

SENATE SUBSTITUTE TO HB 248

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, treatment, fixation, slurry walls, and vapor control systems. Engineered
45 property development features shall be acceptable as engineering controls provided these
46 features physically control or eliminate the potential for exposure to contaminants of
47 concern or control migration.

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

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

- 58 (7) 'Exposure pathway' means a route by which a receptor comes into contact with a
59 constituent of concern.
- 60 (8) 'Fate and transport parameters' means quantitative factors that describe the various
61 media through which constituents of concern migrate from a source of release to a
62 receptor.
- 63 (9) 'Institutional controls' means legal or administrative measures that minimize the
64 potential for human exposure to contaminants of concern or protect and enhance the
65 integrity of a remedy or engineering controls. Examples include, without restriction:
66 easements, covenants, deed notices, well drilling or groundwater use prohibitions, zoning
67 restrictions, digging restrictions, orders, building permit conditions, and land-use
68 restrictions.
- 69 (10) 'Point of demonstration wells' means monitoring wells located between the source
70 of site groundwater contamination and the actual or estimated downgradient point of
71 exposure.
- 72 (11) 'Point of exposure' means the nearest of the following locations:
- 73 (A) The closest existing down gradient drinking water supply well;
- 74 (B) The likely nearest future location of a downgradient drinking water supply well
75 where public supply water is not currently available and is not likely to be made
76 available within the foreseeable future; or
- 77 (C) The hypothetical point of drinking water exposure located at a distance of 1000
78 feet downgradient from the delineated site contamination under this part.
- 79 (12) 'Proof of financial assurance' means a mechanism, in a form specified by the
80 director, designed to demonstrate that sufficient funds will be available to implement and
81 maintain specific actions or controls. Mechanisms for proof of financial assurance
82 include, but are not limited to, insurance, trust funds, surety bonds, letters of credit,
83 performance bonds, certificates of deposit, financial tests, and corporate guarantees.
- 84 (13) 'Receptor' means any human or sensitive organism which is or has the reasonable
85 potential to be adversely affected by the release of constituents of concern.
- 86 (14) 'Representative concentration' means the average concentration to which a specified
87 receptor is exposed over an exposure duration within a relevant exposure domain for soils
88 or at an established or estimated point of exposure for groundwater and consistent with
89 United States Environmental Protection Agency guidance for determination of average
90 exposure concentration.
- 91 (15) 'Voluntary remediation program' means the program established under this part.
- 92 (16) 'Voluntary remediation property' means a qualifying property enrolled in the
93 voluntary remediation program.

94 (17) 'Technical impracticability' means the inability to fully delineate or remediate
 95 contamination without incremental expenditures disproportionate to the incremental
 96 benefit. An example may include, without limitation, dense non-aqueous phase liquids
 97 in fractured bedrock settings.

98 12-8-103.

99 The board shall have the power to adopt, promulgate, modify, amend, and repeal rules and
 100 regulations to implement and enforce the provisions of this part as necessary to provide for
 101 the investigation and remediation of voluntary remediation properties, to the extent
 102 necessary to facilitate the accomplishment of the provisions, purposes, standards, and
 103 policies of this part.

104 12-8-104.

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

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

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

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

113 (4) To concur with certifications of compliance;

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

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

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

120 12-8-105.

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

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

126 (2) The property shall not:

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

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

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

133 (3) Qualifying the property under this part would not violate the terms and conditions
 134 under which the division operates and administers remedial programs by delegation or
 135 similar authorization from the United States Environmental Protection Agency; and

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

139 12-8-106.

140 A participant in the voluntary remediation program must meet the following criteria:

141 (1) Be the property owner of the voluntary remediation property or have express
 142 permission to enter another's property to perform corrective action including, to the extent
 143 applicable, implementing controls for the site pursuant to written lease, license, order, or
 144 indenture;

145 (2) Not be in violation of any order, judgement, statute, rule, or regulation subject to the
 146 enforcement authority of the director; and

147 (3) Meet other such criteria as may be established by the board pursuant to Code Section
 148 12-8-103.

149 12-8-107.

150 (a) In order to enroll any qualifying property in the voluntary remediation program
 151 described in this part, an applicant shall submit to the director a voluntary remediation plan
 152 prepared by a registered professional engineer or a registered professional geologist who
 153 is registered with the State Board of Registration for Professional Engineers and Land
 154 Surveyors or the State Board of Registration for Geologists and who has experience in
 155 responsible charge of the investigation and remediation of such releases. The voluntary
 156 remediation plan shall be in such streamlined form as may be prescribed by the director;
 157 provided, however, that the plan shall, at minimum, enumerate and describe those actions
 158 planned to bring the qualifying property into compliance with the applicable cleanup
 159 standards, with one or more registered professionals to be retained by the applicant at its
 160 sole cost to oversee the investigation and remediation described in the plan; all in
 161 accordance with the provisions, purposes, standards, and policies of the voluntary

162 remediation program. The voluntary remediation plan shall be considered an application
163 for enrollment in the voluntary remediation program, and a nonrefundable application fee
164 of \$5,000.00 shall be submitted with the application. The director may, at any time,
165 invoice the participant for any costs to the division in reviewing the application or
166 subsequent document that exceed the initial application review fee, including reasonably
167 detailed itemization and justification of the costs. Failure to remit payment within 60 days
168 of receipt of such invoice may cause rejection of the participant from the voluntary
169 remediation program. The director may not issue a written concurrence with a certification
170 of compliance if there is an outstanding fee to be paid by the participant.

