

House Bill 1406 (AS PASSED HOUSE AND SENATE)

By: Representatives Shanahan of the 10th, Hanner of the 159th, Stokes of the 92nd, McCall of the 90th, Jackson of the 112th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to waste
2 management, so as to change the amount of certain fees; to provide that the department shall
3 have the power and duty to promulgate rules and regulations governing the operation of land
4 disposal sites for septic tank wastes that receive such waste from more than one business; to
5 provide that no such facility not in operation on January 1, 2002, shall operate after July 1,
6 2002, unless permitted by such department; to extend the period certain fees and surcharges
7 shall be collected; to provide for certain powers and duties of the Director of the
8 Environmental Protection Division of the Department of Natural Resources; to change the
9 criteria for property qualifying for a limitation of liability to site contamination; to provide
10 for liability for clean-up actions without notice if the identity of the responsible person
11 cannot be determined or the situation poses a danger to persons or the environment; to define
12 a certain term; to provide for certain fees; to provide for matters relative to the foregoing;
13 to amend Chapter 2 of Title 31 of the Official Code of Georgia Annotated, relating to the
14 Department of Human Resources, so as to provide that the department shall have the power
15 and duty to promulgate rules and regulations governing the operation of land disposal sites
16 for septic tank wastes that receive such waste from one business; to provide that no such
17 facility which was not in operation on January 1, 2002, shall operate after July 1, 2002,
18 unless permitted by such department; to repeal conflicting laws; and for other purposes.

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 style="text-align:center">**SECTION 1.**

21 Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to waste
22 management, is amended by striking in their entirety subsections (e) and (g) of Code Section
23 12-8-39, relating to cost reimbursement fees and surcharges, and inserting in lieu thereof,
24 respectively, the following:

25 "(e) After July 1, 1992, owners or operators of any solid waste disposal facility other than
26 an inert waste landfill as defined in regulations promulgated by the board or a private

1 industry solid waste disposal facility shall assess and collect on behalf of the division from
 2 each disposer of waste a surcharge of 50¢ per ton of solid waste disposed. From July 1,
 3 2003, through June 30, 2008, said surcharge shall be 65¢ per ton of solid waste disposed.
 4 After July 1, 2008, said surcharge shall be 75¢ per ton of solid waste disposed. Two
 5 percent of said surcharges collected may be retained by the owner or operator of any solid
 6 waste disposal facility collecting said surcharge to pay for costs associated with collecting
 7 said surcharge. Surcharges assessed and collected on behalf of the division shall be paid
 8 to the division on July 1, 1993, for the period July 1, 1992, through December 31, 1992.
 9 All subsequent payments shall be due on the first day of July of each year for the preceding
 10 calendar year."

11 "(g) Unless the requirement for the surcharge required by subsection (e) of this Code
 12 section is reimposed by the General Assembly, no such surcharge shall be collected after
 13 July 1, ~~2003~~ 2013."

14 SECTION 1A.

15 Said chapter is further amended by inserting following Code Section 12-8-40 a new Code
 16 section to read as follows:

17 "12-8-41.

18 The department shall provide by rule or regulation for the regulation and permitting of any
 19 land disposal site that receives septic tank waste from more than one septic tank pumping
 20 and hauling business; provided, however, that no such permit shall be issued except on the
 21 written approval of the governing authority of each county in which such site is wholly or
 22 partially located. No such site which was not in operation on January 1, 2002, shall receive
 23 septic tank waste on or after July 1, 2002, unless a permit has been issued by the
 24 department."

25 SECTION 2.

26 Said chapter is further amended by striking in its entirety subsection (b) of Code Section
 27 12-8-91, relating to a declaration of policy and legislative intent, and inserting in lieu thereof
 28 the following:

29 "(b) The General Assembly declares its intent to fund the execution of the public policy
 30 set forth in subsection (a) of this Code section by and through the division with the fees
 31 established and collected by the division pursuant to subsection (e) of Code Section 12-2-2,
 32 subsection (e) of Code Section 12-8-39, subsection (d) of Code Section 12-8-68, and Code
 33 Section 12-8-95.1. The General Assembly further declares its intent to ensure that the
 34 funding provided by fees on hazardous waste management activities and hazardous
 35 substance reporting and by owners and operators of solid waste disposal facilities pursuant

1 to those Code sections and through the collection of civil penalties will not be diverted for
 2 any purpose other than the administration of this article by the division, including
 3 reviewing and overseeing investigations, corrective action, and other actions by federal
 4 agencies required under this article and supporting the reduction of hazardous waste and
 5 pollution prevention activities by federal agencies; the prevention of pollution, including
 6 reduction of hazardous wastes generated; and the effectuation of corrective action at sites
 7 that may threaten human health or the environment where hazardous wastes, hazardous
 8 constituents, or hazardous substances have been disposed of or released. Appropriation of
 9 funds to the department for inclusion in the hazardous waste trust fund continued in
 10 existence by subsection (a) of Code Section 12-8-95 shall be deemed consistent with this
 11 declaration of legislative intent."

