

House Bill 1550

By: Representatives Manning of the 32nd and Watson of the 91st

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 provisions relating to rehabilitation of brownfields property;
3 to enact the "Georgia Brownfields Rescue, Redevelopment, Community Revitalization, and
4 Environmental Justice Act"; to state legislative findings; to define terms; to encourage the
5 voluntary rehabilitation of property with a presence or suspected presence of hazardous
6 substances, pollutants, or contaminants; to authorize the limitation of liability of persons
7 carrying out such rehabilitation under certain conditions and compliance with program
8 standards; to provide for a Brownfields Program Section within the Environmental Protection
9 Division of the Department of Natural Resources; to create the Brownfields Interagency Task
10 Force; to provide for rules and regulations; to create a Brownfields Revitalization Fund and
11 provide sources of funding therefor; to provide for other related matters; to provide a
12 contingent effective date; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

15 Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to waste
16 management, is amended by striking in its entirety Article 9, the "Georgia Hazardous Site
17 Reuse and Redevelopment Act," and inserting in its place a new Article 9 to read as follows:

18 style="text-align:center">"ARTICLE 9

19 12-8-200.

20 This article shall be known and may be cited as the 'Georgia Brownfields Rescue,
21 Redevelopment, Community Revitalization, and Environmental Justice Act.'

22 12-8-201.

23 (a) The General Assembly has found that:

- 1 (1) There are numerous abandoned, idle, contaminated, or otherwise environmentally
2 'suspect' former industrial or commercial properties in Georgia the revitalization,
3 redevelopment, and reuse of which are complicated by the presence or suspected
4 presence thereon of a hazardous substance, pollutant, or contaminant;
- 5 (2) The mere perception that a property is, or may be, contaminated and that acquiring
6 and undertaking to clean up, revitalize, and redevelop it could expose a new owner or
7 developer to massive liability and incalculable cleanup costs is a virtually insurmountable
8 barrier to the revitalization, redevelopment, and reuse of such a property;
- 9 (3) Most of these properties were the sites of 'first generation' uses that were once
10 commercially viable but, for any number of reasons, including real or suspected
11 contamination, have become obsolete or outmoded in today's commercial and industrial
12 context;
- 13 (4) The obsolescence of such properties' initial uses notwithstanding, most are still,
14 intrinsically, prime locations such as waterfronts, central city areas, or places that are
15 nearby to other business and resources with high cost infrastructure, such as power,
16 sewerage, streets, and other public facilities, already in place;
- 17 (5) Such properties, because of their 'blighted' condition and appearance, are commonly
18 called 'brownfields';
- 19 (6) An unacceptably high percentage of these brownfields properties are in, or close by,
20 minority and low income communities where their presence and continued neglect invite
21 crime, contribute to creeping blight, and discourage efforts by low income and
22 disadvantaged people to clean up, stabilize, and revitalize their neighborhoods;
- 23 (7) Rural areas, small towns and cities, and towns are also disproportionately adversely
24 impacted not only by abandoned industrial sites, but also by closed gas stations and dry
25 cleaners, old dumps, contaminated rail yards, mine-scarred lands, agricultural wastes such
26 as pesticides, and many other unsafe and unsightly conditions;
- 27 (8) Our state with its rapidly expanding economy and soaring population is particularly
28 vulnerable to one of the most disturbing, debilitating, and irreversible consequences of
29 a failure to devise ways and means to rescue, revitalize, and reuse brownfields
30 properties, to wit the rapidly expanding encroachment of development into our rural areas
31 and the accompanying loss of 'greenfields' to urban sprawl;
- 32 (9) There are numerous neighborhood groups, community and civic associations, private
33 persons, business organizations, and other entities willing to acquire and undertake to
34 remediate, revitalize, redevelop, and reuse brownfields properties if they can be provided
35 with protection from the sweeping liability provisions and infinite cleanup costs
36 exposures imposed by state and federal environmental laws and regulations;

1 (10) The General Assembly's previous attempts to legislate a viable brownfields
2 program, principally limitations of liability related to the acquisition and redevelopment
3 of such properties and amendments to the tax code to allow tax preferred status for
4 qualified brownfields properties, have not resulted in an acceptable number of
5 brownfields revitalization and reuse projects and undertakings;

6 (11) Significant new measures must be designed, enacted, and implemented to encourage
7 the rescue, redevelopment, reuse, and revitalization of brownfields sites in all areas of the
8 state;

9 (12) The rapid growth of our economy and population and the corresponding urban
10 sprawl and destruction of our greenfields and rural areas require that such measures be
11 both immediate and far reaching in scope and application; and

12 (13) The health and well-being of our citizens, the protection of our environment and
13 preservation of our natural resources, the development of our economy and production
14 of new jobs, and the fair and impartial application and use of public resources toward
15 such ends demand overarching change and significant expansion of existing brownfields
16 laws and programs.

17 (b) The General Assembly intends this article to establish a Georgia Brownfields Program
18 to encourage, assist, and provide for voluntary actions and undertakings to rescue,
19 redevelop, and revitalize underused, blighted, or abandoned brownfields properties across
20 the state and to establish ways and means to fund implementation of such program by
21 appropriation of fees and fines collected by the division pursuant to Code Section 12-8-214
22 and application of licensed environmental professional licensing fees imposed and
23 collected pursuant to Chapter 17A of Title 43 and by appropriating, beginning with Fiscal
24 Year 2007, one-half of the moneys previously designated for appropriation to the
25 Hazardous Waste Trust Fund to the Brownfields Revitalization Fund established pursuant
26 to Code Section 12-8-211.

27 (c) The General Assembly further intends to encourage private sector involvement in the
28 Georgia Brownfields Program by the expansion of property and income tax credits and
29 preferences available to private sector individuals and entities that undertake to clean up
30 and reuse brownfields properties and by making available grants and loans to neighborhood
31 groups, civic associations, nonprofit entities and private parties, and other entities that
32 undertake cleanups of brownfields properties.

33 12-8-202.

34 (a) Unless otherwise provided in this article, the definition of all terms included in Code
35 Sections 12-8-200 through 12-8-216 shall be applicable to this article.

