

House Bill 248

By: Representatives Barnard of the 166th, Ehrhart of the 36th, Drenner of the 86th, Everson of the 106th, Reese of the 98th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 8 of Title 12 of the Official Code of Georgia Annotated,
2 relating to hazardous waste, so as to provide for voluntary and timely investigation and
3 remediation of properties where there have been releases of regulated substances into the
4 environment for the purpose of reducing human and environmental exposure to safe levels;
5 to provide a short title; to provide legislative declarations; to define certain terms; to provide
6 for power and duties of the director of the Environmental Protection Division; to provide
7 criteria for qualifying for a voluntary remediation program; to provide for corrective action;
8 to provide for program standards and policies; to provide for rules and regulations; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 3 of Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to
13 hazardous waste, is amended by adding a new part to read as follows:

14 "Part 3

15 12-8-100.

16 This part shall be known and may be cited as the 'Georgia Voluntary Remediation Program
17 Act.'

18 12-8-101.

19 (a) It is declared to be the public policy of the State of Georgia to encourage the voluntary
20 and timely investigation and remediation of properties where there have been releases of
21 regulated substances into the environment for the purpose of reducing human and
22 environmental exposure to safe levels and to ensure the cost-effective allocation of limited

23 resources that fully accomplish the provisions, purposes, standards, and policies of this
24 part.

25 (b) The General Assembly declares its intent to encourage voluntary and cost-effective
26 investigation and remediation of qualifying properties under this part and that provisions
27 of this part shall apply and take precedence over any conflicting provisions, regulations,
28 or policies existing under Part 2 of this article with regard to any properties properly
29 enrolled in the voluntary remediation program created under this part.

30 12-8-102.

31 (a) Unless otherwise provided in this part, the definition of all terms included in Code
32 Sections 12-8-62, 12-8-92, and 12-8-202 shall be applicable to this part.

33 (b) As used in this part, the term:

34 (1) 'Cleanup standards' means those rules and regulations adopted by the board pursuant
35 to Code Section 12-8-93.

36 (2) 'Constituents of concern' means the specific regulated substances that may contribute
37 to unacceptable exposure at a site.

38 (3) 'Controls' means institutional controls or engineering controls.

39 (4) 'Engineering controls' means any physical mechanism, device, measure, system, or
40 actions taken at a property that minimize the potential for exposure, control migration or
41 dispersal, or maintain the effectiveness of other remedial actions. Engineering controls
42 may include, without limitation, caps, covers, physical barriers, containment structures,
43 leachate collection systems, ground water or surface water control systems, solidification,
44 stabilization, fixation, slurry walls, vapor control systems, signs, point-of-use treatment,
45 fences, and barrier-like property development features such as pavements, buildings,
46 walls, and other structures.

47 (5) 'Exposure' means contact of a constituent of concern with a receptor.

48 (6) 'Exposure domain' means the contaminated geographical area or areas of a site that
49 can result in exposure to a particular receptor by a specified exposure pathway: the soil
50 exposure domain for routine surficial contact with site soils is the soil area impacted by
51 site constituents of concern from the ground surface down to a depth of two feet below
52 ground surface; the soil exposure domain for exposure of construction workers or
53 underground utility workers is the impacted area of site soils from the ground surface
54 down to the depth of construction; and the soil exposure domain for protection of
55 groundwater at an established point of exposure is the impacted area of site soils from the
56 ground surface down to the uppermost groundwater zone.

57 (7) 'Exposure pathway' means a route by which a receptor comes into contact with a
58 constituent of concern.

59 (8) 'Fate and transport parameters' means quantitative factors that describe the various
60 media through which constituents of concern migrate from a source of release to a
61 receptor.

62 (9) 'Institutional controls' means legal or administrative measures that minimize the
63 potential for human exposure to contaminants of concern or protect and enhance the
64 integrity of a remedy or engineering controls. Examples include, without restriction:
65 easements, covenants, deed notices, well drilling or groundwater use prohibitions, zoning
66 restrictions, digging restrictions, orders, building permit conditions, and land-use
67 restrictions.