12 SECTION 3.

13 Said chapter is further amended by striking in their entirety paragraphs (3) and (4) of
 14 subsection (b) of Code Section 12-8-95, relating to the hazardous waste trust fund, and
 15 inserting in lieu thereof the following:

16 "(3) For activities of the division associated with the administration of this part, including
 17 reviewing and overseeing investigations, corrective action, and other actions by federal
 18 agencies required under this article and supporting the reduction of hazardous waste and
 19 pollution prevention activities by federal agencies;

20 (4) In accordance with rules promulgated by the board, for financing of the state and local
 21 share of the costs associated with the investigation, remediation, and postclosure care and
 22 maintenance of sites placed on the National Priority List pursuant to the federal
 23 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as
 24 amended, or sites placed on the hazardous site inventory pursuant to Code Section 12-8-97;
 25 provided, however, that the director shall ensure that beginning July 1, 2003, and annually
 26 in each following year, an amount equal to at least one-half of the sum of annual
 27 collections made pursuant to subsection (e) of Code Section 12-8-39 and appropriated to
 28 the department in accordance with subsection (b) of Code Section 12-8-91 shall be
 29 available to be used for the purposes of this paragraph; provided, however further, that if
 30 a county or municipal corporation has been or is the owner of or operator of such site, not
 31 less than \$500,000.00 of such costs shall be paid from the hazardous waste trust fund;"

32 SECTION 4.

33 Said chapter is further amended by striking in its entirety Code Section 12-8-95.1, relating
 34 to hazardous waste management fees and hazardous substance reporting fees, and inserting
 35 in lieu thereof the following:

1 "12-8-95.1

2 (a) The division is authorized and directed to charge and collect the fees for hazardous
3 waste management activities and hazardous substance reporting fees as provided in this
4 subsection. As used in this Code section, the term 'hazardous waste' shall not include any
5 material excluded by 40 C.F.R. Part 261 of the Code of Federal Regulations. Every large
6 quantity generator and every small quantity generator shall pay the greater of ~~\$100.00~~
7 \$115.00 per calendar year or the total of the hazardous waste management fees, and every
8 person who is required to report pursuant to Section ~~312~~ or 313 of Title III of the federal
9 Superfund Amendments and Reauthorization Act of 1986 shall pay the annual hazardous
10 substance reporting fees, imposed as follows:

11 (1) Every large quantity generator of hazardous waste shall pay an annual fee of ~~\$20.00~~
12 \$23.00 per ton for hazardous waste shipped off site for disposal or incineration, ~~\$16.00~~
13 \$18.40 per ton for hazardous waste shipped off site for treatment or storage, ~~\$2.00~~ per
14 ton for hazardous waste shipped off site for recycling or reuse, and, beginning January
15 1, 1995, ~~\$9.00~~ and \$10.35 per ton for hazardous waste shipped off site for treatment by
16 being burned for energy recovery in accordance with rules and regulations promulgated
17 pursuant to Part 1 of this article; provided, however, that no large quantity generator shall
18 be liable for off-site hazardous waste management fees exceeding \$75,000.00 in any
19 calendar year. In no event shall any person be liable for an off-site hazardous waste
20 management fee on any hazardous waste for which an off-site hazardous waste
21 management fee has previously been paid;

22 (2) Every large quantity generator of hazardous waste shall pay an annual fee of ~~\$10.00~~
23 \$11.50 per ton for hazardous waste disposed of or incinerated on site, ~~\$4.00~~ \$4.60 per ton
24 for hazardous waste treated or stored on site, ~~\$1.00~~ per ton for hazardous waste reused
25 or recycled on site, and, beginning January 1, 1995, ~~\$2.50~~ and \$2.90 per ton for
26 hazardous waste treated on site by being burned for energy recovery in accordance with
27 rules and regulations promulgated pursuant to Part 1 of this article; provided, however,
28 that no large quantity generator shall be liable for on-site hazardous waste management
29 fees for disposal or incineration, treatment or storage, ~~recycling or reuse~~, or treatment by
30 burning for energy recovery in any calendar year exceeding the following amounts and
31 according to the following schedule:

32 (A) Twenty-five thousand dollars for such payments due on July 1, 1993, and on July
33 1, 1994;

34 (B) Fifty thousand dollars for such payments, excluding payments for the on-site
35 treatment of waste water which is a hazardous waste, due on July 1, 1995, and on July
36 1, 1996;

1 (C) Seventy-five thousand dollars for such payments, excluding payments for the
 2 on-site treatment of waste water which is a hazardous waste, due on and after July 1,
 3 1997;

4 (D) One thousand five hundred dollars for waste water which is a hazardous waste
 5 which is treated on site for payments due on July 1, 1995;

6 (E) Three thousand dollars for waste water which is a hazardous waste treated on site
 7 for payments due on July 1, 1996; and

8 (F) Seven thousand five hundred dollars for waste water which is a hazardous waste
 9 treated on site for payments due on and after July 1, 1997.