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

- 1 (1) 'Approved brownfields corrective action plan' means a plan and schedule for
2 corrective action at an eligible brownfields property that has been approved by the
3 director pursuant to Code Section 12-8-216;
- 4 (2) 'Board' means the board of the Department of Natural Resources.
- 5 (3) 'Brownfields certificate of compliance and no further action covenant' means a
6 written certification by the director confirming a brownfields owner's full and timely
7 implementation of an approved brownfields corrective action plan and confirming that
8 the director will require no further cleanup or remedial action at the property for so long
9 as:
- 10 (A) There is not another release of a hazardous substance on the property; and
11 (B) The brownfields owner or any successor or successors in title to the property
12 continue to observe and enforce any brownfields property covenants imposed by the
13 director and set out in the brownfields project agreement.
- 14 (4) 'Brownfields Interagency Task Force' or 'task force' or 'BIATF' means the task force
15 created by the provisions of Code Section 12-8-204.
- 16 (5) 'Brownfields owner' means an individual, business organization, or other legal entity
17 or association that has acquired a qualified brownfields property and undertaken
18 implementation of an approved brownfields corrective action plan pursuant to a
19 brownfields project agreement.
- 20 (6) 'Brownfields program' means the program established by this article and the rules and
21 regulations promulgated pursuant thereto.
- 22 (7) 'Brownfields program guidance' means the document mandated to be produced by
23 the division pursuant to Code Section 12-8-205.
- 24 (8) 'Brownfields project agreement' means a written agreement pursuant to the provisions
25 of Code Section 12-8-215 between the director and a prospective purchaser and other
26 parties involved with the implementation of an approved brownfields corrective action
27 plan at an eligible brownfields property.
- 28 (9) 'Brownfields project application' means an application on a form furnished by the
29 division, together with supporting documentation as required by Code Section 12-8-214.
- 30 (10) 'Brownfields project manager' means the individual or business organization that
31 is a licensed environmental professional, produces the prospective purchaser corrective
32 action plan, works with the director to process it into an approved brownfields corrective
33 plan, manages the implementation of the plan, and thereafter works with the director to
34 secure a brownfields certificate of compliance and no further action covenant.
- 35 (11) 'Brownfields property' means a tract or parcel of land, improved or unimproved, that
36 fits the descriptions of blighted properties set out in subsection (a) of Code Section
37 12-8-201.

1 (12) 'Brownfields property covenants' means a declaration of permitted and prohibited
2 land uses and related permissive and restrictive covenants set out in a brownfields project
3 agreement and incorporated into the certificate of compliance and no further action
4 covenant, including the installation and maintenance of institutional controls, which
5 covenants must be filed in the land records of the county wherein the brownfields
6 property is located.

7 (13) 'Brownfields remediation, redevelopment, and revitalization plan' means a plan
8 developed and promoted by an individual, business organization, community association,
9 or other entity to qualify several brownfields properties within the jurisdiction of a local
10 government for remediation and redevelopment under and pursuant to the provisions of
11 the Georgia Brownfields Program.

12 (14) 'Brownfields Revitalization Fund' or 'BRF' means the fund created pursuant to Code
13 Section 12-8-211.

14 (15) 'Comprehensive land use plan' means a land use plan developed and adopted by a
15 city or county pursuant to Code Section 36-70-3.

16 (16) 'Comprehensive response action' means the three phased undertakings and activities
17 required to stabilize and clean up a qualifying brownfields property as follows:

18 (A) Phase I Activities: property investigation, property inspection, property
19 assessment;

20 (B) Phase II Activities: feasibility study, remedial design, corrective action plan; and

21 (C) Phase III Activities: remedial action activities where the actual construction and
22 implementation of property cleanup occurs.

23 (17) 'Director' means the director of the Environmental Protection Division of the
24 Department of Natural Resources.

25 (18) 'Division' or 'EPD' means the Environmental Protection Division of the Department
26 of Natural Resources.

27 (19) 'Federal brownfields program' means the program established by USEPA pursuant
28 to the provisions of the 2002 Small Business Liability Relief and Brownfields
29 Revitalization Act.

30 (20) 'Federal environmental law' means the following acts of Congress, as now or
31 hereafter amended, including:

32 (A) The Comprehensive Environmental Response, Compensation and Liability Act
33 ('CERCLA') as set out in 42 U.S.C.S. Sections 9601-9675, as now or hereafter
34 amended;

35 (B) The Resource Conservation and Recovery Act ('RCRA') as set out in 42 U.S.C.S.
36 Section 12-13-1, et seq., as now or hereafter amended; and

1 (C) The Toxic Substances Control Act ('TSCA') as set out in 15 U.S.C.S. Section 2681,
2 et seq., as now or hereafter amended.

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

4 (22) 'Hazardous sites inventory' means the hazardous sites inventory compiled by the
5 division pursuant to Code Section 12-8-97.

6 (23) 'Initial status report' means a report:

7 (A) Produced and certified by a licensed environmental professional;

8 (B) Focusing on a property proposed as a qualifying brownfields property which is
9 compliant with the 'all appropriate inquiry' requirements of Code Section 12-8-206; and

10 (C) Showing that either cleanup of soils and source materials is not required under
11 applicable state and federal environmental laws and regulations or, if a cleanup is
12 required, what corrective actions will be required to clean up the property in accordance
13 with applicable environmental laws and rules and regulations promulgated in
14 accordance with this article.

15 (24) 'Involved state agency' means any of the state agencies, departments, or divisions
16 represented on the Brownfields Interagency Task Force as listed in Code Section
17 12-8-204.

18 (25) 'Licensed environmental professional' means an individual or business organization
19 certified and licensed as an environmental professional by the director pursuant to the
20 provisions of Chapter 17A of Title 43.

21 (26) 'Licensing board' means the State Board of Certification, Registration, and
22 Licensing of Licensed Environmental Professionals established pursuant to Chapter 17A
23 of Title 43.

24 (27) 'Orphan site' means a site that is designated a hazardous site under the provisions
25 of state environmental law or federal environmental law where no potentially responsible
26 party can be identified, qualified, and compelled to pay for and implement a
27 comprehensive response action.

28 (28) 'Potentially responsible party' or 'potentially responsible parties' or 'PRP' or 'PRP's'
29 means individuals or entities who are liable for cleanup costs and damages for the release
30 of a hazardous substance at a property or facility pursuant to state or federal
31 environmental law.

32 (29) 'Preexisting release' means a release, as such term is defined in paragraph (11) of
33 Code Section 12-8-92, which occurred at a proposed brownfields property prior to the
34 prospective purchaser's submission of a brownfields project application.

35 (30) 'Proposed brownfields property' means a parcel or tract of land and the
36 improvements thereon, if any, that is proposed to be cleaned up pursuant to a prospective
37 purchaser corrective action plan and other provisions of a brownfields project application.

1 (31) 'Prospective purchaser' means a person, business organization, or other entity that
2 meets the qualifications and requirements set forth in Code Section 12-8-208 and files a
3 brownfields projection application pursuant to Code Section 12-8-208.

4 (32) 'Prospective purchaser corrective action plan' or 'PPCAP' means a plan and schedule
5 for remediation of an eligible brownfields property that:

6 (A) Is produced and certified by a licensed environmental professional;

7 (B) Specifies an end use or uses for the property in one of the use categories listed in
8 Code Section 12-8-207;

9 (C) Proposes cleanup criteria for the property pursuant to Code Section 12-8-207 and
10 in accordance with the brownfields rules, regulations, and guidance promulgated
11 pursuant to Code Section 12-8-205; and

12 (D) Enumerates and describes actions planned and proposed to bring any source
13 material or soil found on the property into compliance with all applicable rules and
14 regulations developed by the division pursuant to Code Sections 12-8-205 through
15 12-8-207 governing the investigation, assessment, corrective action, and cleanup of a
16 qualifying brownfields property.

