

House Bill 1433

By: Representatives Smith of the 131<sup>st</sup>, Manning of the 32<sup>nd</sup>, Lane of the 167<sup>th</sup>, and Drenner of the 86<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 12 of the Official Code of Georgia Annotated, relating to conservation and  
2 natural resources, so as to provide that certain persons are not aggrieved or affected by an  
3 order or action of the director of the Board of Natural Resources; to provide a statement of  
4 legislative intent; to amend provisions relating to the powers and duties of the Environmental  
5 Protection Division of the Department of Natural Resources relative to rules and regulations  
6 related to releases of hazardous waste, hazardous constituents, and hazardous substances; to  
7 amend provisions relative to the powers and duties of the director of the Environmental  
8 Protection Division of the Department of Natural Resources; to provide changes to the  
9 determination of corrective actions; to provide that certain persons shall not be considered  
10 to have contributed to a spill or release of hazardous substances; to provide exceptions for  
11 liability for such releases; to provide for related matters; to repeal conflicting laws; and for  
12 other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

15 Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural  
16 resources, is amended by striking in its entirety subparagraph (c)(3)(B) of Code Section  
17 12-2-2, relating to the Environmental Protection Division of the Department of Natural  
18 Resources, the Environmental Advisory Council, duties of the council and its members and  
19 the director of the division, procedure for aggrieved persons, and inspections, and inserting  
20 in lieu thereof the following:

21 "(B) Persons are not aggrieved or adversely affected by the listing of property in the  
22 hazardous site inventory in accordance with Code Section 12-8-97, nor are persons  
23 aggrieved or adversely affected by an order of the director issued pursuant to Part 2 of  
24 Article 3 of Chapter 8 of this title, the 'Georgia Hazardous Site Response Act,' unless  
25 or until the director seeks to recover response costs, enforce the order, or recover a  
26 penalty for violation of such order; provided, however, that persons are aggrieved or

1 adversely affected if the director designates property as needing corrective action  
 2 pursuant to paragraph (8) of subsection (a) of Code Section 12-8-97, regardless of  
 3 whether the aggrieved or affected person owns such property. Any person aggrieved  
 4 or adversely affected by such designation shall be entitled to a hearing as provided in  
 5 Code Section 12-8-73."

## 6 SECTION 2.

7 Said title is further amended by inserting at the end of Code Section 12-8-91, relating to a  
 8 declaration of policy and legislative intent relative to management of hazardous waste, a new  
 9 subsection (c) to read as follows:

10 "(c) It is declared that the objective of this part is to protect against unsafe exposures of  
 11 human and ecological receptors to dangerous levels of hazardous wastes, hazardous  
 12 substances, and hazardous constituents. In the review, formulation, and adoption of any  
 13 rule or policy to implement this part, the board and the division shall choose alternatives  
 14 that do not impose excessive regulatory costs on any regulated party if such costs could be  
 15 reduced by a less expensive alternative that adequately protects against unsafe exposures,  
 16 including the use of institutional and engineering exposure controls."

## 17 SECTION 3.

18 Said title is further amended by striking subsection (b) of Code Section 12-8-93, relating to  
 19 powers and duties of the Board of Natural Resources, and inserting in lieu thereof the  
 20 following:

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

23 (1) Rules and regulations governing the reporting of releases of hazardous wastes,  
 24 hazardous constituents, and hazardous substances, including rules and regulations  
 25 governing reportable quantities;

26 (2) Rules and regulations governing the investigation, ~~cleanup, and corrective action at~~  
 27 ~~sites where hazardous wastes, hazardous constituents, or hazardous substances have been~~  
 28 ~~disposed of or released regardless of the date when such disposal or release occurred,~~  
 29 ~~including rules and regulations establishing cleanup standards~~ of sites. Such rules and  
 30 regulations shall:

31 (A) Specify that to the extent the director requires a delineation of the horizontal and  
 32 vertical boundaries of ground-water contamination, such delineation shall be  
 33 determined in ground water above bedrock to the highest of detection limit  
 34 concentrations using detection limits normally utilized by environmental professionals  
 35 for the performance of ground-water investigation work, federal primary or secondary