10 For the purposes of this paragraph, a generator who generates waste water which is a
 11 hazardous waste shall not be required to count such hazardous waste in determining its
 12 status as a large quantity generator, a small quantity generator, or a conditionally exempt
 13 small quantity generator. For the purposes of this paragraph, dilution of waste water that
 14 is a hazardous waste shall be considered treatment subject to the fees established by this
 15 paragraph. A large quantity generator which pays fees for the off-site management of
 16 hazardous waste under paragraph (1) of this subsection for a hazardous waste which was
 17 previously managed on site shall not pay the applicable on-site management fee for that
 18 hazardous waste;

19 (3) Every person who receives hazardous waste generated outside this state shall pay an
 20 annual fee of ~~\$20.00~~ \$23.00 per ton for hazardous waste disposed of or incinerated,
 21 ~~\$16.00~~ \$18.40 per ton for hazardous waste treated or stored, ~~\$2.00 per ton for hazardous~~
 22 ~~waste that is recycled or reused, and, beginning January 1, 1995, \$9.00 and \$10.35~~ per
 23 ton for hazardous waste treated by being burned for energy recovery in accordance with
 24 rules and regulations promulgated pursuant to Part 1 of this article; provided, however,
 25 that no person shall be liable for importation fees exceeding \$75,000.00 per out-of-state
 26 generator in any calendar year. In no case shall any person who receives hazardous waste
 27 from any person outside this state and who pays an importation fee on such waste
 28 pursuant to this paragraph be liable for the off-site hazardous waste management fees
 29 required by paragraph (1) of this subsection. Persons who receive hazardous waste
 30 generated outside this state are not required to pay the fees required by this paragraph for
 31 those wastes generated by conditionally exempt small quantity generators which are
 32 located outside this state. For the purposes of this paragraph, a 'conditionally exempt
 33 small quantity generator' means a generator who generates 220 pounds or less of
 34 hazardous waste in one month, as provided by rules promulgated by the board in
 35 accordance with this article; and

1 (4) Each person who is required to report pursuant to Section 313 of Title III of the
2 federal Superfund Amendments and Reauthorization Act of 1986 shall pay to the division
3 an annual hazardous substance reporting fee as follows:

4 (A) A facility with no reported release shall pay no fee;

5 (B) A facility with a reported release of less than 1,000 pounds during the calendar
6 year shall pay a fee of ~~\$500.00~~ \$575.00 for that calendar year;

7 (C) A facility with a reported release equal to or greater than 1,000 pounds but less
8 than 10,000 pounds during the calendar year shall pay a fee of ~~\$1,000.00~~ \$1,150.00 for
9 that calendar year; and

10 (D) A facility with a reported release equal or greater than 10,000 pounds during the
11 calendar year shall pay a fee of ~~\$1,500.00~~ \$1,725.00 for that calendar year.

12 (b) All hazardous waste and hazardous substance fees required by subsection (a) of this
13 Code section shall be paid to the division for transfer into the state treasury to the credit of
14 the general fund. The division shall collect such fees until the unencumbered principal
15 balance of the hazardous waste trust fund equals or exceeds \$25 million, at which time no
16 hazardous waste or hazardous substance fees shall be levied until the balance in that fund
17 is less than or equal to an unencumbered balance of \$12.5 million, in which case the levy
18 and collection of hazardous waste fees shall resume at the beginning of the next calendar
19 year following the year in which such unencumbered balance occurs. The director shall
20 provide written notice to all large quantity generators and hazardous waste treatment,
21 storage, and disposal facilities and all persons who are required to report pursuant to
22 ~~Sections 312 and~~ Section 313 of Title III of the federal Superfund Amendments and
23 Reauthorization Act of 1986 at such time as the director receives notice that the
24 unencumbered principal balance of the fund equals or exceeds \$25 million or is equal to
25 or less than \$12.5 million.

26 (c) All hazardous waste fees levied under this Code section shall be based on the amounts
27 of hazardous waste managed or imported within the preceding calendar year. Such fees
28 for the period July 1, 1992, through December 31, 1992, shall be paid to the division not
29 later than July 1, 1993. All subsequent hazardous waste fees shall be paid not later than the
30 first day of July of each year for the preceding calendar year.

31 (d) All hazardous substance fees levied under this Code section shall be based on the
32 hazardous substances reported for the preceding calendar year. All hazardous substance
33 fees shall be paid not later than the first day of July of each year for the preceding calendar
34 year.