17 (33) 'Prospective purchaser profile' means a verified resume of an individual, business
18 organization, or other public or private entity setting out such individual's or
19 organization's credentials for approval as a qualifying brownfields purchaser pursuant to
20 the provisions of Code Section 12-8-208.

21 (34) 'Qualified brownfields property' means a tract or parcel of land which meets the
22 criteria set out in Code Section 12-8-209.

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

26 (36) 'Source material' means any hazardous waste, hazardous substance, or hazardous
27 constituent that has been released or disposed of that requires notification in accordance
28 with the rules promulgated by the board pursuant to Part 2 of Article 3 of this chapter.

29 (37) 'State environmental law' means any of the following, as now or hereafter amended:

30 (A) The 'Georgia Hazardous Waste Management Act,' Code Sections 12-8-60 through
31 12-8-83;

32 (B) The 'Georgia Hazardous Site Response Act' ('HSRA'), Code Sections 12-8-90
33 through 12-8-97;

34 (C) The 'Georgia Hazardous Site Reuse and Redevelopment Act,' Code Section
35 12-8-200 through 12-8-210; and

36 (D) The 'Georgia Underground Storage Tank Act' ('GUST'), Code Section 12-13-1
37 through 12-13-22; and

1 (E) Any law of this state empowering and directing the board to comply with federal
2 statutes relating to protection of the environment.

3 (38) 'USEPA' means the United States Environmental Protection Agency.

4 12-8-203.

5 (a) The director shall establish and staff within the division a Brownfields Program Section
6 of equal size and stature to its existing air, water, land, and hazardous waste sections. The
7 Brownfields Program Section shall develop and promulgate rules, regulations, and
8 operating procedures supportive of, and consistent with, the legislative intent expressed in
9 Code Section 12-8-201 to establish a Georgia Brownfields Program. Such rules,
10 regulations, and procedures shall be designed, to the maximum extent possible, to secure
11 the combined benefits of environmental protection and economic redevelopment for the
12 entire state. A draft of such rules, regulations, and procedures shall be available for review
13 by the board, the Brownfields Interagency Task Force, the members of the House and
14 Senate natural resources and environment committees, and other involved agencies on or
15 before September 1, 2006.

16 (b) The Brownfields Program Section shall:

17 (1) Provide assistance to local governments and the private sector in understanding and
18 taking advantage of the brownfields program established by this article;

19 (2) Provide technical assistance to municipalities, counties, redevelopment authorities,
20 redevelopment agencies, community development committees and associations,
21 economic development organizations and other persons and entities interested in rescuing
22 and redeveloping brownfields properties;

23 (3) Serve as division liaison with the Brownfields Interagency Task Force and other
24 local, state, and federal agencies on development issues affecting the Brownfields
25 Program; and

26 (4) Ensure that the citizens of the state realize all possible benefits of federal and state
27 programs to provide assistance for brownfields redevelopment efforts.

28 (c) The director is hereby authorized and directed to appoint a chief of the Brownfields
29 Program Section who preferably shall have experience and expertise in not only
30 environmental protection programs and measures, but also in economic development and
31 commercial or industrial property development.

32 12-8-204.

33 (a) There is established within the Department of Economic Development a Brownfields
34 Interagency Task Force. The task force shall be composed of 19 members as follows:

- 1 (1) The commissioner of economic development, who shall be the chairperson of the
 - 2 task force;
 - 3 (2) The commissioner of community affairs, who shall be a cochairperson of the task
 - 4 force;
 - 5 (3) The director of the Environmental Protection Division of the Department of Natural
 - 6 Resources, who shall be a cochairperson of the task force;
 - 7 (4) The Attorney General;
 - 8 (5) The Commissioner of Insurance;
 - 9 (6) The Labor Commissioner;
 - 10 (7) The commissioner of transportation;
 - 11 (8) The chairpersons of the House and Senate committees on natural resources and
 - 12 environment;
 - 13 (9) Two additional members each of the House and Senate to be selected, respectively,
 - 14 by the Speaker of the House and the President Pro Tempore of the Senate;
 - 15 (10) One member selected by the Lieutenant Governor;
 - 16 (11) The chairperson of the Association County Commissioners of Georgia;
 - 17 (12) The chairperson of the Georgia Municipal Association; and
 - 18 (13) Three licensed environmental professionals to be appointed by the Governor.
- 19 (b) Any of the individuals named in paragraphs (1) through (9) of subsection (a) of this
- 20 Code section may choose to nominate a staff member from their department or agency or
- 21 committee to serve in their stead on the task force.
- 22 (c) The task force shall advise the division's Brownfields Program Section in establishing
- 23 rules and regulations to implement the brownfields program and shall conduct outreach
- 24 efforts to inform, educate, and encourage the private sector to undertake voluntary cleanups
- 25 of brownfields properties.
- 26 (d) The task force shall convene at least quarterly to review actions taken by the division
- 27 in furtherance of the goals and objectives of the brownfields program and shall, from time
- 28 to time, as it deems necessary, report to the Governor and the General Assembly regarding
- 29 actions, undertakings, and incentives that might further enhance and advance the
- 30 brownfields program.
- 31 (e) The chairperson of the task force is authorized and directed to employ three staff
- 32 members, one of whom shall be a licensed environmental professional, one of whom shall
- 33 be a specialist in urban redevelopment with particular experience in bringing together
- 34 community and development interests to implement specific projects, and one of whom
- 35 shall provide administrative support.

1 12-8-205.

2 (a) As provided in subsection (a) of Code Section 12-8-203, the division, through the
3 Brownfields Program Section, shall develop rules and regulations to implement and
4 enforce the provisions of this article. Such rules and regulations may be applicable to the
5 state as a whole or may vary from region to region, as may be appropriate to facilitate the
6 accomplishment of the provisions, purposes, and policies of this article.

7 (b) In addition to the standard rules and regulations to be promulgated pursuant to
8 subsection (a) of Code Section 12-8-203, the division shall compile and publish a
9 comprehensive, plain language, brownfields guidance document to educate and inform
10 prospective purchasers and other interested parties with respect to the provisions of both
11 the federal and state brownfields laws and programs and to provide prospective purchasers
12 and licensed environmental professionals in their employ with a step-by-step template for
13 compiling and filing a brownfields project application. The brownfields guidance shall set
14 out a listing and description of the end uses and corresponding cleanup criteria required by
15 Code Section 12-8-207 together with remedial design and corrective action requirements
16 generally associated with such end uses, all with the purpose of enabling a prospective
17 purchaser to:

18 (1) Identify and anticipate the nature and cost of required corrective actions and
19 restrictive use covenants likely to be required for approval of a particular end use or uses
20 of a brownfields property;

21 (2) Anticipate use restrictions and institutional controls that are likely to be imposed on
22 a particular use and how they might affect the placement and configuration of
23 improvements on the property; and

24 (3) Develop an economic feasibility analysis of a proposed plan for rescue, revitalization,
25 redevelopment, and reuse of a Brownfields Property.