68 (10) 'Point of demonstration wells' means monitoring wells located between the source
69 of site groundwater contamination and the actual or estimated downgradient point of
70 exposure.

71 (11) 'Point of exposure' means the nearest downgradient, three-dimensional location that
72 could reasonably be considered for installation of a drinking water supply well or the
73 location of the nearest drinking water supply well not more than 1,000 feet downgradient
74 from a point of demonstration well.

75 (12) 'Receptor' means any human or sensitive organism which is or has the reasonable
76 potential to be adversely affected by the release of constituents of concern.

77 (13) 'Representative concentration' means the average concentration to which a specified
78 receptor is exposed over an appropriate exposure duration within a relevant exposure
79 domain for soils or at an established or estimated point of exposure for groundwater.

80 (14) 'Voluntary remediation program' means the program established under this part.

81 (15) 'Voluntary remediation property' means a qualifying property enrolled in the
82 voluntary remediation program.

83 (16) 'Technical impracticability' means the inability to fully delineate or remediate
84 contamination without incremental expenditures grossly disproportionate to the
85 incremental benefit. An example may include, without limitation, dense non-aqueous
86 phase liquids in fractured bedrock settings.

87 12-8-103.

88 The board shall have the power to adopt, promulgate, modify, amend, and repeal rules and
89 regulations to implement and enforce the provisions of this part as necessary to provide for
90 the investigation and remediation of voluntary remediation properties, to the extent
91 necessary to facilitate the accomplishment of the provisions, purposes, standards, and
92 policies of this part.

93 12-8-104.

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

95 (1) To make determinations, in accordance with procedures and criteria enumerated in
96 this part, as to whether a property qualifies and an applicant is eligible for the voluntary
97 remediation program;

98 (2) To approve, in accordance with procedures and criteria enumerated in this part and
99 rules and regulations promulgated pursuant to this part, conceptual corrective action
100 plans;

101 (3) To approve, in accordance with procedures and criteria enumerated in this part and
102 rules and regulations promulgated pursuant to this part, compliance status reports;

103 (4) To concur with certifications of compliance;

104 (5) To collect application fees from participants;

105 (6) To compel that reasonable access be granted to affected properties which are
106 demonstrated to have been affected by a release and which are not owned or controlled
107 by the applicant; and

108 (7) To grant waivers of all or any portion of the fees provided by this part for any small
109 business or for any county, municipality, or other political subdivision of this state.

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

113 12-8-105.

114 In order to be considered a qualifying property for the voluntary remediation program
115 under this part, a property shall meet the following criteria:

116 (1) The property must be listed on the inventory under Part 2 of this article or be a
117 property which meets the criteria of Code Section 12-8-205 or otherwise have a release
118 of regulated substances into the environment;

119 (2) The property shall neither:

120 (A) Be listed on the federal National Priorities List pursuant to the federal
121 Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.
122 Section 9601, et seq.; nor

123 (B) Be currently undergoing response activities required by an order of the regional
124 administrator of the federal Environmental Protection Agency; and

125 (3) Any lien filed under subsection (e) of Code Section 12-8-96 or subsection (b) of
126 Code Section 12-13-12 against the property shall be satisfied or settled and released by
127 the director pursuant to Code Section 12-8-94 or Code Section 12-13-6.

128 12-8-106.