35 (e) Persons who make payments of fees levied by this Code section later than 30 days after
36 the due date specified in subsection (c) of this Code section shall pay a penalty of 15
37 percent of the balance due and shall pay interest on the unpaid balance at the rate imposed

1 by law for delinquent taxes due to the state. Delinquent fees may be collected in a civil
 2 action instituted in the name of the director. In addition to the 15 percent penalty and the
 3 interest that may be collected along with the delinquent fees as provided in this subsection,
 4 the director shall be entitled to collect all costs, including administrative costs, and legal
 5 expenses incurred by the state in connection with its collection efforts.

6 (f) Hazardous waste which is generated by any of the following means is exempted from
 7 the fees required by this Code section:

8 (1) Corrective action required by an order, permit, or approved closure plan issued
 9 pursuant to Part 1 of this article;

10 (2) Voluntary corrective action required by any person in accordance with applicable
 11 laws and regulations; and

12 (3) Response actions required under the federal Comprehensive Environmental
 13 Response, Compensation, and Liability Act of 1980, as amended.

14 (g) The following persons shall not be required to pay the hazardous substance reporting
 15 fees required by this Code section:

16 (1) Persons who report pursuant to Section ~~312~~ or 313 of Title III of the federal
 17 Superfund Amendments and Reauthorization Act of 1986 only for substances not
 18 designated as regulated substances pursuant to rules and regulations of the board; and

19 (2) Persons who report pursuant to Section ~~312~~ or 313 of Title III of the federal
 20 Superfund Amendments and Reauthorization Act of 1986 only for petroleum fuels,
 21 lubricants, and hydraulic fluids and components thereof that are designated as regulated
 22 substances pursuant to rules and regulations of the board.

23 (h) Unless fee requirements established in this Code section are reimposed by the General
 24 Assembly, no such fees shall be levied after July 1, ~~2003~~ 2013.

25 (i) In accordance with rules promulgated by the board pursuant to paragraph (6) of Code
 26 Section 12-8-93, the director is authorized to grant a waiver of a portion of the hazardous
 27 waste management fees and hazardous substance reporting fees provided by subsection (a)
 28 of this Code section not to exceed a 25 percent reduction per year for a maximum of three
 29 years for any company as an incentive upon the recommendation of the director of the
 30 Pollution Prevention Assistance Division made in conjunction with programs and activities
 31 designed to encourage industries in the state to reduce their generation of wastes, including
 32 but not limited to programs established to recognize and reward pollution performance and
 33 environmental improvement.

34 (j) Beginning July 1, 2003, and continuing annually thereafter, federal agencies shall pay
 35 the hazardous waste management fees required by this Code section provided an amount
 36 not less than the sum of all fees collected from federal agencies is appropriated annually

1 to the department and used in accordance with subsection (b) of Code Section 12-8-91 and
 2 used for the purposes set forth in paragraph (3) of subsection (b) of Code Section 12-8-95."

3 SECTION 5.

4 Said chapter is further amended by striking in its entirety subsection (a) of Code Section
 5 12-8-96.1, relating to liability for cleanup costs, punitive damages, actions for recovery of
 6 costs and damages, and claims for contribution, and inserting in lieu thereof the following:

7 "(a) Each and every person who contributed to a release of a hazardous waste, a hazardous
 8 constituent, or a hazardous substance shall be jointly, severally, and strictly liable to the
 9 State of Georgia for the reasonable costs of activities associated with the cleanup of
 10 environmental hazards, including legal expenses incurred by the state pursuant to
 11 subsection (a) of Code Section 12-8-96, as a result of the failure of such person to comply
 12 with an order issued by the director. Any such person shall be so liable notwithstanding the
 13 absence of the issuance of an order to such person pursuant to subsection (a) of Code
 14 Section 12-8-96 if the director is unable to identify such person prior to the commencement
 15 of clean-up action after making a reasonable effort to do so pursuant to such Code section,
 16 or if such person contributed to a release which resulted in an emergency action by the
 17 director and issuance of such an order would cause a delay in corrective action that could
 18 endanger human health and the environment. The person may, in addition, be liable for
 19 punitive damages in an amount at least equal to the costs incurred by the state and not more
 20 than three times the costs incurred by the state for activities associated with the cleanup of
 21 environmental hazards. Costs and damages incurred by the state may be recovered in a
 22 civil action instituted in the name of the director. All costs recovered by the state pursuant
 23 to this Code section shall be deposited into the hazardous waste trust fund."

24 SECTION 6.

25 Said chapter is further amended by striking in its entirety Article 9, the "Georgia Hazardous
 26 Site Reuse and Redevelopment Act", and inserting in lieu thereof the following:

27 "ARTICLE 9

28 12-8-200.

29 This article shall be known and may be cited as the 'Georgia Hazardous Site Reuse and
 30 Redevelopment Act.'

31 12-8-201.

32 (a) It is declared to be the public policy of the State of Georgia, in furtherance of its
 33 responsibility to protect the public health, safety, and well-being of its citizens and to

1 protect and enhance the quality of its environment, to encourage the clean up, reuse, and
 2 redevelopment of properties where there have been releases of hazardous waste, hazardous
 3 constituents, and hazardous substances, into the environment.