26 (c) The rules, regulations, and guidance to be promulgated under this Code section shall
27 be written, compiled, published, and made available to the public no later than September
28 1, 2006.

29 12-8-206.

30 The intent of the General Assembly in enacting this article is to encourage brownfields
31 cleanups by reducing the complexity of the process and eliminating, to the maximum
32 extent possible, uncertainties relating to differences and conflicts between the federal and
33 state brownfields programs and the liability protections afforded prospective purchasers by
34 each. Accordingly, the director shall strive to reconcile the rules and regulations
35 promulgated pursuant to Code Section 12-8-205 with their federal counterparts, in
36 particular the federal rule setting out standards and practices for the conduct of 'all

1 appropriate inquiries' into the present and past uses of a property and the potential presence
2 of environmental contamination on the property.

3 12-8-207.

4 (a) The director shall establish cleanup criteria and approve of remedial actions in the use
5 categories listed in this subsection. The cleanup criteria for such use categories shall be
6 based on generic human health risk assessment assumptions determined by the director to
7 appropriately characterize patterns of human exposure associated with certain land uses.
8 The director shall utilize only reasonable and relevant exposure pathways in determining
9 these assumptions. The director may prescribe more than one generic set of exposure
10 assumptions within each use category. If the director prescribes more than one generic set
11 of exposure assumptions within a category, each set of exposure assumptions shall be
12 deemed to create a subcategory within a use category. The director shall specify property
13 characteristics that determine the applicability of criteria derived for these categories or
14 subcategories. The use categories are as follows:

15 (1) Residential;

16 (2) Commercial;

17 (3) Recreational;

18 (4) Industrial;

19 (5) Other land uses based on categories established by the director;

20 (6) Limited residential;

21 (7) Limited commercial;

22 (8) Limited recreational;

23 (9) Limited industrial; and

24 (10) Other limited categories established by the director.

25 (b) The director may approve a prospective purchaser corrective action plan based on
26 property specific cleanup criteria that satisfy the applicable requirements of this article and
27 the rules and regulations promulgated under this article. The director shall utilize only
28 reasonable and relevant exposure pathways in determining the adequacy of a property
29 specific criterion. Additionally, the director may approve a PPCAP for a designated
30 area-wide zone encompassing more than one brownfields property, and may consolidate
31 remedial actions for more than one brownfields property.

32 (c) The director shall not approve a prospective purchaser corrective action plan in
33 categories set forth in paragraphs (1) through (10) of subsection (a) of this Code section
34 unless the licensed environmental professional producing the plan certifies that the current
35 zoning of the property is consistent with the categorical cleanup criteria being proposed or
36 that the governing authority intends to change the zoning designation so that the proposed

1 criteria are consistent with the new zoning designation; provided, however, that approval
2 of a PPCAP depending on a pending change in zoning shall not be final until such zoning
3 change has been made by the local unit of government. The director may approve of a
4 remedial action that achieves categorical criteria that is based on greater exposure potential
5 than the criteria applicable to current zoning. In addition, a PPCAP shall include
6 documentation that the current property use is consistent with the current zoning or is a
7 legal nonconforming use. Abandoned or inactive property shall be considered on the basis
8 of zoning classifications as described above.

9 (d) Cleanup criteria from one or more categories in subsection (a) of this Code section may
10 be applied at a brownfields property if all relevant requirements are satisfied for application
11 of a pertinent criterion.

12 (e) Approval by the director of a PPCAP based on one or more categorical standards listed
13 in paragraphs (1) through (10) of subsection (a) of this Code section shall be granted only
14 if the pertinent criteria are satisfied in the affected media. The director shall approve the
15 use of probabilistic or statistical methods or other scientific methods of evaluating
16 environmental data when determining compliance with a pertinent cleanup criterion if the
17 methods are determined by the director to be reliable and scientifically valid and best
18 represent actual site conditions and exposure potential.

19 (f) A PPCAP for a particular brownfields property that relies on categorical cleanup
20 criteria developed pursuant to subsection (a) of this Code section shall also consider other
21 factors necessary to protect the public health, safety, and welfare and the environment as
22 specified by the director, if the director determines, based on data and existing information
23 that such considerations are relevant to the particular brownfields property. These factors
24 include, but are not limited to, the protection of surface water quality and consideration of
25 ecological risks if pertinent to the brownfields property.

26 (g) The director shall annually evaluate and, if appropriate, propose revisions to the
27 cleanup criteria derived pursuant to this Code section. The evaluation shall incorporate
28 knowledge gained through research and studies in the areas of fate and transport and risk
29 assessment. The director shall prepare and submit an annual report on such findings to the
30 board; and, if the board determines appropriate, the report detailing revisions made to
31 cleanup criteria may be incorporated into a proposed amendment to this Code section
32 which shall be submitted to the General Assembly and the BIATF as a part of the
33 division's requests for changes in the law.

34 (h) If a brownfields property encompasses several areas where disparate land uses are
35 contemplated, the director may specify different cleanup criteria applicable to such
36 disparate uses.

1 12-8-208.

2 (a) To qualify for a limitation of liability as provided in Code Section 12-8-210, a
3 prospective purchaser must:

4 (1) Not be a person or business organization that has contributed or is contributing to a
5 preexisting release at the proposed brownfields property;

6 (2) Not be related to any individual or be affiliated with or hold any interest in a business
7 organization or entity that has contributed or is contributing to a release of a hazardous
8 substance on the proposed brownfields property; and

9 (3) Not be in violation of any order, judgment, statute, rule, or regulation subject to the
10 enforcement authority of the director.

11 (b) A prospective purchaser must submit, as a part of a brownfields project application,
12 a verified prospective purchaser profile confirming that he or she or it is not a person or
13 business organization disqualified under paragraph (1), (2), or (3) of subsection (a) of this
14 Code section and a financial statement or other documentation evidencing the ability to
15 finance implementation of the remedial actions and other activities set out in the
16 prospective purchaser corrective action plan.

17 (c) The director may grant a variance from the eligibility requirements contained in
18 paragraph (2) or (3) of subsection (a) of this Code section if he or she:

19 (1) Finds that such criteria would render a prospective purchaser that is a nonprofit
20 business organization or a community or civic association or a public-private joint
21 venture to which a local government is a party ineligible for a limitation of liability under
22 this article;

23 (2) Determines that no other qualified prospective purchaser has filed a brownfields
24 project application on the subject property and that such ineligibility would result in the
25 continuation of a condition on the subject property which poses a threat to human health
26 and the environment;

27 (3) Finds that the state would likely be required to perform the necessary corrective
28 action using public moneys; or

29 (4) Finds that, in all probability, the division would be unable to recover the cost of state
30 managed corrective action at the property as provided in Code Section 12-8-96.1.

