

House Bill 979

By: Representative Setzler of the 35th

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 certain provisions relating to definitions relative to hazardous
3 waste management; to change certain provisions relating to variances; to change certain
4 provisions relating to criteria for property to qualify for limitation of liability; to change
5 certain provisions relating to limitation of expenses following approval of a corrective action
6 plan; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to waste
10 management, is amended by striking paragraphs (2), (9), (10), and (20) of Code Section
11 12-8-62, relating to definitions relative to hazardous waste management, and inserting in lieu
12 thereof the following:

13 "(2) 'Designated hazardous waste' means any solid waste identified as such in regulations
14 promulgated by the board. The board may identify as 'designated hazardous waste' any
15 solid waste which the board concludes is capable of posing a substantial present or
16 potential hazard to human health or the environment when improperly treated, stored,
17 transported, or disposed of or otherwise managed, based on the factors set forth in
18 regulations promulgated by the administrator of the United States Environmental
19 Protection Agency pursuant to the federal act which are codified as 40 C.F.R. Section
20 261.11(a)(3), in force and effect on ~~February 1, 1996~~ February 15, 2006, if such solid
21 waste contains any substance which is listed on any one or more of the following lists:

22 (A) List of Hazardous Constituents, codified as 40 C.F.R. Part 261, Appendix VIII, in
23 force and effect on ~~February 1, 1996~~ February 15, 2006;

24 (B) Ground-water Monitoring List, codified as 40 C.F.R. Part 264, Appendix IX, in
25 force and effect on ~~February 1, 1996~~ February 15, 2006;

1 (C) List of Hazardous Substances and Reportable Quantities, codified as 40 C.F.R.
 2 Table 302.4, and all appendices thereto, in force and effect on ~~February 1, 1996~~
 3 February 15, 2006;

4 (D) List of Regulated Pesticides, codified as 40 C.F.R. Part 180, in force and effect on
 5 ~~February 1, 1996~~ February 15, 2006;

6 (E) List of Extremely Hazardous Substances and Their Threshold Planning Quantities,
 7 codified as 40 C.F.R. Part 355, Appendix A, in force and effect on ~~February 1, 1996~~
 8 February 15, 2006; or

9 (F) List of Chemicals and Chemical Categories, codified as 40 C.F.R. Part 372.65 in
 10 force and effect on ~~February 1, 1996~~ February 15, 2006."

11 "(9) 'Hazardous constituent' means any substance listed as a hazardous constituent in
 12 regulations promulgated by the administrator of the United States Environmental
 13 Protection Agency pursuant to the federal act which are in force and effect on ~~February~~
 14 ~~1, 1996~~ February 15, 2006, codified as Appendix VIII to 40 C.F.R. Part
 15 261—Identification and Listing of Hazardous Waste.

16 (10) 'Hazardous waste' means any solid waste which has been defined as a hazardous
 17 waste in regulations promulgated by the administrator of the United States Environmental
 18 Protection Agency pursuant to the federal act which are in force and effect on ~~February~~
 19 ~~1, 1996~~ February 15, 2006, codified as 40 C.F.R. Section 261.3 and any designated
 20 hazardous waste."

21 "(20) 'Solid waste' means solid waste as defined by regulations promulgated by the
 22 administrator of the United States Environmental Protection Agency pursuant to the
 23 federal act which are in force and effect on ~~February 1, 1996~~ February 15, 2006, codified
 24 as 40 C.F.R. Sections 261.1, 261.2(a)-(d), and 261.4(a)."