4 (b) The General Assembly declares its intent to fund the execution of the public policy set
 5 forth in subsection (a) of this Code section by and through the division with application
 6 review fees established and collected by the division pursuant to Code Section 12-8-209.
 7 The General Assembly further declares its intent to ensure that the funding provided by the
 8 application review fees will not be diverted for any purpose other than the administration
 9 of this article by the division. Appropriation of funds to the Department of Natural
 10 Resources for inclusion in the hazardous waste trust fund continued in existence by
 11 subsection (a) of Code Section 12-8-95 shall be deemed consistent with this declaration of
 12 legislative intent.

13 12-8-202.

14 (a) Unless otherwise provided in this article, the definition of all terms included in Code
 15 Sections 12-8-62 and 12-8-92 shall be applicable to this article.

16 (b) As used in this article, the term:

17 (1) 'Certificate of compliance' means the certification of compliance with a corrective
 18 action plan required by Code Section ~~12-8-206~~ 12-8-207.

19 (2) 'Corrective action plan' means the corrective action plan required by Code Section
 20 ~~12-8-206~~ 12-8-207.

21 (3) 'Groundwater' means any subsurface water that is in a zone of saturation.

22 ~~(3)(4)~~ (4) 'Hazardous site inventory' means the hazardous site inventory published by the
 23 division pursuant to Code Section 12-8-97.

24 ~~(4) 'HSI site' means a property listed on the hazardous site inventory.~~

25 (5) 'Preexisting release' means a release, as such term is defined in paragraph (11) of
 26 Code Section 12-8-92, which occurred prior to the prospective purchaser's application
 27 for a limitation of liability pursuant to ~~Code Section 12-8-206~~ this article.

28 (6) 'Prospective purchaser' means a person who intends to purchase a property ~~which is~~
 29 ~~part of a site listed on the hazardous site inventory~~ where there is a preexisting release.

30 (7) 'Qualifying property' means a property which meets the criteria of Code Section
 31 ~~12-8-204~~ 12-8-205 which a prospective purchaser intends to purchase and bring into
 32 compliance with the risk reduction standards.

33 (8) 'Risk reduction standards' means those standards promulgated by the board pursuant
 34 to Part 2 of Article 3 of this chapter.

1 (9) 'Soil' means any unconsolidated earth material, together with any unconsolidated
 2 plant or animal matter or foreign material that has been incorporated into it, that either
 3 consists of or remains within, or comes to be deposited on, native soil or regolith.

4 (10) 'Source material' means any hazardous waste, hazardous substance, or hazardous
 5 constituent that has been released or disposed of that requires notification in accordance
 6 with the rules promulgated by the board pursuant to Part 2 of Article 3 of Chapter 8 of
 7 Title 12, the 'Georgia Hazardous Site Response Act.'

8 ~~12-8-202~~12-8-203.

9 (a) The board shall have the power to adopt, promulgate, modify, amend, and repeal rules
 10 and regulations to implement and enforce the provisions of this article as necessary to
 11 provide for the redevelopment and return to productive use certain ~~property or~~ qualifying
 12 ~~properties listed on the hazardous site inventory.~~ Such rules and regulations may be
 13 applicable to the state as a whole or may vary from region to region, as may be appropriate
 14 to facilitate the accomplishment of the provisions, purposes, and policies of this article.

15 (b) The board's rules and regulations shall include, but shall not be limited to, the
 16 following:

17 (1) Rules and regulations governing the eligibility criteria of prospective purchasers
 18 seeking a limitation of liability;

19 (2) Rules and regulations governing procedures for application and approval of
 20 prospective purchasers seeking a limitation of liability; and

21 (3) Rules and regulations governing procedures and criteria for determining whether a
 22 prospective purchaser qualifies for a limitation of liability.

23 ~~12-8-203~~12-8-204.

24 (a) The director shall have the power and duty:

25 (1) To make determinations, in accordance with procedures and criteria enumerated in
 26 this article and rules and regulations promulgated pursuant to this article, as to whether
 27 a prospective purchaser qualifies for a limitation of liability;

28 (2) To make determinations, in accordance with procedures and criteria enumerated in
 29 this article and rules and regulations promulgated pursuant to this article, as to whether
 30 a proposed corrective action plan is sufficient to bring the qualifying property into
 31 compliance with the risk reduction standards;

32 (3) To ensure that all actions in an approved corrective action plan are completed within
 33 the time specified, the corrective action requirements are implemented, and the risk
 34 reduction standards are achieved and certified for a qualifying property prior to
 35 concurrence with a certification of compliance;

1 (4) To approve corrective action plans; ~~and~~

2 (5) To concur with certifications of compliance; and

3 (6) To assess and collect application review fees from prospective purchasers.

4 (b) The powers and duties described in subsection (a) of this Code section may be
5 exercised and performed by the director through such duly authorized agents and
6 employees as the director deems necessary and proper.