31 12-8-209.

32 (a) The rules and regulations promulgated under and pursuant to Code Section 12-8-205
33 shall include, but not limited to, the standards and requirements set out in subsection (b)
34 of this Code section.

35 (b) In order to be designated a qualifying brownfields property, a property must meet the
36 following criteria:

- 1 (1) It must be contaminated by a preexisting release;
- 2 (2) Any lien filed under subsection (e) of Code Section 12-8-96 against the property
3 must be satisfied or settled and released by the director; and
- 4 (3) It must not:
- 5 (A) Be listed on the Federal National Priorities List pursuant to the Federal
6 Comprehensive Environmental Response, Compensation, and Liability Act, 42
7 U.S.C.S. Section 9601, et seq.;
- 8 (B) Be currently undergoing response activities required by an order of the Regional
9 Administrator of the Federal Environmental Protection Division issued pursuant to the
10 provisions of such act; or
- 11 (C) Be a hazardous waste facility as defined in Code Section 12-8-62.
- 12 12-8-210.
- 13 (a) Upon the director's approval of a prospective purchaser's corrective action plan, a
14 prospective purchaser shall not be liable to the state or any third party for costs incurred in
15 the remediation of, equitable relief relating to, or damages resultant from a preexisting
16 release, nor shall the prospective purchaser be required to certify compliance with risk
17 reduction standards for ground water, perform corrective action, or otherwise be liable for
18 any preexisting releases to ground water associated with the qualifying brownfields
19 property.
- 20 (b) The liability protection provided under this Code section shall benefit all of the persons
21 or entities described as covered parties in this subsection to the same extent as a
22 prospective purchaser who files a brownfields project application which is approved by the
23 director and for which a brownfields certificate of compliance and no further action
24 covenant is issued by the director so long as such persons are not otherwise potentially
25 responsible parties or parents, subsidiaries, or affiliates of any potentially responsible
26 parties. Such covered parties are:
- 27 (1) Any person in the employ of the prospective purchaser who directs or contracts for
28 remediation or redevelopment of the brownfields property;
- 29 (2) Any future owner of the brownfields property;
- 30 (3) A person who develops or occupies the brownfields property;
- 31 (4) A contiguous property owner if such owner is a party to a brownfields project
32 agreement; and
- 33 (5) Any lender or fiduciary that provides financing for remediation or redevelopment of
34 the brownfields property.
- 35 (c) A person who conducts an environmental assessment or transaction screen that is part
36 of a initial status report or a prospective purchaser corrective action plan on a brownfields

1 property and who is not otherwise a potentially responsible party shall not become a
2 potentially responsible party as a result of conducting such environmental assessment or
3 transaction screen unless that person increases the risk of harm to public health or the
4 environment by failing to exercise due diligence and reasonable care in performing the
5 environmental assessment or transaction screen.

6 (d) If a land use restriction or requirement for installation, operation, and maintenance of
7 institutional controls is set up by the director as a condition precedent to his or her approval
8 of a prospective purchaser corrective action plan and the prospective purchaser accepts
9 such conditions and restrictions as a part of the brownfields project agreement applicable
10 to such property and if such restrictions or requirements are set out in brownfields property
11 covenants, then if any such restriction or requirement is later breached or violated, the
12 brownfields property owner at the time such restriction or requirement is violated, any
13 successor in title, and any agent of such owner who directs or contracts for alteration of the
14 brownfields property in violation of such restriction or requirement shall be liable for
15 remediation of the property to the use standards set out in the brownfields property
16 covenants.

17 (e) A prospective purchaser who fully implements an approved corrective action plan and
18 complies with all of the provisions of a brownfields project agreement and any other person
19 who receives liability protection under this Code section shall not be required to undertake
20 additional remediation at the brownfields property unless:

21 (1) The prospective purchaser or any licensed environmental professional employed by
22 the prospective purchaser knowingly provides false information that forms a basis for
23 concurrence by the director with any component of a prospective purchaser corrective
24 action plan or any other document that is submitted to the division and incorporated into
25 the brownfields project agreement or that is offered to demonstrate compliance with the
26 PPCAP or other provisions of the brownfields project agreement or fails to disclose
27 relevant information about contamination at the brownfields property; or

28 (2) The level of risk to public health or the environment from previously undiscovered
29 contaminants on the brownfields property due to changes in exposure conditions
30 occasioned by a change in land use at the brownfields property increases the probability
31 of exposure to contaminants to a degree reasonably considered by the director to be a
32 threat to public health and the environment.

33 (f) Any person whose use, including any change in use, of a brownfields property causes
34 such an unacceptable risk to public health or the environment as set out in paragraph (1)
35 or (2) of subsection (e) of this Code section may be required by the director to undertake
36 additional remediation measures.

37 (g) The limitation of liability provided by this Code section shall be contingent upon:

1 (1) The purchaser's good faith implementation of the approved brownfields corrective
2 action plan for the property; and

3 (2) Certification by the director of compliance with the cleanup criteria and standards set
4 out in the approved brownfields corrective action plan; provided, however, that neither
5 a prospective purchaser qualified under the provisions of Code Section 12-8-208 nor a
6 licensed environmental professional employed by such prospective purchaser shall incur
7 any liability with respect to any initial site investigation and site assessment activities
8 conducted in course of preparation of an initial site status report.

9 (h) The limitation of liability provided by this article shall not affect any right of
10 indemnification which any person has or may acquire by contract against any other person
11 who is otherwise liable for creating an environmental hazard; nor shall they apply to
12 persons who intentionally, wantonly, or willfully violate federal or state regulations in the
13 cleanup process.

14 (i) The limitation of liability provided by this article shall be fully transferable to the heirs,
15 successors, assigns, and designees of the person to whom such limitation of liability was
16 granted; provided, however, that in no event shall the director's concurrence with the
17 provisions of a PPCAP or issuance of a brownfields certificate of compliance operate to
18 absolve from liability any PRP for a preexisting release on the property.

19 (j) A transfer of the title to a qualified brownfields property or any portion thereof from
20 the prospective purchaser back to the owner from whom the subject property was
21 purchased, any other party deemed to be a PRP at the property, or any person disqualified
22 from obtaining a limitation of liability under Code Section 12-8-208 shall terminate any
23 limitation of liability applicable to the transferor under this article.

24 (k) A contiguous property owner may qualify for the liability protections provided by this
25 Code section if such owner voluntarily offers his or her or its property to be incorporated
26 into, and made a part of, and subject to the provisions of the brownfields project agreement.

27 12-8-211.