129 (a) In order to enroll any qualifying property in the voluntary remediation program
130 described in this part, an applicant shall submit to the director a conceptual corrective
131 action plan prepared by a registered professional engineer or a registered professional
132 geologist who is registered with the State Board of Registration for Professional Engineers
133 and Land Surveyors or the State Board of Registration for Geologists and who has for a
134 minimum of eight years engaged in the investigation and remediation of releases of
135 regulated substances, including a minimum of four years in responsible charge of the
136 investigation and remediation of such releases. The conceptual corrective plan shall be in
137 such streamlined form as may be prescribed by the director; provided, however, that the
138 plan shall, at minimum, enumerate and describe those actions planned to bring the
139 qualifying property into compliance with the applicable cleanup standards, with one or
140 more registered professionals to be retained by the applicant at its sole cost to oversee the
141 investigation and remediation described in the plan; all in accordance with the provisions,
142 purposes, standards, and policies of the voluntary remediation program. The conceptual
143 corrective action plan shall be considered an application for enrollment in the voluntary
144 remediation program, and a nonrefundable application fee of \$3,000.00 shall be submitted
145 with the application.

146 (b) Upon the director's approval of the conceptual corrective action plan described in
147 subsection (a) of this Code section, the qualifying property shall be deemed enrolled, and
148 the applicant deemed a participant, in the voluntary remediation program. It shall be the
149 responsibility of the participant to cause one or more registered professionals to oversee
150 the implementation of said plan in accordance with the provisions, purposes, standards, and
151 policies of this part. The registered professional shall submit semi-annual status reports to
152 the director describing the implementation of the plan during the preceding period. Upon
153 request of the applicant, the director shall have the discretion to approve annual or longer
154 periods for submittal of status reports. Within 30 days of the director's approval of the
155 conceptual corrective action plan described in subsection (a) of this Code section, the
156 director shall cause the relevant voluntary remediation property to be designated on the
157 inventory under Part 2 of this article as undergoing corrective action pursuant to the
158 voluntary remediation program.

159 (c) The participant may terminate at any time the enrollment of the property in the
160 voluntary remediation program and the participant's requirements under this part. The
161 director may terminate, at any time prior to approval of the compliance status report
162 described in subsection (a) of this Code section, the enrollment of the property in the
163 voluntary remediation program and the participant's requirements under this part if the
164 director determines that either:

165 (1) The participant has failed without justification to implement the conceptual corrective
166 action plan in accordance with the provisions, purposes, standards, and policies of the
167 voluntary remediation program; or

168 (2) Such continued enrollment would result in a condition which poses an imminent
169 threat to human health and the environment.

170 (d) Upon completion of corrective action under this Code section, the participant shall
171 cause to be prepared a compliance status report confirming consistency of the corrective
172 action with the provisions, purposes, standards, and policies of the voluntary remediation
173 program and certifying the compliance of the relevant voluntary remediation property with
174 the applicable cleanup standards in effect at the time.

175 (e) Upon receipt of the compliance status report described in subsection (d) of this Code
176 section, a decision of concurrence with the report and certification shall be issued on
177 evidence satisfactory to the director that it is consistent with the provisions, purposes,
178 standards, and policies of the voluntary remediation program. Within 90 days of the
179 director's written concurrence, the director shall cause the property to be removed from the
180 inventory under Part 2 of this article.

181 (f) In addition to other provisions of this part:

182 (1) The director shall remove the voluntary remediation property from the inventory at
183 any time that the participant demonstrates to the director, in accordance with rules and
184 regulations promulgated by the board pursuant to Part 2 of this article, that a release
185 exceeding a reportable quantity does not exist at the voluntary remediation property,
186 unless the director issues a decision that such release poses an imminent threat to human
187 health and the environment;

188 (2) The participant shall not be required to perform corrective action or to certify
189 compliance for groundwater if the voluntary remediation property was listed on the
190 inventory as a result of a release to soil exceeding a reportable quantity, but not for
191 groundwater, and the groundwater protection requirements for soils shall be based on
192 protection of the established point of exposure for groundwater as provided under this
193 part; and

194 (3) The limitations provided under subparagraph (c)(3)(B) of Code Section 12-2-2 shall
195 not apply to the director's decisions or actions under this part.

196 12-8-107.