7 ~~12-8-204~~12-8-205.

8 In order to be considered a qualifying property for a limitation of liability as provided in
9 Code Section ~~12-8-206~~ 12-8-207, a property must meet the following criteria:

10 (1) The property must ~~be part of a site listed on the hazardous site inventory~~ have a
11 preexisting release;

12 (2) Any lien filed under subsection (e) of Code Section 12-8-96 against the property
13 must be satisfied or settled and released by the director pursuant to Code Section 12-8-94;

14 (3) The property must not:

15 (A) Be listed on the federal National Priorities List pursuant to the federal
16 Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.
17 Section 9601, et seq.;

18 (B) Be currently undergoing response activities required by an order of the regional
19 administrator of the federal Environmental Protection Agency issued pursuant to the
20 provisions of such act; or

21 (C) Be a hazardous waste facility as defined in Code Section 12-8-62; and

22 (4) The property shall meet other criteria as may be established by the board as provided
23 in this article and Article 3 of this chapter.

24 ~~12-8-205~~12-8-206.

25 (a) To qualify for a limitation of liability as provided in Code Section ~~12-8-206~~ 12-8-207,
26 a prospective purchaser must meet the following criteria:

27 (1) The prospective purchaser must not be a person who has contributed or who is
28 contributing to a release of ~~regulated substances, as defined in paragraph (9) of Code~~
29 ~~Section 12-8-92, at the HSI site of which~~ at the qualifying property is a part;

30 (2) Where the prospective purchaser is an individual, the party must not: be a relative by
31 blood within the third degree of consanguinity or by marriage; be an employee,
32 shareholder, officer, or agent; or otherwise be affiliated with a current owner of the
33 subject property HSI site or any person who has contributed or is contributing to a release
34 ~~of hazardous materials on~~ at the subject property HSI site;

1 (3) Where the prospective purchaser is a corporation or other legal entity, the party must
 2 not: be a current or former subsidiary, division, parent company, or partner; be the
 3 employer or former employer; or otherwise have been affiliated with the current owner
 4 of the subject property HSI site or any person who has contributed or is contributing to
 5 a release of hazardous materials on at the subject property HSI site;

6 (4) The prospective purchaser must not be in violation of any order, judgment, statute,
 7 rule, or regulation subject to the enforcement authority of the director; and

8 (5) The prospective purchaser must meet such other criteria as may be established by the
 9 board pursuant to Code Section ~~12-8-202~~ 12-8-203.

10 (b) The director may grant a variance from the eligibility requirements contained in
 11 paragraphs (2), (3), (4), and (5) of subsection (a) of this Code section if the director finds
 12 that such criteria would render a prospective purchaser ineligible for a limitation of liability
 13 under this article, that no other qualified prospective purchaser has applied for a limitation
 14 of liability for the qualifying property, and that:

15 (1) Such ineligibility would result in the continuation of a condition which poses a threat
 16 to human health and the environment;

17 (2) The director would likely be required to perform the necessary corrective action
 18 using funds from the hazardous waste trust fund; and

19 (3) In all probability, the director would be unable to recover the cost of the corrective
 20 action as provided in Code Section 12-8-96.1.

21 The director may place such conditions upon the grant of a variance as he or she deems
 22 appropriate including, without limitation, a provision relating to the time all or a portion
 23 of the corrective action must be completed, and if the applicant fails to comply with such
 24 conditions the director may modify or withdraw such variance.

25 ~~12-8-206~~12-8-207.

26 (a) Upon the director's approval of the prospective purchaser corrective action plan or
 27 concurrence with the certification of compliance described in this Code section, whichever
 28 first occurs, a prospective purchaser shall not be liable to the state or any third party for
 29 costs incurred in the remediation of, equitable relief relating to, or damages resultant from
 30 the preexisting release, nor shall the prospective purchaser be required to certify
 31 compliance with risk reduction standards for groundwater, perform corrective action, or
 32 otherwise be liable for any preexisting releases to groundwater associated with the
 33 qualifying property at the HSI site of which the qualifying property is part.

34 (b) (1) For ~~those HSI sites~~ qualifying properties which the director has designated as
 35 needing corrective action in accordance with paragraph (8) of subsection (a) of Code
 36 Section 12-8-97, any party desiring to qualify for a limitation of liability pursuant to this

1 Code section shall submit a prospective purchaser corrective action plan to the division.
2 The corrective action plan shall, at minimum, enumerate and describe in detail those
3 actions planned and proposed to bring any source material or soil found on the qualifying
4 property into compliance with all applicable rules and regulations adopted by the board
5 governing the investigation, cleanup, and corrective action at properties listed on the
6 hazardous site inventory. A corrective action plan submitted by a prospective purchaser
7 under this subsection shall be in such form and meet such criteria as established by the
8 board.