1 maximum contaminant levels, if established, or naturally occurring background  
2 concentrations. If ground-water contamination extends into underlying bedrock,  
3 acceptable delineation shall include data points from up to three bedrock monitoring  
4 wells extending vertically into bedrock up to 50 feet unless measured concentrations  
5 of contaminants in bedrock indicate the presence of dense nonaqueous phase liquids in  
6 such bedrock, in which case the rules may authorize the director to require such  
7 additional delineation as is necessary to protect a ground-water resource;

8 (B) Specify that, to the extent the director requires a delineation of the horizontal and  
9 vertical boundaries of soil contamination, such delineation shall be conducted in  
10 unsaturated soil and shall delineate soil conditions to the highest of detection limit  
11 concentrations using detection limits normally utilized by environmental professionals  
12 for the performance of soil investigation work notification concentrations set forth in  
13 the rules, or soil background concentrations; and

14 (C) Provide for exceptions to investigation requirements where such requirements are  
15 technically practicable or where the cost of particular requirements substantially  
16 exceeds the benefits;

17 (3) Rules and regulations governing procedures for placement of sites on and removal  
18 of sites from the hazardous site inventory required under the provisions of Code Section  
19 12-8-97. Such rules and regulations shall specify that any site for which a potentially  
20 responsible person demonstrates at any time that hazardous wastes, hazardous  
21 constituents, or hazardous substances are not present in quantities deemed reportable by  
22 rules and regulations of the board shall be removed from the inventory; provided,  
23 however, that such demonstration shall not be based solely on fencing to prevent access  
24 to the site;

25 (4) Rules and regulations governing corrective action at sites where hazardous wastes,  
26 hazardous constituents, or hazardous substances have been disposed of or released  
27 regardless of the date when such disposal or release occurred, including procedures and  
28 criteria for making a determination whether property requires corrective action pursuant  
29 to paragraph (8) of subsection (a) of Code Section 12-8-97 and cleanup standards. Such  
30 rules and regulations shall:

31 (A) Specify that an actual risk pathway of human exposure or ecological receptor must  
32 be demonstrated in order for corrective action to be required. Hypothetical exposures  
33 that cannot reasonably be demonstrated shall not be presumed;

34 (B) Consider, for the purpose of evaluating the adequacy of any proposed corrective  
35 action, probable human exposures to source material or contaminated soil or ground  
36 water, and where such exposures are unlikely or can be reasonably controlled through

1 engineering or institutional means, such means shall be considered acceptable  
 2 corrective action;

3 (C) Specify, for the purposes of evaluating corrective action alternatives, that relative  
 4 practicability and relative cost-effectiveness among alternatives shall be considered,  
 5 and proposed corrective action utilizing proposed innovative technologies or  
 6 cost-saving methods shall be encouraged; and

7 (D) Ensure that, for the purposes of establishing standards as to the performance of any  
 8 corrective action, the methodologies used to measure the achievement of such standards  
 9 are consistent with generally accepted scientific methodologies involved in setting such  
 10 standards. If standards are calculated based on average exposures across a site, then the  
 11 measurements regarding the achievement of that standard shall likewise reflect average  
 12 exposures across the site;

13 (5) Rules and regulations governing procedures for the filing in the deed records of the  
 14 superior courts of additional affidavits concerning property for which an initial affidavit  
 15 has been filed pursuant to Code Section 12-8-97; and

16 (6) Rules and regulations governing the waiver of hazardous waste management fees and  
 17 hazardous substance reporting fees as provided in subsection (i) of Code Section  
 18 12-8-95.1."

#### 19 **SECTION 4.**

20 Said title is further amended by striking in its entirety paragraph (2) of subsection (a) of Code  
 21 Section 12-8-94, relating to powers and duties of the director of the Environmental Protection  
 22 Division, and inserting in lieu thereof the following:

23 "(2) To ensure that corrective action is taken in accordance with rules and regulations  
 24 established by the board for releases of hazardous wastes, hazardous constituents, or  
 25 hazardous substances into the environment that pose a present or future danger to human  
 26 health or the environment;"

#### 27 **SECTION 5.**

28 Said title is further amended by striking subsection (a) of Code Section 12-8-96, relating to  
 29 corrective action upon release of hazardous wastes, hazardous constituents, or hazardous  
 30 substances; notice; administrative consent orders; and expenditure of funds from the  
 31 hazardous waste trust fund, and inserting in lieu thereof the following:

32 "(a) Whenever the director has reason to believe that ~~there is or has been~~ a release of  
 33 hazardous wastes, hazardous constituents, or hazardous substances into the environment  
 34 requires investigation or corrective action in accordance with rules and regulations  
 35 promulgated by the board, regardless of the time at which release of such hazardous

1 wastes, hazardous constituents, or hazardous substances occurred, and has reason to believe  
 2 that such release poses a danger to health or the environment, the director shall make a  
 3 reasonable effort to identify each person who has contributed or who is contributing to such  
 4 a release. The director shall then notify each such person in writing of the opportunity  
 5 voluntarily to perform voluntarily such investigation as is required by rules and regulations  
 6 promulgated by the board. If the director determines that corrective action is necessary,  
 7 he or she shall provide the opportunity for each person who has contributed or is  
 8 contributing to such a release voluntarily to perform corrective action in accordance with  
 9 rules and regulations promulgated by the board. If such person fails voluntarily to perform  
 10 corrective action, or if such person otherwise requests, the director may request any such  
 11 person to perform such corrective action under an administrative consent order entered into  
 12 with the director within such period of time as may be specified by the director in written  
 13 correspondence to the person. If the person fails or refuses to enter into an administrative  
 14 consent order with the director for the performance of corrective action within the period  
 15 of time specified by the director, the director may issue an order directed to any such  
 16 person. The order may direct that necessary corrective action be taken within a reasonable  
 17 time to be prescribed in the order. For sites that are determined, in accordance with rules  
 18 promulgated by the board, to exhibit reportable quantities solely for an on-site exposure  
 19 pathway, corrective action under this part shall be limited to soils and source material at  
 20 such site unless the director determines that corrective action for ground water is necessary  
 21 to prevent danger to human health or the environment. Site investigations and corrective  
 22 action shall not be the subject of any order under this part prior to the finalization of rules  
 23 specified under Code Section 12-8-93. The director may order interim actions at sites to  
 24 the extent necessary to protect against imminent endangerment to human health and the  
 25 environment until such rules are finalized."

## 26 SECTION 6.

27 Said title is further amended by striking subsections (a), (c), (e), and (f) of Code Section  
 28 12-8-96.1, relating to liability for cleanup costs, punitive damages, actions for recovery of  
 29 costs and damages, and claims for contributions, and inserting in lieu thereof, respectively,  
 30 the following:

31 "(a) Each and every person who contributed to a release of a hazardous waste, a hazardous  
 32 constituent, or a hazardous substance shall be jointly, severally, and strictly liable to the  
 33 State of Georgia for the reasonable costs of activities associated with the cleanup of  
 34 environmental hazards, including legal expenses incurred by the state pursuant to  
 35 subsection (a) of Code Section 12-8-96, as a result of the failure of such person to comply  
 36 with an order issued by the director. Any such person shall be so liable notwithstanding

1 the absence of the issuance of an order to such person pursuant to subsection (a) of Code  
 2 Section 12-8-96 if the director is unable to identify such person prior to the commencement  
 3 of clean-up action after making a reasonable effort to do so pursuant to such Code section,  
 4 or if such person contributed to a release which resulted in an emergency action by the  
 5 director and issuance of such an order would cause a delay in corrective action that could  
 6 endanger human health and the environment. The person may, in addition, be liable for  
 7 punitive damages in an amount at least equal to the costs incurred by the state and not more  
 8 than three times the costs incurred by the state for activities associated with the cleanup of  
 9 environmental hazards if such person failed to comply with an order of the director without  
 10 sufficient cause. Sufficient cause shall include an objectively reasonable belief that there  
 11 is a basis to assert lack of liability or existence of a defense set forth in this Code section  
 12 or an objectively reasonable belief that the director's order was inconsistent with law.  
 13 Costs and damages incurred by the state may be recovered in a civil action instituted in the  
 14 name of the director. All costs recovered by the state pursuant to this Code section shall  
 15 be deposited into the hazardous waste trust fund."

