities; and

(6) Determining the finality of the cleanup of contaminated properties.

(b) Upon request, the DDOE may assist a person in identifying contaminated properties or brownfields in the District and the available options and programs for their cleanup and redevelopment. The Mayor may assist in or provide supervision for the development and the implementation of reasonable and necessary cleanup or remedial actions. This assistance may include the review of agency records, files, investigation plans, and proposed cleanup plans.

(June 13, 2001, D.C. Law 13-312, § 301, 48 DCR 3804; Apr. 8, 2011, D.C. Law 18-369, § 2(a), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-369 substituted "DDOE" for "EHA" wherever it appeared.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(a) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

For history of Law 18-369, see notes under § 8-631.02.

§ 8-633.02. ELIGIBILITY AND REQUIREMENTS.

(a) In order to participate in the program, a person shall submit, on a form to be provided by DDOE, the following:

(1) Repealed.

(2) Information which establishes that the property is an eligible property;

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

(4) An environmental assessment of the property including, the nature and location of all hazardous substances known by the applicant to be present on the contaminated property;

(5) A descriptive summary of a proposed cleanup action plan that conforms to DDOE cleanup standards; and

(6) Verifiable information regarding the identity of the true and legal owners of the eligible property.

(b)(1) DDOE shall approve or deny the application within 90 business days of its receipt. A request by DDOE for additional information shall toll the 90-day review period. The review period shall resume upon the receipt of the additional information.

(2) DDOE shall provide written notice to the applicant which states the reasons for denial of an application and shall recommend any corrective actions and the period within which the applicant may resubmit the application. If within the 90-day review period, DDOE does not deny or approve an application, or request additional information from the applicant, the applicant, within 10 days of a request, shall be entitled to a meeting with a designated DDOE official to inquire about the status of the application.

(June 13, 2001, D.C. Law 13-312, § 302, 48 DCR 3804; Apr. 8, 2011, D.C. Law 18-369, § 2(a), (e), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-369 substituted "DDOE" for "EHA" throughout the section; and repealed subsec. (a)(1), which formerly read:

"(1) Information which establishes to the satisfaction of EHA, the status of the applicant as a responsible person or a non-responsible person;"

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(a), (e) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

For history of Law 18-369, see notes under § 8-631.02.

§ 8-633.03. CLEANUP ACTION PLAN.

(a) The participant shall submit a cleanup action plan to DDOE, after the approval of an application to participate in the Program. The cleanup action plan shall be in accordance with DDOE cleanup standards and shall be approved or disapproved within 90 business days after its submission. Within that period DDOE shall consider any public comments received pursuant to this chapter and shall notify the participant of its determination.

(b) If the cleanup action is disapproved, DDOE shall include in the notice, the modifications in the cleanup action plan which are necessary to receive an approval. The participant may submit a revised or amended plan within 30 business days after the receipt of the letter of rejection, otherwise the plan shall be considered withdrawn pursuant to § 8-633.07. DDOE shall notify the participant whether the cleanup action plan has been approved, within 30 business days after the receipt of the resubmitted plan.

(c) The approval of a cleanup action plan shall mean that the program participant has granted DDOE an express right to access the eligible property for the purposes of inspecting and verifying the implementation of the cleanup action plan, once that plan has been approved.

(d) The approval of a cleanup action plan shall not:

(1) Prevent the District from taking action against any person to prevent or abate an imminent or substantial endangerment to the public or the environment at the eligible property;

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

(3) Affect the District's authority to take action against a responsible person concerning new contamination or the exacerbation of existing contamination at the eligible property after a cleanup action plan has been approved;

(4) Affect the District's authority to take action against a responsible person concerning previously undiscovered contamination at an eligible property after a cleanup action plan has been approved;

(5) Prevent the District from taking action against any person who is responsible for long-term monitoring and maintenance as provided in the cleanup action plan; or

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

(e) If a participant fails to meet the schedule for implementation and completion of the cleanup action plan, DDOE may:

(1) Reach an agreement with the participant to revise the schedule of completion in the cleanup action plan; or

(2) Withdraw the approval of the cleanup action plan pursuant to § 8-633.07, if an agreement cannot be reached.

(June 13, 2001, D.C. Law 13-312, § 303, 48 DCR 3804; Apr. 8, 2011, D.C. Law 18-369, § 2(a), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-369 substituted "DDOE" for "EHA" wherever it appeared.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(a) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

For history of Law 18-369, see notes under § 8-631.02.

§ 8-633.04. FEES, BONDS, AND OTHER SECURITY OF THE CLEANUP ACTION PLAN.

(a) The Mayor may require an applicant to pay a fee not to exceed $10,000 upon submission of an application to participate in the Program.

(b) A performance bond, in an amount to be determined by DDOE, as necessary to secure and stabilize the eligible property if the cleanup action plan is not implemented accordingly, shall be posted with DDOE before the participant may perform any cleanup action on the property. The obligation of the performance bond shall be void upon the issuance of a Certificate of Completion to the participant, or 16 months after the date of withdrawal if the participant withdraws from the Program. The obligation of the performance bond shall be due and payable upon notification by the DDOE that action must be taken to fulfill the withdrawal requirements of this chapter to stabilize the property.