197 At the participant's option, any or all of the following standards and policies may be
198 considered and used in connection with the investigation and remediation of a voluntary
199 remediation property under this part:

200 (1) SITE DELINEATION CONCENTRATION CRITERIA. Satisfactory evidence of the definition
201 of the horizontal and vertical delineation of soil or groundwater contamination may be
202 determined on the basis of any of the following concentrations:

203 (A) Upper limit concentrations from samples that are representative of local ambient
204 or anthropogenic background conditions not affected by the subject site release;

205 (B) Soil concentrations less than those concentrations that require notification under
206 standards promulgated by the board pursuant to Part 2 of this article;

207 (C) Two times the laboratory lower detection limit concentration using an applicable
208 analytical test method recognized by the United States Environmental Protection
209 Agency;

210 (D) For metals in soils, the upper limit concentration reported for Georgia undisturbed
211 native soil background samples as reported in the United States Geological Survey
212 (USGS) Open File Report 8 1-197 (Boerngen and Shacklette, 1981), or such later
213 version as may be adopted by rule or regulation of the board; or

214 (E) Cleanup standards;

215 (2) EXPOSURE PATHWAY. An exposure pathway shall be considered complete if there
216 are no discontinuities in or impediments to constituent of concern movement, including
217 without limitation controls, from the source of the release to the receptor. Otherwise, the
218 exposure pathway shall be incomplete and there shall be no exposure pathway that
219 requires evaluation;

220 (3) REPRESENTATIVE EXPOSURE CONCENTRATIONS. Compliance with cleanup standards
221 shall be determined on the basis of representative concentrations of constituents of
222 concern in soils across each applicable soil exposure domain, and the representative
223 concentrations for groundwater at a point of exposure established as the nearest of the
224 following locations:

225 (A) Closest existing down gradient drinking water supply well;

226 (B) Likely nearest future location of a downgradient drinking water supply well where
227 public supply water is not currently available and is not likely to be made available
228 within the foreseeable future; and

229 (C) Hypothetical point of drinking water exposure located at a distance of 1000 feet
230 downgradient from the delineated site contamination under this part;

231 (4) POINT OF DEMONSTRATION MONITORING FOR GROUNDWATER. Concentrations of
232 site-specific constituents of concern in groundwater shall be measured and evaluated at
233 a point of demonstration well to demonstrate that groundwater concentrations are
234 protective of any established downgradient point of exposure;

235 (5) CLEANUP STANDARDS FOR SOIL. Compliance with cleanup standards for soil may be
236 based on:

237 (A) Direct exposure factors for surficial soils within two feet of the land surface;
238 (B) Construction worker exposure factors for subsurface soils to a specified subsurface
239 construction depth; and
240 (C) Soil concentrations for protection of groundwater criteria (at an established point
241 of exposure for groundwater as defined under this part) for soils situated above the
242 uppermost groundwater zone.

243 Whenever such depth-specific soil criteria are applied, the corrective action plan for the
244 site shall include a description of the continuing actions and controls necessary to
245 maintain compliance;

246 (6) CLEANUP STANDARD SELECTION FLEXIBILITY. A participant may select any cleanup
247 standard without having to show or demonstrate that achieving other cleanup standards
248 would not be feasible;

249 (7) FATE AND TRANSPORT PARAMETERS. Compliance with cleanup standards may be
250 determined on the basis of any fate and transport model recognized by the United States
251 Environmental Protection Agency or United States Geological Survey and using most
252 probable representative values for model parameters, as adopted by the board;

253 (8) SOURCE MATERIAL. Compliance with cleanup standards that require that source
254 material be removed may be satisfied when such material is removed, decontaminated,
255 or stabilized to the extent practicable; and

256 (9) TECHNICAL IMPRACTICABILITY. Site delineation or remediation beyond the point of
257 technical impracticability shall not be required if the site does not otherwise pose an
258 imminent threat to human health and the environment."

259 **SECTION 2.**

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