16 "(c) No person shall be liable for costs or damages pursuant to this ~~Code section part, or~~  
 17 be subject to injunction to perform an order of the director pursuant to this part, if he or she  
 18 can show by a preponderance of the evidence that the release of a hazardous waste, a  
 19 hazardous constituent, or a hazardous substance was caused solely by:

- 20 (1) An act of God;  
 21 (2) An act of war;  
 22 (3) An act or omission of a third party other than an employee or agent of the person or  
 23 other than one whose act or omission occurs in connection with a contractual relationship,  
 24 existing directly or indirectly, with the person, if the person establishes by a  
 25 preponderance of the evidence that:

26 (A) He or she had no relationship with the third party nor exercised any control over  
 27 activities of the third party; and

28 (B) He or she took precautions against foreseeable acts or omissions of any such third  
 29 party and the consequences that could foreseeably result from such acts or omissions;

30 or

- 31 (4) Any combination of paragraph (1), (2), or (3) of this subsection.

32 (c.1) Penalties under this article may be applied to a person who fails to comply with an  
 33 order of the director pursuant to this part if such person lacked sufficient cause for such  
 34 failure to comply. Sufficient cause shall include an objectively reasonable belief that there  
 35 is a basis to assert a lack of liability or existence of a defense set forth in this Code section  
 36 or an objectively reasonable belief that the director's order was inconsistent with law."

1 "(e) During or following the undertaking of any voluntary or required investigation,  
 2 cleanup, or corrective action pursuant to this part, any person may seek contribution from  
 3 any other person who has contributed or is contributing to any release of a hazardous  
 4 waste, a hazardous constituent, or a hazardous substance. Such claims for contribution  
 5 shall be governed by the law of this state. In resolving contribution claims, the court may  
 6 allocate costs among liable parties using such equitable factors as the court determines to  
 7 be appropriate. In any action filed by the director for the recovery of costs and damages  
 8 pursuant to this Code section, any third-party claim for contribution may, upon the motion  
 9 of the director, be severed and maintained as a separate action.

10 (f) A person who has voluntarily agreed to perform corrective action pursuant to an  
 11 administrative consent order with the director shall not be liable for claims for contribution  
 12 regarding matters addressed in the administrative consent order. To encourage settlements  
 13 and to provide maximum possible contribution protection available under state and federal  
 14 law, any such administrative consent order shall be deemed a settlement both under this  
 15 part as well as a settlement of state claims under the Comprehensive Environmental  
 16 Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601, et seq.).  
 17 Such administrative consent order does not discharge any other person who has contributed  
 18 or is contributing to a release of hazardous wastes, hazardous constituents, or hazardous  
 19 substances unless the terms of the administrative consent order so provide, and the other  
 20 persons remain liable for any corrective action deemed necessary by the director but not  
 21 agreed to in the administrative consent order."

## 22 SECTION 7.

23 Said title is further amended by inserting immediately following Code Section 12-8-96.3 a  
 24 new Code section to read as follows:

25 "12-8-96.4.

26 (a) A person who owns or operates real property which:

27 (1) Is contiguous to property on which a release has occurred or is threatened to occur;  
 28 and

29 (2) Is or may be contaminated by the release or threatened release of a hazardous waste,  
 30 hazardous substance, or hazardous constituent from such contiguous property

31 shall not be considered to be a person who has contributed or who is contributing to such  
 32 release and shall not be required to undertake any action with respect to such release or be  
 33 liable for any costs or damages under this part for such release.

34 (b) The provisions of subsection (a) of this Code section shall apply only to a person who:

35 (1) Did not cause, contribute, or consent to the release or threatened release;

36 (2) Is not either:

- 1 (A) Liable, or affiliated with any other person who is liable, for such release through  
2 any direct or indirect familial relationship or any contractual, corporate, or financial  
3 relationship other than a contractual, corporate, or financial relationship that is created  
4 by a contract for the sale of goods or services; or
- 5 (B) The result of a reorganization of a business entity that was potentially liable; and
- 6 (3) Provides full cooperation and access to persons that are authorized to conduct  
7 investigations and corrective action with respect to such a release.
- 8 (c) Nothing in subsection (a) of this Code section shall relieve a person of any liability that  
9 may exist with respect to releases that originate on property owned or operated by such  
10 person.
- 11 (d) A person shall not be considered a person who contributed to or is contributing to a  
12 release on adjoining property not owned or operated by such person based solely on a  
13 separate and unrelated release originating on property owned or operated by such person."

14

**SECTION 8.**

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