(June 13, 2001, D.C. Law 13-312, § 304, 48 DCR 3804; Apr. 8, 2011, D.C. Law 18-369, § 2(a), (f), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-369 substituted "DDOE" for "EHA" throughout the section; in the section heading, substituted " "security of the cleanup action plan" for "security"; and rewrote subsec. (a), which formerly read:

"(a) An applicant shall pay a $10,000 fee, upon submission of an application to participate in the Program."

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(a), (f) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

For history of Law 18-369, see notes under § 8-631.02.

§ 8-633.05. CLEANUP STANDARDS.

(a) DDOE shall publish in the District of Columbia Register, within 180 business days of June 13, 2001, cleanup standards for contaminated properties. The cleanup standards shall be based on sound science and acceptable industry standards for the cleanup of contaminated properties to protect public health, welfare, and the environment and shall include the following:

(1) General numerical or performance standards, which describe the concentrations of hazardous substances in groundwater, surface water and soils that will allow a property to be used for any purpose;

(2) The procedures that DDOE shall use to establish and approve site or property-specific standard based on the assessments of health and environmental risks at a property. The standards may rely on engineering or institutional controls protective of public health, welfare and the environment. DDOE may designate and publish the particular engineering controls it deems as protective of public health, welfare and the environment in specified circumstances; and may designate the circumstances as containing presumptive remedies, taking into account the type of hazardous substances on the contaminated property and the proposed use of the property. Applicants claiming presumptive remedies shall not be required to conduct a risk assessment prior to the approval of a cleanup action plan.

(b) Until the cleanup standards required by subsection (a) of this section are adopted, the following guidelines shall apply to voluntary cleanup actions:

(1) The maximum contaminant levels established pursuant to the federal Safe Drinking Water Act, approved December 16, 1974 (88 Stat. 1660; 42 U.S.C. § 300f *et seq*.) shall be the cleanup standard for groundwater;

(2) The cleanup standards established by DDOE based on the District's environmental policy, law, or regulations in effect prior to June 13, 2001, shall apply to hazardous substances in any other media apart from groundwater; and

(3) For hazardous substances in any media apart from groundwater, for which interim cleaning standards cannot be determined pursuant to paragraphs (1) and (2) of this subsection, the cleanup standards established by the application of risk assessment regulations of the District's leaking underground storage tank program shall apply.

(June 13, 2001, D.C. Law 13-312, § 305, 48 DCR 3804; Apr. 8, 2011, D.C. Law 18-369, § 2(a), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-369 substituted "DDOE" for "EHA" wherever it appeared.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(a) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

For history of Law 18-369, see notes under § 8-631.02.

§ 8-633.06. CERTIFICATE OF COMPLETION.

(a) The participant shall notify DDOE that the cleanup action plan has been fully implemented, by submitting a cleanup completion report once the cleanup action plan has been completely implemented.

(b) The completion report shall state:

(1) Sampling results;

(2) A description of the measures taken to achieve the applicable standards;

(3) Any engineering and institutional controls used to achieve the applicable standards and the measures that will be necessary to maintain those controls;

(4) A listing of any hazardous substances involved; and

(5) A description of the intended future use of the facility for employment opportunities, housing, open space, recreation or other uses.

(c) DDOE shall review the implementation and completion of the cleanup action plan, and shall issue within 30 business days of the notice pursuant to subsection (a) of this section, a Certificate of Completion, if it determines that the cleanup action plan has been implemented, completed to its satisfaction and has achieved the cleanup criteria.

(d) The Certificate of Completion shall state:

(1) That the requirements of the cleanup action plan have been implemented and that applicable cleanup standards have been met;

(2) That the participant has demonstrated that implementation of the cleanup action plan at the eligible property has achieved the applicable cleanup standard regarding the contamination addressed in the cleanup action plan;

(3) That the participant is released from further liability under this chapter and any other District law or regulation, for the cleanup of the eligible property and for any contamination identified in the environmental assessment of the property, and that the participant shall not be subject to a contribution action instituted by a responsible person;

(4) Whether long-term monitoring and maintenance is necessary for the eligible property;

(5) The permissible uses of the eligible property; and

(6) That the Certificate of Completion is transferable.

(e) DDOE shall send a copy of the Certificate of Completion to the Recorder of Deeds and the Office of Tax and Revenue within 10 business days after its issuance.

(f) If a Certificate of Completion is conditioned on the permissible use of the property for commercial or industrial use, the participant shall record the Certificate of Completion with the Recorder of Deeds within 30 business days after receiving the certificate, or the Certificate of Completion shall be deemed void.

(g) 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 the approval of DDOE, shall be responsible for the cost of cleaning up the property to the appropriate standard.

(h) A requirement for long-term monitoring and maintenance in the approved cleanup action plan shall not delay the issuance of a Certificate of Completion.

(i) A Certificate of Completion shall not:

(1) Prevent the District from taking action against any person or property to prevent or abate an imminent or substantial endangerment to the public or the environment;

(2) Remain in effect if obtained by fraud or a material misrepresentation, or if new information is discovered, within a reasonable time, about a hazardous substance that revises the acceptable risk levels; or if the risk level increases due to land use.

(3) Affect the District's authority to take action against any person concerning new contamination or the exacerbation of an existing contamination after a Certificate of Completion has been issued;

(4) Affect the District's authority to take action against any person concerning previously undiscovered contamination at an eligible property after a Certificate of Completion has been issued;

(5) Prevent the District from taking action against any person who is responsible for long-term monitoring and maintenance, for failure to comply with the cleanup action plan or failure to maintain institutional control;

(6) Prevent the District 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;

(7) Prevent the District from requiring any person to take further action if the eligible property fails to meet the applicable cleanup criteria set up in the cleanup action plan; or

(8) Affect the planning or zoning authority of the District.