25 SECTION 2.

26 Said chapter is further amended by striking subsection (a) of Code Section 12-8-69, relating
 27 to variances, and inserting in lieu thereof the following:

28 "(a)(1) Unless variances are prohibited by the federal act or the standards, rules, and
 29 regulations promulgated thereunder, the director may grant variances from the
 30 requirements of this article or the rules and regulations effective under this article
 31 whenever the director finds that compliance with any provision of this article or any
 32 standard, rule, or regulation will result in an arbitrary and unreasonable taking of property
 33 or will result, in effect, in the closing and elimination of any lawful business, occupation,
 34 or activity without sufficient corresponding benefit or advantage to the public, provided
 35 that no variance shall be granted where the effect of a variance will permit the
 36 continuation of a condition which poses an undue present or potential threat to the

1 environment or to the health of humans; provided, further, that any variance so granted
 2 shall not be construed so as to relieve any person from any liability imposed by law or
 3 rule and regulation.

4 (2) A variance may be granted under paragraph (1) of this subsection to a site requiring
 5 cleanup under the provisions of Article 3 of this chapter for the sole purpose of changing
 6 the status of a hazardous waste facility as defined in Code Section 12-8-62. Such a
 7 variance shall qualify the property as eligible for a limitation of liability pursuant to Code
 8 Section 12-8-205, provided that all conditions of the variance are met. Such a variance
 9 shall be granted only when it is demonstrated to the satisfaction of the director that the
 10 variance will result in an improved level of protection for human health and the
 11 environment than would exist if the variance had not been granted."

12 SECTION 3.

13 Said chapter is further amended by striking paragraph (3) of Code Section 12-8-205, relating
 14 to criteria for property to qualify for limitation of liability, and inserting in lieu thereof the
 15 following:

16 "(3) The property must not:

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

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

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

24 SECTION 4.

25 Said chapter is further amended by striking paragraph (1) of subsection (b) of Code Section
 26 12-8-207, relating to limitation of expenses following approval of a corrective action plan,
 27 and inserting in lieu thereof the following:

28 "(b)(1) For qualifying properties ~~which the director has designated as needing corrective~~
 29 ~~action in accordance with paragraph (8) of subsection (a) of Code Section 12-8-97~~ where
 30 corrective action may be needed in order to certify compliance with risk reduction
 31 standards, any party desiring to qualify for a limitation of liability pursuant to this Code
 32 section shall submit a prospective purchaser corrective action plan to the division. The
 33 corrective action plan shall, at minimum, enumerate and describe in detail those actions
 34 planned and proposed to bring any source material or soil found on the qualifying
 35 property into compliance with all applicable rules and regulations adopted by the board

1 governing the investigation, cleanup, and corrective action ~~at properties listed on the~~
2 ~~hazardous site inventory~~ in accordance with risk reduction standards. A corrective action
3 plan submitted by a prospective purchaser under this subsection shall be in such form and
4 meet such criteria as established by the board."

5 **SECTION 5.**

6 Said chapter is further amended by adding to Code Section 12-8-207, relating to limitation
7 of expenses following approval of a corrective action plan, new subsections to read as
8 follows:

9 "(f) Any person seeking or obtaining a limitation of liability provided for in this Code
10 section shall not be required to notify the director pursuant to subsection (d) of Code
11 Section 12-8-97 for any source material or releases to soil identified in a prospective
12 purchaser corrective action plan, nor shall a property be listed on the hazardous site
13 inventory due solely to soil or source material set forth in a prospective purchaser
14 corrective action plan, so long as such prospective purchaser corrective action plan is
15 subsequently approved by the director and the corrective action identified in the
16 prospective purchaser corrective action plan is implemented within the time frame required
17 in the director's approval.

18 (g) Upon the director's approval of the prospective purchaser corrective action plan or
19 concurrence with the certification of compliance described in this Code section, whichever
20 first occurs, a property listed on the hazardous site inventory due solely to soil or source
21 material shall be removed from the hazardous site inventory and not be subject to
22 provisions of Code Section 12-8-97. If at any time the corrective action identified in the
23 prospective purchaser corrective action plan fails to be implemented within the time frame
24 required in the director's approval, the director may opt to re-list the property on the
25 hazardous site inventory."

26 **SECTION 6.**

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