28 (a) There is hereby established a Brownfields Revitalization Fund which is to be held and
29 managed by the task force in accordance with the provisions of subsection (c) of this Code
30 section and to which shall be credited:

31 (1) Any appropriations or other moneys authorized by the General Assembly and
32 specifically designated to be credited to the BRF, including 50 percent of the moneys
33 collected by the division pursuant to Code section 12-8-91, but directed to be deposited
34 into the BRF by the provisions of this Code section;

1 (2) Any grants, gifts, or other moneys directed to the BRF, specifically including, but not
2 limited to, moneys received by the division pursuant to grant applications to USEPA
3 under the provisions of the federal brownfields program; and

4 (3) Any income derived from an investment of amounts credited to the BRF.

5 (b) As used in this Code section, the following words shall have the following meanings
6 unless the context clearly requires otherwise:

7 (1) 'Loan' means a loan or credit enhancement including, but not limited to, a loan
8 guarantee, letter of credit or insurance.

9 (2) 'Phase I Activities' means the actions undertaken pursuant to subparagraph (b)(16)(A)
10 of Code Section 12-8-202.

11 (3) 'Phase II Activities' means the actions undertaken pursuant to subparagraph
12 (b)(16)(B) of Code Section 12-8-202.

13 (4) 'Phase III Activities' means the means the actions undertaken pursuant to
14 subparagraph (b)(16)(C) of Code Section 12-8-202.

15 (5) 'Priority project' means a Brownfields Project which is eligible for funding under this
16 Code section and with respect to which the local government jurisdiction in which the
17 Brownfields Property is located has made available in support of the project significant
18 technical and administrative support and substantial funds in the form of grants, loans,
19 or abated property taxes.

20 (6) 'Qualified applicant' means a prospective purchaser, qualified pursuant to the
21 provisions of Code Section 12-8-209, who holds a valid and enforceable option or
22 contract right to acquire a tract or parcel of land that is, or may reasonably be anticipated
23 to be, a qualified brownfields property pursuant to the provisions of Code Section
24 12-8-209.

25 (c) The task force shall hold the fund in an account maintained by the Department of
26 Economic Development and shall utilize, invest, or reinvest or disburse the moneys therein
27 to encourage voluntary cleanups of brownfields properties under and pursuant to the
28 brownfields program by providing loans and grants to finance Phase I, II, and III activities
29 at brownfields properties. The task force may make and administer grants and loans
30 generally as it deems necessary and proper to accomplish the goals and objectives of the
31 brownfields program; provided, however that:

32 (1) Preference shall be accorded applications for loans and grants to finance Phase I and
33 II activities or other undertakings that will enable applicants to reach at least a
34 preliminary determination regarding a property's eligibility for inclusion in the
35 brownfields program;

36 (2) The loan documents require that any qualified applicant who has received grants or
37 loans from the fund to finance Phase I and II a activities at a brownfields property and

1 then does not proceed with Phase III Activities or who is otherwise disqualified for
2 participation in the brownfields program shall transfer the data and documentation
3 relating to the subject Phase I and II activities to the task force;

4 (3) No qualified applicant shall receive grants or loans to conduct Phase I, II, or III
5 activities at a particular brownfields property that cumulatively exceed \$500,000.00;

6 (4) No single project shall receive a grant or loan to conduct Phase I and Phase II
7 activities which shall exceed \$75,000.00;

8 (5) No loan or grant made under this Code section shall be expended to finance more
9 than 80 percent of the costs required to complete Phase III Activities;

10 (6) No grant shall be awarded to a local government, including related development
11 authorities and other quasi-governmental entities unless and until the qualified applicant
12 for such grant contributes an amount equal to 20 percent of the grant for which such
13 qualified applicant has applied; and

14 (7) Security for loans made under this Code section may be subordinate to private or
15 other financing provided for Phase I, II, or III activities.

16 (d) To be eligible for financial assistance from the fund, in addition to the requirements
17 in subsections (b) and (c) of this Code section, the qualified applicant and project shall
18 meet the following requirements and the qualified applicant shall submit to the division,
19 for the task force's final approval, a completed application providing all information
20 required by this Code section and by the fund guidelines, including, at a minimum, a
21 showing that:

22 (1)(A) The proposed brownfields project will result in a significant positive economic
23 impact in terms of the number of jobs to be created or will contribute to the economic
24 or physical revitalization of the area in which the property is located and a significant
25 level of community benefits shall be associated with the project; or

26 (B) If the qualified applicant is requesting financing for the cost of Phase III Activities,
27 that assistance from the fund is necessary to make the proposed reuse of the property
28 economically feasible;

29 (2) The qualified applicant certifies that he, she, or it is not a PRP with respect to the
30 property;

31 (3) The qualified applicant does not have a familial relationship or a direct or indirect
32 business relationship with any person or entity that is a PRP with respect to the property;
33 provided, however, that the provisions of this paragraph may be waived if, after full
34 disclosure by the qualified applicant of any familial or business relationship with a PRP,
35 the task force determines that such waiver is in the best interest of the public; and

36 (4) The qualified applicant is not subject to any outstanding administrative or judicial
37 environmental enforcement action unless the qualified applicant has entered into an

1 agreement with USEPA or EPD to resolve such enforcement action with respect to the
2 property under consideration for assistance from the fund and with respect to any other
3 properties located within the state for which the qualified applicant is liable as a
4 potentially responsible party.

5 (e) The task force shall approve or reject applications after taking into consideration the
6 intent of the General Assembly as set out in Code Section 12-8-201 and the goals and
7 objectives of the brownfields program as detailed in this article.

8 (f) The members of the task force shall not be liable for any claim, loss, cost, damage, or
9 injury of any nature whatsoever arising in connection with the task force's administration
10 of this article or the environmental condition of a qualifying brownfields property unless
11 such loss, cost, injury, or damage is caused by their gross negligence or willful misconduct.

12 (g) The task force may charge fees for defraying the ordinary and necessary expenses of
13 administration and operation associated with the fund. All fees received under this
14 subsection shall be deposited into the fund.

15 (h) On the first Monday in January, 2007, and, on the same day of each succeeding year
16 thereafter, the task force shall file, jointly and in writing, a report to the Governor and the
17 General Assembly regarding the progress of the brownfields program created pursuant to
18 this article. Such report shall include information and data relating to the effectiveness of
19 the financial incentives offered by the program and made available from the fund which
20 shall include, but shall not be limited to:

21 (1) The number of projects assisted through the fund, with a specification of the amount
22 of any loan or grant awarded to each;

23 (2) The manner in which such projects contribute to the economic and physical
24 revitalization of the areas in which the projects are located and a description of steps
25 taken by the division and the task force to make the application process efficient and
26 manageable; and

27 (3) Such other information as will provide a fair evaluation of the program.

28 12-8-212.

29 (a) The task force may make grants and loans to towns, cities, and counties to further the
30 goals and objectives of the brownfields program.