171 (b) Upon the director's approval of the voluntary remediation plan described in subsection
172 (a) of this Code section, the qualifying property shall be deemed enrolled, and the applicant
173 deemed a participant, in the voluntary remediation program. It shall be the responsibility
174 of the participant to cause one or more registered professionals to oversee the
175 implementation of said plan in accordance with the provisions, purposes, standards, and
176 policies of this part. The registered professional shall submit at least semi-annual status
177 reports to the director describing the implementation of the plan during the preceding
178 period. Upon request of the applicant, the director shall have the discretion to approve
179 annual or longer periods for submittal of status reports. Within 30 days of the director's
180 approval of the voluntary remediation plan described in subsection (a) of this Code section,
181 the director shall cause any relevant voluntary remediation property listed on the inventory
182 under Part 2 of this article to be designated as undergoing corrective action pursuant to the
183 voluntary remediation program.

184 (c) The director may issue an order requiring the participant to submit proof of financial
185 assurance for continuing actions or controls upon issuance of the director's approval with
186 the voluntary remediation plan.

187 (d) The participant may terminate at any time the enrollment of the property in the
188 voluntary remediation program and the participant's requirements under this part. The
189 director may terminate, at any time prior to approval of the compliance status report
190 described in subsection (e) of this Code section, the enrollment of the property in the
191 voluntary remediation program and the participant's requirements under this part if the
192 director determines that either:

193 (1) The participant has failed to implement the voluntary remediation plan in accordance
194 with the provisions, purposes, standards, and policies of the voluntary remediation
195 program; or

196 (2) Such continued enrollment would result in a condition which poses an imminent or
197 substantial danger to human health and the environment.

198 (e) Upon completion of corrective action under this Code section, the participant shall
199 cause to be prepared a compliance status report confirming consistency of the corrective
200 action with the provisions, purposes, standards, and policies of the voluntary remediation
201 program and certifying the compliance of the relevant voluntary remediation property with
202 the applicable cleanup standards in effect at the time.

203 (f) Upon receipt of the compliance status report described in subsection (d) of this Code
204 section, a decision of concurrence with the report and certification shall be issued on
205 evidence satisfactory to the director that it is consistent with the provisions, purposes,
206 standards, and policies of the voluntary remediation program. The participant shall comply
207 with the applicable public participation requirements for compliance status reports as
208 promulgated pursuant to Part 2 of this article. Within 90 days of the director's written
209 concurrence, the director shall cause the property to be removed from the inventory under
210 Part 2 of this article.

211 (g) In addition to other provisions of this part:

212 (1) The director shall remove the voluntary remediation property from the inventory if
213 the participant demonstrates to the director at the time of enrollment, in accordance with
214 rules and regulations promulgated by the board pursuant to Part 2 of this article, that a
215 release exceeding a reportable quantity did not exist at the voluntary remediation
216 property, unless the director issues a decision that such release poses an imminent or
217 substantial danger to human health and the environment;

218 (2) The participant shall not be required to perform corrective action or to certify
219 compliance for groundwater if the voluntary remediation property was listed on the
220 inventory as a result of a release to soil exceeding a reportable quantity for soil but was
221 not listed on the inventory as a result of a release to groundwater exceeding a reportable
222 quantity, and if the participant further demonstrates to the director at the time of
223 enrollment that a release exceeding a reportable quantity for groundwater does not exist
224 at the voluntary remediation property; and the groundwater protection requirements for
225 soils shall be based on protection of the established point of exposure for groundwater as
226 provided under this part. The director may require annual groundwater monitoring for
227 up to five years for a voluntary remediation property removed from the inventory
228 pursuant to this paragraph unless the director determines that further monitoring is
229 necessary to protect human health and the environment; and

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

232 (h) Any voluntary remediation property or site relying on controls, including, but not
233 limited to, groundwater use restrictions for the purposes of certifying compliance with
234 cleanup standards, shall execute a covenant restricting such use in conformance with

235 O.C.G.A. 44-16-1, et seq., the 'Georgia Uniform Environmental Covenants Act.' The
236 division shall maintain an inventory of such properties as provided for in that statute.

237 12-8-108.

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

241 (1) SITE DELINEATION CONCENTRATION CRITERIA. Satisfactory evidence of the definition
242 of the horizontal and vertical delineation of soil or groundwater contamination for the
243 purposes of this part may be determined on the basis of any of the following
244 concentrations; provided, however, that the provisions of subparagraphs (B) and (C) of
245 this paragraph shall not be used if the concentrations are higher than as provided in
246 subparagraph (E) of this paragraph:

247 (A) Concentrations from an appropriate number of samples that are representative of
248 local ambient or anthropogenic background conditions not affected by the subject site
249 release;

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

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

255 (D) For metals in soils, the concentrations reported for Georgia undisturbed native soil
256 samples as reported in the United States Geological Survey (USGS) Open File Report
257 8 1-197 (Boerngen and Shacklette, 1981), or such later version as may be adopted by
258 rule or regulation of the board; or

259 (E) Default, residential cleanup standards;

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

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

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

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

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

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

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

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

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

284 (6) AVAILABLE CLEANUP STANDARDS. Any cleanup standard lawfully promulgated
 285 pursuant to Code Section 12-8-93 that is protective of human health and the environment
 286 and accomplishes the provisions, purposes, standards, and policies of this part may be
 287 used without demonstrating that a different cleanup standard is inappropriate or
 288 impracticable;

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

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

298 (9) TECHNICAL IMPRACTICABILITY. Site delineation or remediation beyond the point of
 299 technical impracticability shall not be required if the site does not otherwise pose an
 300 imminent or substantial danger to human health and the environment."

301 **SECTION 2.**

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

304 **SECTION 3.**

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