(j) The provisions of this section shall not affect any tort action against the participant.

(June 13, 2001, D.C. Law 13-312, § 306, 48 DCR 3804; Apr. 8, 2011, D.C. Law 18-369, § 2(a), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-369 substituted "DDOE" for "EHA" wherever it appeared.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(a) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

For history of Law 18-369, see notes under § 8-631.02.

§ 8-633.07. WITHDRAWAL FROM THE PROGRAM.

(a) 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 cleanup action plan, or after receiving a Certificate of Completion. To effectively withdraw from the Program, a participant shall:

(1) Provide a 10-day written notice of the anticipated withdrawal to DDOE;

(2) Stabilize and secure the eligible property, to the satisfaction of DDOE, to ensure the protection of the public health and environment; and

(3) Forfeit any application fees.

(b) If the participant is a non-responsible person, the participant may not be required by DDOE to cleanup the eligible property, but shall be held liable for new contamination or the exacerbation of the existing contamination at the eligible property.

(c) If the participant is a responsible person, DDOE or the Mayor may take any applicable enforcement actions authorized pursuant to this chapter.

(d) In the case of an involuntary withdrawal, where DDOE withdraws the approval of a non-responsible person's cleanup action plan, that person may not be required to cleanup the eligible property, except that the provisions of subsection (a)(1),(2) and (3) and subsection (c) of this section shall apply to the person.

(e) If an application, a cleanup action plan, or a Certificate of Completion is withdrawn, any letter or Certificate of Completion issued pursuant to this chapter shall be void and any bond or other security shall be forfeited.

(June 13, 2001, D.C. Law 13-312, § 307, 48 DCR 3804; Apr. 8, 2011, D.C. Law 18-369, § 2(a), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-369 substituted "DDOE" for "EHA" wherever it appeared.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(a) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

For history of Law 18-369, see notes under § 8-631.02.

§ 8-633.08. CLEAN LAND FUND.

(a) There is established, the Clean Land Fund, as a non-lapsing, revolving fund. The Clean Land Fund shall receive and disburse funds from appropriations, income from operations, fees, gifts by devise or bequest, donations, grants, revenues from a source pursuant to the Program, and revenues from other sources generated from enforcement at a contaminated property or from an action taken to prevent contamination, which sources of revenue may include enforcement actions under §§ 8-632.01 and 8-634.06 and cost recoveries under § 8- 634.02.

(b) Monies credited and any interest accrued to the fund shall remain available until expended, and shall not revert to the General Fund of the District of Columbia. Subject to appropriations, the Mayor shall use monies in the fund for the administration, improvement and maintenance of the Program, loans and grants made for contaminated property cleanup assistance pursuant to § 8- 637.04, other brownfield revitalization incentives established by this chapter, and other activities associated with the Mayor's cleanup of contaminated property, including the Mayor's oversight and enforcement activity.

(June 13, 2001, D.C. Law 13-312, § 308, 48 DCR 3804; Apr. 8, 2011, D.C. Law 18-369, § 2(g), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-369, in subsec. (a), substituted "revenues from a source pursuant to the Program, and revenues from other sources generated from enforcement at a contaminated property or from an action taken to prevent contamination, which sources of revenue may include enforcement actions under §§ 8-632.01 and 8- 634.06 and cost recoveries under § 8-634.02" for "and revenues from any source pursuant to the Program"; and, in subsec. (b), substituted "other brownfield revitalization incentives established by this chapter, and other activities associated with the Mayor's cleanup of contaminated property, including the Mayor's oversight and enforcement activity" for "and any other brownfield revitalization incentive established by this chapter".

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(g) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

For history of Law 18-369, see notes under § 8-631.02.

SUBCHAPTER IV. HAZARDOUS SUBSTANCE RESPONSE.

§ 8-634.01. RESPONSE AND ORDER AUTHORITY.

(a) Upon receipt of information of a threatened or actual release of a hazardous substance, the Mayor may:

(1) Take response action not inconsistent with the Hazardous Substances Response Plan that the Mayor considers necessary to protect the public health or welfare or the environment;

(2) Issue an administrative order to perform a response action that is not inconsistent with the Hazardous Substances Response Plan;

(3) Take action necessary to protect the public health or welfare or the environment from an imminent and substantial threat;

(4) Secure such relief as may be necessary to abate such danger or threat, and the Superior Court of the District of Columbia may grant such relief as the public interest and the equities of the case may require;

(5) Issue an emergency executive order pursuant to Chapter 23 of Title 7 as may be necessary to protect the public health or welfare or the environment; and

(6) Issue an administrative order to enforce other provisions of this chapter.

(b) This chapter shall not prevent or impede an immediate response by the Mayor to a contamination or threat of contamination that presents imminent and substantial danger to the public.

(c) A federal, state, local, or District permit shall not be required for the portion of a response action conducted entirely onsite, if the response action is selected and carried out in compliance with this section.

(d) Any response action taken, ordered, or otherwise agreed to by the Mayor shall:

(1) Be protective of public health and welfare and the environment; and

(2) Attain a level of cleanup or control that attains legally applicable or relevant and appropriate standards, requirements, criteria, or limitations.