31 (b) A local government that receives a loan or grant under this Code section shall establish
32 a local brownfields committee as provided in subsection (d) of this Code section to review
33 applications for loans submitted to the local government under the provisions of this article
34 and subject to the restrictions set out in subsections (c) through (e) of Code Section
35 12-8-211.

1 (c) A local brownfields committee shall coordinate its activities and undertakings with the
2 local governing authority of the jurisdiction in which it sits. A local brownfields committee
3 shall consist of members to represent each of the following:

4 (1) The city or county government;

5 (2) Neighborhood committees or associations actively engaged in efforts to revitalize
6 blighted properties or areas in their communities;

7 (3) Conservation or environmental organizations active in the local community;

8 (4) Civic organizations; and

9 (5) The local chamber of commerce.

10 12-8-213.

11 (a) The provisions of this article are intended to authorize, empower, and encourage
12 actions and undertakings in furtherance of the General Assembly's obligation to: (1)
13 protect and promote the health, safety, and well-being of the citizens of the state; and (2)
14 perform its duty to preserve natural resources, the environment, and vital areas of the state.

15 (b) No provision of this article is intended or shall be construed as enlarging the eminent
16 domain powers of any governmental entity or diminishing the private property rights of any
17 citizen. The focus and purpose of this article is to create a program that will revive and
18 enhance private property rights by setting out ways and means to clean up, revitalize, and
19 reuse properties that presently lie idle, abandoned, or underused because of the presence
20 or potential presence thereon of a hazardous substance, pollutant, or contaminant. This
21 article is intended only to invest state agencies and local governments with the power,
22 authority, and obligation to assist and encourage voluntary cleanup of blighted properties.

23 (c) Neighborhood groups, civic associations, private individuals, and entities with an
24 interest in or desire to clean up and revitalize blighted properties in their neighborhoods,
25 communities, cities, or counties, or in any other area or political subdivision of the state,
26 may request a local government or the task force to assist them in developing, seeking
27 approval of, and implementing a brownfields remediation, redevelopment, and
28 revitalization plan or a brownfields project plan.

29 (d) A brownfields project plan shall set and include all of the components of a brownfields
30 remediation, redevelopment, and revitalization plan as are listed and described in
31 subsections (e) and (f) of this Code section and shall also include a prospective purchaser
32 corrective action plan and other components of a brownfields project application set out
33 and described in Code Section 12-8-214.

34 (e) Both a brownfields remediation, redevelopment, and revitalization plan and a
35 brownfields project plan must be compatible with the zoning and comprehensive land plan
36 developed pursuant to Code Section 36-70-3 through 36-70-28 and adopted by city or

1 county where the properties proposed to be covered by the plan or plans are located;
2 provided, however, that such a plan may be submitted to local governing authorities as part
3 of a request for rezoning of the subject property or properties.

4 (f) A local government may adopt a brownfields remediation, redevelopment, and
5 revitalization plan or a brownfields project plan as an amendment to its comprehensive land
6 use plan if such government, in so doing, follows all of the provisions of Code Section
7 36-70-3 through 36-70-28 applicable to such action.

8 12-8-214.

9 (a) All brownfields project applications shall include:

10 (1) A prospective purchaser profile as defined and required by Code Section 12-8-208;

11 (2) A prospective purchaser corrective action plan as defined in Code Section 12-8-202;

12 and

13 (3) A nonrefundable application review fee of \$1,000.00; provided, however, that any
14 nonprofit organization, civic association, community, or neighborhood group or
15 association shall not be required to pay such fee.

16 (b) All plans, proposals, and reports included in a brownfields project application must be
17 prepared and certified by a licensed environmental professional.

18 (c) By making such application, the prospective purchaser shall be deemed to agree to all
19 of the requirements of this article.

20 (d) All applications received by the division shall be stamped by the division to document
21 the date and time of filing.

22 (e) The provisions of Code Sections 12-8-208 and 12-8-209 to the contrary
23 notwithstanding, the director may condition his or her concurrence with, and approval of,
24 a PPCAP on provisions relating to the time all or any portion of the PPCAP must be
25 completed.

26 (f) The director shall be deemed to have approved a brownfields project application
27 submitted pursuant to subsections (a), (b), (c), and (d) of this Code section unless he or she
28 informs the applicant, in writing and within 30 days of the date of such filing, that he or
29 she:

30 (1) Finds the prospective purchaser to be ineligible for the liability protections offered
31 under and pursuant to Code Section 12-8-208;

32 (2) Finds the proposed brownfields property to be ineligible for cleanup under and
33 pursuant to Code Section 12-8-209; or

34 (3) Finds the potential purchaser corrective action plan deficient, incorrect, or
35 unacceptable in any particular.

1 (g) The director shall state with specificity, and in detail, the reasons for his or her actions
2 under and pursuant to paragraphs (1) through (3) of subsection (f) of this Code section.

3 12-8-215.

4 Before any actions are taken with respect to cleanup of a qualifying brownfields property,
5 the prospective brownfields purchaser and the division shall enter into a brownfields
6 project agreement which shall incorporate:

7 (1) A description of all remediation to be conducted on the property;

8 (2) A description of specific areas where remediation is to be conducted;

9 (3) A listing of the remediation method or methods to be employed;

10 (4) A description of the resources that the prospective purchaser will make available;

11 (5) A listing and description of the agreed upon method or methods for evaluating the
12 effectiveness of remediation actions and undertakings;

13 (6) A listing of all land use restrictions that will apply to the brownfields property;

14 (7) A statement of the desired results of any remediation or land use restrictions to be
15 imposed upon the brownfields property;

16 (8) A listing and description of the guidelines, including parameters, principles, and
17 policies within which the desired results are to be accomplished;

18 (9) An agreed upon description of the consequences of achieving or not achieving the
19 desired remediation results;

20 (10) A detailed schedule for initiation and completion of all remediation activities and
21 undertakings and all other requirements imposed upon the parties; and

22 (11) An acknowledgment that any failure by the prospective purchaser or the prospective
23 purchaser's agents and employees to comply with the brownfields project agreement will
24 constitute a violation of this article.

25 12-8-216.

26 (a) The director shall have the obligation and duty to:

27 (1) Assess and collect the brownfields project application review fee provided for in
28 Code Section 12-8-214, in writing and within 30 days of the filing of a brownfields
29 project application;

30 (2) Confirm that the person or business organization compiling, certifying, and
31 submitting the prospective purchaser corrective action plan with respect to the proposed
32 brownfields property is a licensed environmental professional;

33 (3) Determine and confirm, in accordance with procedures and criteria enumerated in
34 this article and rules and regulations promulgated pursuant to this article, whether the

1 prospective purchaser submitting such project application qualifies for a limitation of
2 liability pursuant to Code Section 12-8-210;

3 (4) Review and approve or disapprove the prospective purchaser corrective action plan
4 submitted as part of a brownfields project application and determine if it is deficient,
5 defective, or incomplete in any particular; and

6 (5) Advise the prospective purchaser, in particular and in writing, of the nature and
7 extent of any such defect or deficiency and of what action or undertaking will be required
8 to correct same.