9 (2) The prospective purchaser shall submit proof of financial assurance, in such form as
10 specified by the director, of his or her ability to implement the corrective action plan.

11 (3) Upon the director's approval of the prospective purchaser corrective action plan, it
12 shall be the responsibility of the prospective purchaser to implement said plan. The
13 director's approval of a prospective purchaser corrective action plan shall not in any way
14 be construed as a guarantee, promise, or assurance that the director will concur with the
15 prospective purchaser's certification of compliance ~~with the risk reduction standards for~~
16 source material and soil in accordance with the provisions of this Code section.

17 Compliance with the appropriate risk reduction standards for source material or soil in
18 effect at the time the director's concurrence is sought is the sole responsibility of the
19 prospective purchaser. The prospective purchaser shall not acquire a vested right to the
20 director's concurrence regardless of the expenditure of money. The prospective purchaser
21 shall implement the corrective action plan with the understanding that the requirements
22 of corrective action necessary to obtain a limitation of liability are subject to change
23 because of newly discovered facts or subsequent changes in state or federal laws, rules,
24 or regulations.

25 (4) The director's approval of the prospective purchaser corrective action plan shall
26 specify a time within which the prospective purchaser must certify the qualifying
27 property to be in compliance with the risk reduction standards for source material or soil
28 in order to maintain the limitation of liability provided for by subsection (a) of this Code
29 section. The director may revoke the limitation of liability provided for by subsection (a)
30 of this Code section if the prospective purchaser fails to ~~comply with~~ certify compliance
31 within such time ~~requirement~~.

32 (5) If at any time the director determines that any element of an approved prospective
33 purchaser corrective action plan must be modified in order to achieve compliance with
34 the risk reduction standards for source material or soil or that the corrective action is not
35 being implemented in accordance with the corrective action plan, the director may revoke
36 his or her approval of the plan and the limitation of liability by providing the prospective
37 purchaser with written notification specifying the basis for making such determination

1 and requesting modification and resubmission of a modified plan or an opportunity to
2 address any deficiencies in implementing the corrective action plan within a specified
3 time. If at any time the prospective purchaser determines that any element of an approved
4 prospective purchaser corrective action plan must be modified in order to achieve
5 compliance with the risk reduction standards for source material or soil, the prospective
6 purchaser shall notify the director and obtain approval of the proposed modification.

7 (6) A prospective purchaser shall, upon completion of those activities specified in the
8 corrective action plan, submit to the director a compliance status report certifying the
9 compliance of ~~the qualifying property~~ any source material or soil found on the qualifying
10 property with the risk reduction standards for source material or soil and corrective action
11 requirements. The qualifying property will be deemed in compliance with the source or
12 soil contamination risk reduction standards upon the prospective purchaser's receipt of
13 the director's written concurrence with the compliance status report.

14 (c) For those ~~sites listed on the hazardous site inventory~~ qualifying properties which the
15 director has not yet designated as being in need of corrective action, any party desiring to
16 qualify for a limitation of liability as provided in this Code section shall certify the
17 qualifying property to be in compliance with the risk reduction standards for source
18 material or soil by submitting a compliance status report to the division in such form as
19 provided by rules and regulations adopted by the board. A compliance status report
20 submitted by a prospective purchaser under this subsection shall be in such form and meet
21 such criteria as established by the board. The qualifying property will be deemed in
22 compliance with the risk reduction standards for source material or soil upon the
23 prospective purchaser's receipt of the director's written concurrence with the compliance
24 status report.

25 (d) A person who holds indicia of ownership executed by the prospective purchaser
26 primarily to protect said person's security interest in the qualifying property or who acts
27 in good faith solely in a fiduciary capacity and who did not actively participate in the
28 management, disposal, or release of hazardous wastes, hazardous constituents, or
29 hazardous substances on or from the qualifying property shall not be liable to the state or
30 any third party for costs incurred in the remediation of, equitable relief relating to, or
31 damages resultant from the preexisting release at the ~~HSI site of which the qualifying~~
32 ~~property is part~~ qualifying property.

33 (e) When a person who holds indicia of ownership executed by the prospective purchaser
34 primarily to protect said person's security interest in the qualifying property takes title to
35 the qualifying property from the prospective purchaser via foreclosure or a deed in lieu of
36 foreclosure, such new titleholder shall maintain his or her limitation of liability under
37 subsection (d) of this Code section if:

1 (1) The director is informed in writing of the transfer of title; and

2 (2) Within 180 days, or such other time period as specified by the director, of said
3 transfer of title, the new titleholder:

4 (A) Presents the name of a new party who qualifies as a prospective purchaser for the
5 qualifying property along with said new party's written assurance, including financial
6 assurance, that the prospective purchaser corrective action plan will be fully
7 implemented; or

8 (B) Submits a statement in writing that the new titleholder complies with the
9 requirements applicable to prospective purchasers under this article.

10 ~~12-8-207~~12-8-208.