(e) Response actions in which treatment permanently and significantly reduces the volume, toxicity, or mobility of hazardous substances shall be preferred over response actions not involving such treatment.

(f) The Mayor may select a remedial action meeting the requirements of subsection (d) of this section that does not attain a level or standard of control at least the level or equivalent to a legally applicable or relevant and appropriate standard requirement if:

(1) The response action selected is only part of a total response action that will attain the level or standard when complete;

(2) Compliance with the requirement will result in greater risk to human health and the environment than alternative options;

(3) Compliance with the requirement is technically impracticable from an engineering perspective; or

(4) The response action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, or limitation, through use of another method or approach.

(June 13, 2001, D.C. Law 13-312, § 401, 48 DCR 3804; Apr. 8, 2011, D.C. Law 18-369, § 2(i), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-369 rewrote the section, which formerly read:

"Within one year of June 13, 2001, the Mayor shall develop and publish in the District of Columbia Register, a comprehensive hazardous substances response plan which shall include policies and procedures for responding to, and evaluating hazardous substance releases that may threaten public health and the environment. The response plan shall not be inconsistent with the provisions of this chapter."

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(i) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

For history of Law 18-369, see notes under § 8-631.02.

§ 8-634.02. REIMBURSEMENT FOR REASONABLE COSTS.

(a) A person who receives and complies with the terms of an order issued under this chapter may petition the Mayor for the reimbursement of the reasonable costs of the action, plus interest, from the Clean Land Fund; provided, that:

(1) The required action has been completed to the satisfaction of the Mayor; and

(2) The petition is filed within 60 days of the issuance of a Certificate of Completion by the Mayor.

(b) To obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that:

(1) The petitioner is not liable for response costs under § 8-632.01, and that the costs are reasonable in light of the action required by the relevant order; or

(2)(A) The Mayor's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with the law.

(B) Reimbursement under this paragraph shall be limited to reasonable costs incurred under the portions of the order found to be arbitrary and capricious or otherwise not in accordance with the law.

(c) If the Mayor denies all or part of a petition made under this section, the petitioner may file an appeal in the Superior Court of the District of Columbia within 30 days of issuance of the Mayor's decision.

(June 13, 2001, D.C. Law 13-312, § 402, 48 DCR 3804; Apr. 8, 2011, D.C. Law 18-369, § 2(j), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-369 rewrote the section, which formerly read:

"(a) In cases of hazardous substance release or threat of release, or upon receipt of notification pursuant to § 8-632.01, the Mayor shall determine whether there is a present or imminent and substantial threat to the public or the environment. The Mayor may issue an emergency executive order, consistent with the situation, pursuant to Chapter 23 of Title 7. The Mayor shall take any other reasonable and lawful actions necessary to protect public health and the environment from the threats of imminent or immediate contamination.

"(b) Nothing in this chapter shall prevent or impede an immediate response by the Mayor or any responsible person to a contamination or threat of contamination that presents imminent and substantial danger to the public.

"(c) Nothing in this chapter shall prevent or preclude the Mayor from securing access or obtaining information in any other lawful and reasonable manner. A person required to provide information pursuant to this chapter, may not claim that the information required is entitled to confidentiality protection unless the request for confidentiality is made in writing at the time the information is provided to Mayor."

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(j) of Brownfield Revitalization Emergency Amendment

Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

For temporary (90 day) addition of sections, see § 2(k) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

For history of Law 18-369, see notes under § 8-631.02.

§ 8-634.03. ACCESS TO INFORMATION.

(a) The Mayor, upon reasonable notice, may require any person who has or may have responsive information to:

(1) Furnish information or documents relating to:

(A) The identification, nature, and quantity of material that has been or is generated, stored, treated, or disposed of at a facility or transported to a facility;

(B) The nature or extent of the release or threatened release of a hazardous substance from a facility; or

(C) The ability of a person to pay for or perform a cleanup;

(2) Grant the Mayor access at reasonable times to any facility, establishment, place, property, or location to inspect and copy all documents or records relating to matters set forth in paragraph (1) of this subsection; or

(3) Copy or furnish to the Mayor all such documents or records relating to matters set forth in paragraph (1) of this subsection at the expense of the person.

(b)(1) A record, report, or other information obtained from a person under this section shall be available to the public, except upon a showing satisfactory to the Mayor that the record, report, or other information, or a part thereof, other than health or safety effects data, if made public would divulge methods or processes entitled to protection as a trade secret.

(2) The information, or a portion thereof, shall be considered confidential, except that a record, report, document, or other information may be disclosed by the Mayor when relevant in a proceeding under this chapter.

(3)(A) A person required to provide information under this section shall not claim that the information is entitled to protection unless the request for confidentiality is made in writing at the time the record, report, or other information is submitted to the Mayor.

(4) The following information shall not be exempt from disclosure under § 2- 534(a)(14):

(A) The trade name, common name, or generic class or category of the hazardous substance;

(B) The physical properties of the hazardous substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees Celsius;

(C) The hazards to health and the environment posed by the substance, including physical hazards such as explosion, and potential acute and chronic health hazards;

(D) The potential routes of human or ecological exposure to the substance at the facility, establishment, place, or property being investigated, entered, or inspected under this chapter;

(E) The location of disposal of a waste stream;

(F) Monitoring data or analysis of monitoring data pertaining to disposal activities;

(G) Hydrogeologic or geologic data; or

(H) Groundwater monitoring data.