9 (b) In the exercise of the duties and obligations required of him or her by subsection (a)
10 of this Code section, the director shall be ever mindful that the General Assembly's
11 purpose and intention in enacting this article is to encourage, accommodate, and expedite
12 the rescue, revitalization, redevelopment, and reuse of brownfields properties and the
13 revitalization of surrounding neighborhoods and that, accordingly, the provisions of this
14 article should be liberally construed in accordance with such purpose and intent.

15 (c) If a prospective purchaser corrects a brownfields project application in particular as
16 required by the director pursuant to paragraphs (4) and (5) of subsection (a) of this Code
17 section and resubmits same within 120 days of notification by the director of such defects
18 or deficiencies, then no additional application review fee may be assessed and collected.

19 12-8-217.

20 (a) In addition to the obligations and duties imposed upon the director under Code Section
21 12-8-216, he or she shall, on or before September 1, 2006, take whatever actions as are
22 necessary to establish common practices and standard operating procedures for negotiating
23 and memorializing memoranda of agreement between the division and EPA Region IV to:

24 (1) Define the roles and responsibilities of EPA Region IV and the division to guide and
25 facilitate the division's implementation of the brownfields program established by this
26 article;

27 (2) Recognize the brownfields program for grant funding eligibility purposes pursuant
28 to Section 128(a) of the Comprehensive Environmental Response, Compensation, and
29 Liability Act, as amended, 42 U.S.C.S. Section 9601, et seq. (CERCLA);

30 (3) Express how the agencies intend, generally, to exercise their respective authorities
31 at sites where the division and brownfields owners have executed a brownfields project
32 agreement;

33 (4) Implement the federal 'One Cleanup Program' initiative by working together to
34 achieve cleanups that protect human health and the environment by making greater use
35 of available state and federal resources and authorities; sharing science and technological

1 approaches; and selecting the optimum programmatic tools to increase the pace,
2 effectiveness, cost efficiency, and quality of such cleanups;

3 (5) Facilitate the cleanup and beneficial reuse of brownfields properties in this state by
4 maximizing the use of existing infrastructures, thereby conserving and minimizing
5 development of green spaces and pristine open areas;

6 (6) Provide opportunities for the agencies to exercise their authorities under the state and
7 federal brownfields programs and demonstrate how they can use their respective powers
8 and resources to ensure appropriate brownfields property rehabilitation tasks and to
9 demonstrate how such authorities, powers, and resources can be exercised in a mutually
10 complementary way to protect the environment and revitalize blighted properties;

11 (7) Provide coordinated and consistent technical assistance and information to promote
12 informed decision making with respect to brownfields properties by property owners,
13 prospective purchasers, lenders, public and private developers, citizens, local
14 governments, and elected officials; and

15 (8) Publicly confirm the agencies' belief that the voluntary cleanup, revitalization,
16 redevelopment, and reuse of existing contaminated or potentially contaminated
17 brownfields properties will yield significant costs savings and increased program
18 efficiencies and provide significant benefits to the environment, public health, and the
19 economies of affected local communities.

20 (b) The director shall ensure that, on or before September 1, 2006, a generic brownfields
21 program memorandum of agreement between the division and EPA Region IV is in effect
22 and that such memorandum of agreement covers prospectively, and to the maximum extent
23 possible, brownfields projects that are developed in conformity with the provisions of this
24 article.

25 (c) The director shall ensure that all brownfields project agreements concluded between
26 the division and prospective purchasers and other involved individuals and entities party
27 to such agreement include representations and warranties running to the prospective
28 purchasers or other individuals or entities party to such agreement or an individual or entity
29 reasonable foreseeable as being a third-party beneficiary of such agreement confirming:

30 (1) That EPA Region IV has reviewed and evaluated the brownfields program and has
31 determined that the brownfields program, as implemented under the provisions of this
32 article, includes all of the elements of an acceptable state response program as described
33 in CERCLA Section 128(a)(2);

34 (2) That the agencies will work in a coordinated manner to avoid, to the maximum extent
35 possible, duplication of enforcement efforts at brownfields properties and to ensure that
36 property remediation can continue in a timely fashion;

1 (3) That, subject only to the exceptions listed in CERCLA Section 128(b), EPA Region
2 IV does not plan on or anticipate taking any administrative or judicial enforcement action
3 under CERCLA Section 106(a) or 107(a) against a person that is addressing a specific
4 release at a brownfields property in compliance with this article and the brownfields
5 program;

6 (4) That EPA Region IV does not plan on or anticipate taking any removal or remedial
7 action under CERCLA or any other provision of federal environmental law at any
8 brownfields property being remediated under the provisions of this article and the
9 brownfields program so long as such property remains in compliance with the
10 brownfields program; and

11 (5) That when a comprehensive response action under and pursuant to this article and the
12 brownfields program has been completed at a qualified brownfields property and all other
13 requirements of the brownfields project agreement applicable to such property have been
14 satisfied, or are in the process of being satisfied, and the director has issued a brownfields
15 certificate of compliance and no further action covenant for the property no further
16 enforcement action shall be taken unless:

17 (A) The person responsible for brownfields property rehabilitation fails or refuses to
18 complete the comprehensive response action in a timely manner, including operation
19 and maintenance or long-term monitoring, and the division is unable to ensure
20 implementation of all such activities and undertakings as are included in the
21 brownfields project agreement; or

22 (B) Either or both EPA Region IV and the division determine that conditions at the
23 brownfields property continue to present a threat to human health or safety or the
24 environment and that such threat or threats remain or result from a failure to properly
25 implement an approved corrective action plan or maintain land use restrictions or
26 institutional or engineering controls required by the terms of the brownfields project
27 agreement.

28 (d) The director shall ensure that the parties to any brownfields project agreement are fully
29 informed with regard to the limitations of protections afforded the brownfields owner or
30 brownfields developer under the terms and conditions of a standard brownfields agreement
31 as it is limited by the terms of the memorandum of agreement between the division and
32 EPA Region IV."

33 SECTION 2.

34 This Act shall become effective upon its approval by the Governor or upon its becoming law
35 without such approval only if there is enacted into law at the 2006 session of the General
36 Assembly of Georgia a bill which enacts a new Chapter 17A of Title 43 of the Official Code

1 of Georgia Annotated providing for the qualification and licensing of individuals and
2 companies to conduct or design hazardous site investigations, site assessments, feasibility
3 studies, remedial programs, and corrective action plans and to carry out cleanup of hazardous
4 sites. If no such bill is enacted into law at the 2006 session of the General Assembly, this
5 Act shall not take effect.

6 **SECTION 3.**

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