11 (a) The limitation of liability provided by subsection (a) of Code Section ~~12-8-206~~
12 12-8-207 shall be contingent upon the prospective purchaser's good faith implementation
13 of the corrective action plan as approved by the director as well as the certification of
14 compliance with the risk reduction standards and corrective action requirements. Such
15 limitation of liability shall not be applicable to any activities conducted on the qualifying
16 property before the director's approval of the corrective action plan or concurrence with
17 a certification of compliance, whichever first occurs, or during any time the director's
18 approval of the corrective action plan has been suspended or revoked.

19 (b) The limitation of liability provided by this article shall not affect any right of
20 indemnification which any person has or may acquire by contract against any other person
21 who is otherwise liable for creating an environmental hazard; apply to persons who
22 intentionally, wantonly, or willfully violate federal or state regulations in the cleanup
23 process; or apply to any release occurring or continuing after the date of the certification
24 of compliance unless any such continuing release is specifically addressed in the director's
25 concurrence with the certification of compliance.

26 (c) The limitation of liability provided by this article shall be fully transferable to the heirs,
27 assigns, and designees of the person to whom such limitation of liability is granted;
28 provided, however, that in no event shall the director's approval of a corrective action plan
29 or concurrence with a certification of compliance operate to absolve from liability any
30 party deemed to be a person ~~responsible for~~ who has contributed or is contributing to a
31 release ~~on~~ at the ~~HSI site from which the qualifying property originated~~ qualifying
32 property. A transfer of the title to the qualifying property or any portion thereof from the
33 prospective purchaser back to the owner of the ~~HSI site~~ property from which the ~~qualifying~~
34 subject property was purchased, any other party deemed to be a person ~~responsible for~~ who
35 has contributed or is contributing to a release ~~on~~ at the ~~HSI site~~ property, or any person

1 disqualified from obtaining a limitation of liability under Code Section ~~12-8-205~~ 12-8-206
 2 shall terminate any limitation of liability applicable to the transferor under this article.

3 (d) For the purpose of determining liability for continuing or future releases of regulated
 4 substances upon or from any qualifying property for which the director has concurred with
 5 a certification of compliance pursuant to Code Section ~~12-8-206~~ 12-8-207, the background
 6 or baseline concentration for any and all ~~regulated substances~~ releases for which corrective
 7 action was performed or compliance certified or both shall be equivalent to the risk
 8 reduction standard for which compliance was certified in order to invoke the limitation of
 9 liability.

10 (e) The limitation of liability provided by this article shall have no effect on liability for
 11 releases of hazardous waste, hazardous constituents, or hazardous substances not addressed
 12 in the corrective action plan or the certification of compliance. Any such release shall
 13 constitute a new, separate, and distinct release, subject to the provisions of Part 2 of Article
 14 3 of this chapter.

15 (f) Nothing in this article shall limit the authority of the director or the division to take
 16 action in response to any release or threat of release ~~of regulated substances~~. Except as
 17 provided in this article, nothing shall limit the authority of the director or the division to
 18 seek recovery of costs from persons liable under Part 2 of Article 3 of this chapter.

19 12-8-209.

20 The initial compliance status report or a corrective action plan submitted for any qualifying
 21 property under Code Section 12-8-207 shall be deemed to be an application to participate
 22 in the program described in this article and shall be submitted in such form as may be
 23 prescribed by the director. By making said initial submission, the prospective purchaser
 24 agrees to the provisions of this Code section. A nonrefundable application review fee of
 25 \$3,000.00 shall be submitted with the application. Within 30 days of the receipt of the
 26 application, the director shall cause to be prepared and delivered to the applicant an
 27 estimate of the projected costs of the division to review the application. The director may,
 28 at any time during the application review process, invoice the applicant for any costs of the
 29 division in reviewing the application that exceed the initial application review fee. Failure
 30 to remit payment within 30 days of receipt of invoice may cause rejection of the
 31 application. The director may not issue a written concurrence with a certification of
 32 compliance if there is an outstanding fee to be paid by the prospective purchaser."

33 SECTION 6A.

34 Chapter 2 of Title 31 of the Official Code of Georgia Annotated, relating to the Department
 35 of Human Resources, is amended by inserting at the end thereof the following:

1 "31-2-8.
2 The department shall provide by rule or regulation for the regulation and permitting of any
3 land disposal site that receives septic tank waste from only one septic tank pumping and
4 hauling business; provided, however, that no such permit shall be issued except on the
5 written approval of the governing authority of each county in which such site is wholly or
6 partially located. No such site which was not in operation on January 1, 2002, shall receive
7 septic tank waste on or after July 1, 2002, unless a permit has been issued by the
8 department."

9 **SECTION 7.**

10 This Act shall become effective on July 1, 2002, except for Section 4, which shall become
11 effective on July 1, 2003.

12 **SECTION 8.**

13 All laws and parts of laws in conflict with this Act are repealed.