(c) This chapter shall not prevent or preclude the Mayor from securing access or obtaining information in any other lawful and reasonable manner, including by issuing a subpoena to compel the production of information.

(June 13, 2001, D.C. Law 13-312, § 403, as added Apr. 8, 2011, D.C. Law 18-369, § 2(k), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2(k) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For history of Law 18-369, see notes under § 8-631.02.

§ 8-634.04. ENTRY, INSPECTION, AND SAMPLING.

(a) Upon a determination of a threat or an actual release of a hazardous substance that is a threat to the public health, welfare, or the environment, for the purpose of inspection and obtaining samples, the Mayor may enter at reasonable times, and issue orders as necessary to gain entry to, a facility, establishment, or other property if:

(1) A hazardous substance may be, has been, or may have been generated, stored, treated, released, disposed of, or transported from the facility, establishment, or property; or

(2) Entry is needed to determine the need for response, the appropriate response, or to effectuate a response action under this chapter.

(b) The inspection and entry shall be completed with reasonable promptness.

((June 13, 2001, D.C. Law 13-312, § 404, as added Apr. 8, 2011, D.C. Law 18-369, § 2(k), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2(k) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For history of Law 18-369, see notes under § 8-631.02.

§ 8-634.05. REVIEW.

If the Mayor selects a response action pursuant to § 8-634.01 that results in any hazardous substances remaining at the site, the Mayor shall review the response action no less often than each 5 years after the initiation of the response action to assure that human health and the environment are being protected by the response action being implemented. If, after the review, it is the judgment of the Mayor that action is appropriate at the site in accordance with § 8-634.01 , the Mayor shall take or require the action.

(June 13, 2001, D.C. Law 13-312, § 405, as added Apr. 8, 2011, D.C. Law 18-369, § 2(k), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2(k) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For history of Law 18-369, see notes under § 8-631.02.

§ 8-634.06. CIVIL PENALTIES.

Pursuant to § 8-634.01 , a person who:

(1) Violates or fails to comply with an order of the Mayor, permit, or other applicable standard, requirement, regulation, or provisions of law pursuant to this chapter, shall be liable for:

(A) Civil penalties not to exceed $10,000 for each day of noncompliance; and

(B) An amount equal to 3 times the costs expended resulting from a failure to take proper action; and

(2) Without sufficient cause, willfully violates, fails, or refuses to comply with an order of the Mayor, permit, or other applicable standard, requirement, regulation, or provisions of law pursuant to this chapter, shall be liable for:

(A) Civil penalties not to exceed $25,000 for each day of noncompliance; and

(B) An amount equal to 3 times the costs expended resulting from a failure to take proper action.

(June 13, 2001, D.C. Law 13-312, § 406, as added Apr. 8, 2011, D.C. Law 18-369, § 2(k), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2(k) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For history of Law 18-369, see notes under § 8-631.02.

§ 8-634.07. JUDICIAL ACTIONS.

The Mayor may request the Attorney General, and the Attorney General shall have authority, to commence a civil action in the Superior Court of the District of Columbia:

(1) To compel compliance with an order of the Mayor, permit, or other applicable standard, requirement, regulation, or provisions of law pursuant to this chapter;

(2) To recover a response cost or natural resource damage, or for contribution;

(3) To declare future liability for a response cost or damage;

(4) For civil penalties not to exceed $25,000 for each day of noncompliance against any person who unreasonably fails to comply with an order of the Mayor, permit, or other applicable standards, requirement, regulation, or provision of law pursuant to this chapter; and

(5) For an amount equal to 3 times the costs expended resulting from a failure to take proper action.

(June 13, 2001, D.C. Law 13-312, § 407, as added Apr. 8, 2011, D.C. Law 18-369, § 2(k), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2(k) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For history of Law 18-369, see notes under § 8-631.02.

§ 8-634.08. SETTLEMENT AUTHORITY.

(a) The Mayor, in his or her discretion, may enter into an agreement with a person to perform a response action if the Mayor determines that the response action will be properly completed by the person.

(b) The agreement shall be subject to public notice and comment. The Mayor may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. The parties to the agreement, including the Mayor, may enforce the agreement in the Superior Court of the District of Columbia.

(c) The agreement may include limited covenants not to sue for contamination addressed in compliance with the terms of the agreement and may provide that the person shall not be liable to another person for response costs relating to a contamination addressed in compliance with the terms of the agreement.

(d) The Mayor may find a person eligible to participate in the voluntary cleanup program established under § 8-633.01 as part of an agreement.

(June 13, 2001, D.C. Law 13-312, § 408, as added Apr. 8, 2011, D.C. Law 18-369, § 2(k), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2(k) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For history of Law 18-369, see notes under § 8-631.02.

§ 8-634.09. CONTRIBUTION ACTIONS.

(a) A person may seek contribution from another person who is liable under § 8-632.01. The claim shall be brought in the Superior Court of the District of Columbia. In resolving a contribution claim, the court may allocate a response cost among liable parties using the equitable factors as the court determines appropriate.

(b) This section shall not diminish the right of a person to bring an action for contribution in the absence of a civil action under § 8-634.07.

(c) A person who has resolved his, her, or its liability to the District in an administrative or judicially approved settlement, or has been issued a Certificate of Completion under § 8-633.06, shall not be liable for a claim for contribution regarding a matter addressed in the settlement or Certificate of Completion. The settlement or Certificate of Completion shall not discharge another responsible person unless its terms so provide, but it shall reduce liability of the others by the amount of the settlement.

