

Senate Bill 78

By: Senators Tolleson of the 20th, Golden of the 8th, Wiles of the 37th, Stoner of the 6th, Hudgens of the 47th and others

AS PASSED SENATE

**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 provide
9 an effective date; to repeal 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, to protect current and likely future use of

23 groundwater, and to ensure the cost-effective allocation of limited resources that fully
24 accomplish the provisions, purposes, standards, and policies of this 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 of the following locations:

72 (A) The closest existing down gradient drinking water supply well;

73 (B) The likely nearest future location of a downgradient drinking water supply well
74 where public supply water is not currently available and is not likely to be made
75 available within the foreseeable future; or

76 (C) The hypothetical point of drinking water exposure located at a distance of 1000
77 feet downgradient from the delineated site contamination under this part.

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

80 (13) 'Representative concentration' means the average concentration to which a specified
81 receptor is exposed over an exposure duration within a relevant exposure domain for soils
82 or at an established or estimated point of exposure for groundwater and consistent with
83 United States Environmental Protection Agency guidance for determination of average
84 exposure concentration.

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

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

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

92 12-8-103.

93 The board shall have the power to adopt, promulgate, modify, amend, and repeal rules and
 94 regulations to implement and enforce the provisions of this part as necessary to provide for
 95 the investigation and remediation of voluntary remediation properties, to the extent
 96 necessary to facilitate the accomplishment of the provisions, purposes, standards, and
 97 policies of this part.

98 12-8-104.

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

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

103 (2) To approve, in accordance with procedures and criteria enumerated in this part and
 104 rules and regulations promulgated pursuant to this part, voluntary remediation plans;

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

107 (4) To concur with certifications of compliance;

108 (5) To collect application fees from participants; and

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

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

114 12-8-105.

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

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

120 (2) The property shall not:

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

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

126 (C) Be a facility required to have a permit under Code Section 12-8-66;

127 (3) Qualifying the property under this part would not violate the terms and conditions
128 under which the division operates and administers remedial programs by delegation or
129 similar authorization from the United States Environmental Protection Agency; and
130 (4) Any lien filed under subsection (e) of Code Section 12-8-96 or subsection (b) of
131 Code Section 12-13-12 against the property shall be satisfied or settled and released by
132 the director pursuant to Code Section 12-8-94 or Code Section 12-13-6.

133 12-8-106.

134 (a) In order to enroll any qualifying property in the voluntary remediation program
135 described in this part, an applicant shall submit to the director a voluntary remediation plan
136 prepared by a registered professional engineer or a registered professional geologist who
137 is registered with the State Board of Registration for Professional Engineers and Land
138 Surveyors or the State Board of Registration for Geologists and who has experience in
139 responsible charge of the investigation and remediation of such releases. The voluntary
140 remediation plan shall be in such streamlined form as may be prescribed by the director;
141 provided, however, that the plan shall, at minimum, enumerate and describe those actions
142 planned to bring the qualifying property into compliance with the applicable cleanup
143 standards, with one or more registered professionals to be retained by the applicant at its
144 sole cost to oversee the investigation and remediation described in the plan; all in
145 accordance with the provisions, purposes, standards, and policies of the voluntary
146 remediation program. The voluntary remediation plan shall be considered an application
147 for enrollment in the voluntary remediation program, and a nonrefundable application fee
148 of \$5,000.00 shall be submitted with the application.

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

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

168 (1) The participant has failed without justification to implement the voluntary
169 remediation plan in accordance with the provisions, purposes, standards, and policies of
170 the voluntary remediation program; or

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

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

178 (e) Upon receipt of the compliance status report described in subsection (d) of this Code
179 section, a decision of concurrence with the report and certification shall be issued on
180 evidence satisfactory to the director that it is consistent with the provisions, purposes,
181 standards, and policies of the voluntary remediation program. The participant shall comply
182 with the applicable public participation requirements for compliance status reports as
183 promulgated pursuant to Part 2 of this article. Within 90 days of the director's written
184 concurrence, the director shall cause the property to be removed from the inventory under
185 Part 2 of this article.

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

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

193 (2) The participant shall not be required to perform corrective action or to certify
194 compliance for groundwater if the voluntary remediation property was listed on the
195 inventory as a result of a release to soil exceeding a reportable quantity for soil but was
196 not listed on the inventory as a result of a release to groundwater exceeding a reportable
197 quantity, and if the participant further demonstrates to the director at the time of
198 enrollment that a release exceeding a reportable quantity for groundwater does not exist

199 at the voluntary remediation property; and the groundwater protection requirements for
200 soils shall be based on protection of the established point of exposure for groundwater as
201 provided under this part; and

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

204 12-8-107.

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

208 (1) SITE DELINEATION CONCENTRATION CRITERIA. Satisfactory evidence of the definition
209 of the horizontal and vertical delineation of soil or groundwater contamination for the
210 purposes of this part may be determined on the basis of any of the following
211 concentrations:

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

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

216 (C) Two times the laboratory lower detection limit concentration using an applicable
217 analytical test method recognized by the United States Environmental Protection
218 Agency, provided that such concentrations do not exceed all cleanup standards;

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

223 (E) Cleanup standards;

224 (2) EXPOSURE PATHWAY. A site-specific exposure pathway shall be considered complete
225 if there are no discontinuities in or impediments to constituent of concern movement,
226 including without limitation controls, from the source of the release to the receptor.
227 Otherwise, the exposure pathway shall be incomplete and there shall be no exposure
228 pathway that requires evaluation;

229 (3) REPRESENTATIVE EXPOSURE CONCENTRATIONS. Compliance with site-specific
230 cleanup standards shall be determined on the basis of representative concentrations of
231 constituents of concern in soils across each applicable soil exposure domain, and the
232 representative concentrations for groundwater at a point of exposure;

233 (4) POINT OF DEMONSTRATION MONITORING FOR GROUNDWATER. Concentrations of
234 site-specific constituents of concern in groundwater shall be measured and evaluated at

235 a point of demonstration well to demonstrate that groundwater concentrations are
236 protective of any established downgradient point of exposure;

237 (5) CLEANUP STANDARDS FOR SOIL. Compliance with site-specific cleanup standards for
238 soil may be based on:

239 (A) Direct exposure factors for surficial soils within two feet of the land surface;

240 (B) Construction worker exposure factors for subsurface soils to a specified subsurface
241 construction depth; and

242 (C) Soil concentrations for protection of groundwater criteria (at an established point
243 of exposure for groundwater as defined under this part) for soils situated above the
244 uppermost groundwater zone.

245 Whenever such depth-specific soil criteria are applied, the voluntary remediation plan for
246 the site shall include a description of the continuing actions and controls necessary to
247 maintain compliance;

248 (6) AVAILABLE CLEANUP STANDARDS. Any cleanup standard lawfully promulgated
249 pursuant to Code Section 12-8-93 that is protective of human health and the environment
250 and accomplishes the provisions, purposes, standards, and policies of this part without
251 demonstrating that a different cleanup standard is inappropriate or impracticable;

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

257 (8) SOURCE MATERIAL. Compliance with site-specific cleanup standards that require that
258 source material be removed may be satisfied when such material is removed,
259 decontaminated, or otherwise immobilized in the subsurface, to the extent practicable;
260 and

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

264 **SECTION 2.**

265 This Act shall become effective on the first day of the month following the month in which
266 it is approved by the Governor or in which it becomes law without such approval.

267 **SECTION 3.**

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