((June 13, 2001, D.C. Law 13-312, § 409, as added Apr. 8, 2011, D.C. Law 18-369, § 2(k), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2(k) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For history of Law 18-369, see notes under § 8-631.02.

§ 8-634.10. STATUTE OF LIMITATIONS.

(a) The provisions of § 12-301(10) notwithstanding, an action by or on behalf of the Mayor to recover the cost of a response action under this section must be commenced within 6 years after the initiation of physical onsite response work.

(b) An action to compel the Mayor or another person to perform a duty brought under this section shall be commenced within 2 years after the date that the duty became nondiscretionary.

((June 13, 2001, D.C. Law 13-312, § 410, as added Apr. 8, 2011, D.C. Law 18-369, § 2(k), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2(k) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For history of Law 18-369, see notes under § 8-631.02.

§ 8-634.11. JUDICIAL REVIEW.

(a) In considering a challenge made to a response action taken or ordered under this chapter, or the denial of all or part of a petition for reimbursement under this chapter, the court shall uphold the Mayor's decision in selecting the response action unless the objecting party can demonstrate on the administrative record that the decision was arbitrary and capricious or otherwise not in accordance with District law.

(b) If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with District law, the court shall award only the response costs or damages that are consistent with the Hazardous Substances Response Plan and other relief as is consistent with the Hazardous Substances Response Plan.

(c) In reviewing an alleged procedural error, the court may disallow the costs or damages only if the error was so serious and related to a matter of such central relevance to the action that the action would have been significantly changed had the error not been made.

(d) The Mayor shall establish an administrative record upon which the Mayor shall base the selection of a non-emergency response action. The administrative record shall be available to the public, at a minimum, by scheduling an appointment to inspect the record during regular business hours at DDOE.

(June 13, 2001, D.C. Law 13-312, § 411, as added Apr. 8, 2011, D.C. Law 18-369, § 2(k), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-369, see notes under § 8-631.02.

SUBCHAPTER V. INSTITUTIONAL CONTROLS.

§ 8-635.01. INSTITUTIONAL CONTROL.

(a) DDOE is authorized to create, modify, maintain and disseminate records, informational systems, educational materials and other materials that are necessary to protect public health and the environment at contaminated properties cleaned up pursuant to this chapter or any other laws.

(b) DDOE is authorized to issue and execute instruments pertaining to properties cleaned up pursuant to this chapter and properties adversely affected by residual hazardous substances from the cleaned-up properties. When necessary, DDOE shall request other District agencies to issue and execute instruments pertaining to properties cleaned up pursuant to this chapter or other pertinent instruments. The instruments shall include:

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

(2) Residual risk restriction, which may apply to the use of the property or to the use of specific resources on the property to the extent that the restriction will provide flexibility in use but must be consistent with the objectives of this chapter;

(3) Hazardous substance easement, which may grant DDOE access to the property for the purposes of monitoring the levels of hazardous substances and the maintenance and functioning of engineering or institutional controls;

(3A) Environmental covenant signed by the DDOE in accordance with Chapter 6C of this title; and

(4) Other orders that run with the land if any other instruments authorized pursuant to this section is found to be insufficient in implementing the objectives of this chapter.

(c) The Recorder of Deeds shall record any instruments issued pursuant to this section, with the deed to a concerned property.

(d) Any instruments issued pursuant to this section shall run with the land and may not be declared unenforceable under any circumstances, including lack of property interest, lack of privity of estate or contract, lack of benefit to a particular property, or any rule against restraints on transfer of property. DDOE may execute, modify, or terminate environmental covenants entered into pursuant to this section in accordance with Chapter 6C of this title. DDOE may modify, rescind, or extinguish any other instrument issued pursuant to this section for good cause consistent with the objectives of this chapter; provided, that the public is notified and given the opportunity to comment on the proposed action.

(June 13, 2001, D.C. Law 13-312, § 501, 48 DCR 3804; May 12, 2006, D.C. Law 16-95, § 201, 53 DCR 1652; Mar. 25, 2009, D.C. Law 17-353, §§ 109, 181, 56 DCR 1117; Apr. 8, 2011, D.C. Law 18-369, § 2(a), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 16-95, in par. (b)(3), substituted ";" for "; and"; added par. (b)(3A); in par. (b)(4), substituted "Other orders" for "Orders"; and rewrote subsec. (d), which had read as follows:

"(d) Any instruments issued pursuant to this section shall run with the land and may not be declared unenforceable under any circumstances, including lack of property interest, lack of privity of estate or contract, lack of benefit to a particular property, or any rule against restraints on transfer of property. EHA may modify, rescind, or extinguish any instrument issued pursuant to this section for good cause consistent with the objectives of this chapter provided that the public is notified and given the opportunity to comment on the proposed action."

D.C. Law 17-353, in subsec. (b), substituted "cleaned-up properties" for "cleaned up properties" and "instruments pertaining to properties cleaned up pursuant to this act or other pertinent" for "the same or pertinent the" in the lead-in language, and substituted "run" for "runs" in par. (4), and validated previously made technical corrections in subsec. (d).

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(a) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

For Law 16-95, see notes following § 8-671.01.

Law 17-353, the "Technical Amendments Act of 2008", was introduced in Council and assigned Bill No. 17-994 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

SUBCHAPTER VI. PUBLIC NOTICE, INVOLVEMENT.

§ 8-636.01. PUBLIC NOTICE.

(a) Prior to the approval of any application or cleanup action plan, and before the issuance of a Certificate of Completion, DDOE shall provide the public with a 14-day notice to comment on the proposed approval or issuance. Public comments required pursuant to this section shall be considered by DDOE in acting upon an application, cleanup action plan, or the issuance of a Certificate of Completion.

(b) The notice issued pursuant to subsection (a) of this section shall be published in the District of Columbia Register, and shall be mailed to the Advisory Neighborhood Commission in the neighborhood where the concerned property is located. The notice may also be published in a newspaper of general circulation.

(June 13, 2001, D.C. Law 13-312, § 601, 48 DCR 3804; Apr. 8, 2011, D.C. Law 18-369, § 2(a), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-369 substituted "DDOE" for "EHA" wherever it appeared.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(a) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

For history of Law 18-369, see notes under § 8-631.02.

§ 8-636.02. PUBLIC INVOLVEMENT.

(a) In addition to the provisions of § 8-636.01, DDOE may develop public involvement plans, which may include public hearings, the posting on a property of an intent to conduct a response or cleanup action, and the requirement to include a summary of proposed plans in the public notices.

(b)(1) This chapter shall not prevent a person from commencing an action to compel the Mayor to perform a non-discretionary duty under this chapter or to commence a civil action on his or her own behalf against a person who is in violation of an order of the Mayor, permit, or other applicable standard, requirement, regulation, or provision of law pursuant to this chapter.

(2) An action shall not be commenced if the Mayor has commenced an action under this chapter or another law to require compliance with the standard, regulation, requirement, or order concerned.

(3) An action commenced pursuant to this subsection shall require a 60-day notice to the Mayor and an alleged violator.

(4) The court may award attorneys' fees and other costs to the prevailing party on actions commenced pursuant to this subsection.

(June 13, 2001, D.C. Law 13-312, § 602, 48 DCR 3804; Apr. 8, 2011, D.C. Law 18-369, § 2(a), (l), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-369 substituted "DDOE" for "EHA" throughout the section; and rewrote subsec. (b), which had read as follows:

"(b) Nothing in this chapter shall prevent any person from commencing an action to compel the Mayor to perform any non-discretionary duty under this chapter; or to commence a civil action on his or her own behalf against any person who is in violation of any standard, regulations, requirements, or orders pursuant to this chapter. An action commenced pursuant to this subsection shall require a 60-day notice to the Mayor and any alleged violator. The court may award attorney fees and other costs to the prevailing party on actions commenced pursuant to this subsection."

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(a), (l) of Brownfield Revitalization Emergency

Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

For temporary (90 day) addition of section, see § 2(m) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

For history of Law 18-369, see notes under § 8-631.02.

§ 8-636.03. TIMING OF REVIEW.

A court shall not review a challenge to a response action chosen by the Mayor or to review any order issued by the Mayor, pursuant to § 8-634.01, except in the following circumstances:

(1) An action pursuant to § 8-634.01(a)(4);

(2) An action for reimbursement pursuant to § 8-634.02;

(3) An action pursuant to § 8-634.07(1), (2), (4), and (5);

(4) An action for contribution pursuant to § 8-634.09; and

(5) An action pursuant to § 8-636.02(b).

(June 13, 2001, D.C. Law 13-312, § 603, as added Apr. 8, 2011, D.C. Law 18-369, § 2(m), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-369, see notes under § 8-631.02.

SUBCHAPTER VII. CLEANUP INCENTIVES.

§ 8-637.01. INCENTIVE AUTHORIZED.

(a) The Mayor may submit proposed rules to the Council to establish credits that offset real property taxes and business franchise taxes in connection with the cleanup and redevelopment of a contaminated property. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(b) Nothing in this section shall affect any requirements imposed upon the Mayor pursuant to subchapter I of Chapter 5 of Title 2.

(c) The aggregate of the credits given pursuant to this section may equal an amount up to 100% of costs for cleanup and shall not exceed 25% of costs for redevelopment of a contaminated property.

(June 13, 2001, D.C. Law 13-312, § 701, 48 DCR 3804.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

§ 8-637.02. REQUIREMENTS.

(a) The Mayor may grant a property tax reduction on a contaminated property for the cleanup and the redevelopment of the property. The Mayor may grant the deferral or forgiveness of any delinquent real property taxes, delinquent special assessments, cost or fee assessed to correct any condition that exists on the contaminated property in violation of the law. The application for the tax reduction or for deferral or forgiveness, shall contain the following:

(1) A description of the real property;

(2) The assessed value of the real property;

(3) A statement of expected public benefits;

(4) A certification by DDOE that the applicant is eligible for the voluntary cleanup program established by this chapter; and

(5) A statement of public benefits which shall include the following:

(A) A description of the proposed cleanup and redevelopment;

(B) An estimate of the cost of the cleanup and redevelopment; and

(C) An estimate of the benefits associated with the proposed cleanup and redevelopment of the contaminated property, including:

(i) An estimate of the number of person who will be employed or whose employment shall be retained as a result of the cleanup and redevelopment; an estimate of the annual salaries of those employees; and the number of District resident employees;

(ii) An estimate of the increase in the assessed value of the real property; and

(iii) An estimate of the total increase in taxable activity in connection with the proposal.

(b) The Mayor may grant a credit to any franchise tax liability imposed by subchapters VII or VIII of Chapter 18 of Title 47. The application for the credit shall:

(1) Identify the incorporated or unincorporated business entity;

(2) Estimate the annual dollar value of each franchise tax credit; and

(3) State whether the business entity has entered into an employment agreement with the District pursuant to subchapter X of Chapter 2 of Title 2.

(c) If the amount of the credits allowable pursuant to this section exceeds the taxes otherwise due, the amount of the credits not used as an offset against the taxes may be carried forward for up to 25 years.

(d) The Mayor may impose limitations on the amount of total reductions that shall be allowed.

(June 13, 2001, D.C. Law 13-312, § 702, 48 DCR 3804; Oct. 26, 2001, D.C. Law 14-42, § 16, 48 DCR 7612; Apr. 8, 2011, D.C. Law 18-369, § 2(a), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 14-42, in subsec. (b), substituted "subchapters VII or VIII of Chapter 18" for "subchapters VII or VIII".

D.C. Law 18-369 substituted "DDOE" for "EHA" wherever it appeared.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 16 of Technical Amendments Emergency Act of 2001 (D.C. Act 14-108, August 3, 2001, 48 DCR 7622).

For temporary (90 day) amendment of section, see § 2(a) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

Law 14-42, the "Technical Correction Amendment Act of 2001", was introduced in Council and assigned Bill No. 14-216, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 5, 2001, and June 26, 2001, respectively. Signed by the Mayor on July 24, 2001, it was assigned Act No. 14-107 and transmitted to both Houses of Congress for its review. D.C. Law 14-42 became effective on October 26, 2001.

For history of Law 18-369, see notes under § 8-631.02.

§ 8-637.03. ENVIRONMENTAL SAVINGS ACCOUNT PROGRAM.

The Mayor shall establish an Environmental Savings Account Program which shall permit any person, to establish an Environmental Savings Account ("ESA") for the purpose of accumulating funds to be used for the cleanup or the redevelopment of a contaminated property. Funds deposited in an ESA and the interest earned on the funds shall be exempt from District income tax; provided, that any funds withdrawn that are not used for cleanup and redevelopment shall be subject to income tax and a 10% penalty.

(June 13, 2001, D.C. Law 13-312, § 703, 48 DCR 3804.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

§ 8-637.04. CONTAMINATED PROPERTY CLEANUP ASSISTANCE.

(a) Subject to availability of funds in the Clean Land Fund established by § 8-633.08, the Mayor may award grants and provide financial assistance for the cleanup and redevelopment of contaminated property. The financial assistance, in the form of grants or loans, to be made at a rate not to exceed 2%, shall be in an amount up to 75% of the costs incurred for completing an environmental assessment and cleaning and redeveloping a contaminated property.

(b) The following criteria shall be used to determine eligibility for financial assistance:

(1) The benefit of the remedy to public health, safety and the environment;

(2) The permanence of the remedy;

(3) The cost effectiveness of the remedy compared with other alternatives;

(4) The financial condition of the applicant;

(5) The economic distress of the area in which the site is located; and

(6) The potential for economic development.

(c) In addition to the criteria in subsection (b) of this section, loans may be made based on the ability to repay the loan from future revenue to be derived from the redeveloped site and may be secured by a mortgage or other collateral.

(d) Moneys received as repayment of loans shall be deposited in the Clean Land Fund.

(e) The Mayor shall provide an annual report to the Council by October 1 of each year on grants, loans, and expenditures made from the Clean Land Fund, the revenue received by the fund, and on the effectiveness of the fund in redeveloping contaminated property sites.

(June 13, 2001, D.C. Law 13-312, § 704, 48 DCR 3804.)

HISTORICAL AND STATUTORY NOTES

Temporary Addition of Section

For temporary (225 day) addition of section 8-637.11, see § 2 of Brownfield Revitalization Temporary Amendment Act of 2001 (D.C. Law 14-16, July 10, 2001, law notification 48 DCR 6592).

Emergency Act Amendments

For temporary (90 day) addition of section 8-637.11, see § 2 of Brownfield Revitatization Emergency Amendment Act of 2001 (D.C. Act 14-39, April 18, 2001, 48 DCR 3837).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

SUBCHAPTER VIII. RULES, FISCAL IMPACT, EFFECTIVE DATE.

§ 8-638.01. RULES.

(a) The Mayor may promulgate rules to implement the provisions of this chapter, including provisions concerning site assessment, financial assurance, feasibility studies, response actions, enforcement, cleanup standards, natural resources, public participation, and other provisions relevant to this chapter.

(b) The Mayor shall have the authority to enter into cooperative agreements, cost-sharing and other agreements for which states are eligible under the Federal Act and other statutes in order to further the purposes of this chapter.

(June 13, 2001, D.C. Law 13-312, § 801, 48 DCR 3804; Apr. 8, 2011, D.C. Law 18-369, § 2(n), 58 DCR 996.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-369 rewrote subsec. (a), which had read as follows:

"(a) The Mayor shall promulgate rules to implement the provisions of this chapter."

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(n) of Brownfield Revitalization Emergency Amendment Act of 2010 (D.C. Act 18-667, December 28, 2010, 58 DCR 95).

Legislative History of Laws

For Law 13-312, see notes following § 8-631.01.

For history of Law 18-369, see notes under § 8-631.02.