

Senate Bill 176

By: Senators Tolleson of the 20th, Ginn of the 47th and Davis of the 22nd

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 revise provisions relating to management of hazardous waste sites and
3 provisions concerning the enrollment, participation, and administration of hazardous site
4 remediation programs; to amend Code Section 12-2-2 of the Official Code of Georgia
5 Annotated, relating to the Environmental Protection Division and Environmental Advisory
6 Council, so as to revise provisions relating to procedures for challenging certain agency
7 actions; to provide for an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to waste
11 management, is amended by revising Code Section 12-8-80, which is reserved, as follows:
12 "12-8-80.

13 (a) Any person may consider and use, in connection with the investigation and corrective
14 action of a release of hazardous wastes, hazardous constituents, or hazardous substances
15 at a property, facility, or site under this part or Part 2 of this article and under Article 9 of
16 this chapter, except for that part of any property that is a facility subject to a permit under
17 Code Section 12-8-66, any or all of the provisions, standards, and policies set forth in Part
18 3 of this article, and they shall apply and take precedence over any conflicting provisions,
19 standards, or policies existing under this article with regard to any such property, facility,
20 or site; provided, however, that except for voluntary remediation properties, facilities, or
21 sites under this part or Article 9 of this chapter, investigations and corrective action at a
22 property, facility, or site under Part 2 of this article may use the standard set forth in
23 subparagraph (D) of paragraph (5) of Code Section 12-8-108 only at the discretion of the
24 director.

25 (b) This Code section does not in any way repeal, supersede, or preempt applicable federal
26 law nor does it supersede the requirement that state programs authorized by the United

27 States Environmental Protection Agency to operate in lieu of the federal Resource
 28 Conservation and Recovery Act be at least as protective as the federal program. Reserved."

29 **SECTION 2.**

30 Said chapter is further amended in Code Section 12-8-96.1, relating to corrective actions for
 31 releases of hazardous waste, by revising subsection (e) as follows:

32 "(e) With or without an order issued by the director, during ~~During~~ or following the
 33 undertaking of any corrective action, any person may seek contribution from any other
 34 person who has contributed or is contributing to any release of a hazardous waste, a
 35 hazardous constituent, or a hazardous substance. Such claims for contribution shall be
 36 governed by the law of this state. In resolving contribution claims, the court may allocate
 37 costs among liable parties using such equitable factors as the court determines to be
 38 appropriate. In any action filed by the director for the recovery of costs and damages
 39 pursuant to this Code section, any third-party claim for contribution may, upon the motion
 40 of the director, be severed and maintained as a separate action."

41 **SECTION 3.**

42 Said chapter is further amended in Code Section 12-8-102, relating to definitions relative to
 43 the Georgia Voluntary Remediation Program, by adding a new paragraph to subsection (b)
 44 to read as follows:

45 "(13.1) 'Registered professional' means any person who:
 46 (A) Has a minimum of eight years' experience in the investigation and remediation of
 47 releases of regulated substances, including a minimum of four years as the person in
 48 responsible charge of the investigation and remediation of such releases;
 49 (B) Holds a bachelor's or advanced degree from an accredited college or university in
 50 a related environmental science, engineering, or geology field; and
 51 (C) Is a professional engineer or professional geologist registered with the State Board
 52 of Registration for Professional Engineers and Land Surveyors or the State Board of
 53 Registration for Geologists."

54 **SECTION 4.**

55 Said chapter is further amended by revising Code Section 12-8-107, relating to the voluntary
 56 investigation and remediation plan, as follows:

57 "12-8-107.

58 (a) In order to enroll any qualifying property in the voluntary remediation program
 59 described in this part, an applicant shall submit to the director a voluntary investigation and
 60 remediation plan prepared by a registered professional engineer or a registered professional

61 ~~geologist who is registered with the State Board of Registration for Professional Engineers~~
 62 ~~and Land Surveyors or the State Board of Registration for Geologists and who has~~
 63 ~~experience in responsible charge of the investigation and remediation of such releases.~~ The
 64 voluntary investigation and remediation plan shall be in such streamlined form as may be
 65 prescribed by the director; provided, however, that the plan shall, ~~at minimum,~~ enumerate
 66 and describe those actions planned, to the extent known to the applicant or registered
 67 professional at the time, to bring the qualifying property into compliance with the
 68 applicable cleanup standards, with one or more registered professionals to be retained by
 69 the applicant at its sole cost to oversee the investigation and remediation described in the
 70 plan; all in accordance with the provisions, purposes, standards, and policies of the
 71 voluntary remediation program. The voluntary investigation and remediation plan shall be
 72 considered an application for enrollment in the voluntary remediation program, and a
 73 nonrefundable application fee of \$5,000.00 shall be submitted with the application. The
 74 director may, at any time, invoice the participant for any costs to the division in reviewing
 75 the application or subsequent document that exceed the initial application review fee,
 76 including reasonably detailed itemization and justification of the costs. Failure to remit
 77 payment within 60 days of receipt of such invoice may cause rejection of the participant
 78 from the voluntary remediation program. The director may not issue a written concurrence
 79 with a certification of compliance if there is an outstanding fee to be paid by the
 80 participant.

81 (b) ~~Upon the~~ The director's approval of ~~the~~ any voluntary investigation and remediation
 82 ~~plan described in~~ properly submitted in accordance with subsection (a) of this Code
 83 ~~section;~~ shall be subject to the provisions of the 'Georgia Voluntary Remediation Program
 84 Act' but shall not be otherwise conditioned or delayed beyond 90 days following receipt
 85 of the application. Upon the director's approval, the qualifying property shall be deemed
 86 enrolled, and the applicant deemed a participant, in the voluntary remediation program.
 87 It shall be the responsibility of the participant to cause one or more registered professionals
 88 to oversee the implementation of said plan, as may be amended or updated by the
 89 registered professional, in accordance with the provisions, purposes, standards, and policies
 90 of this part. The registered professional shall submit ~~at least semi-annual~~ status reports
 91 annually to the director describing the implementation of the plan during the preceding
 92 period and upon completion of any nonannual generic milestone specified in the plan.
 93 Upon request of the applicant, the director ~~shall have the discretion to~~ may approve ~~annual~~
 94 ~~or longer periods for submittal~~ less frequent submissions of status reports. Within 30 days
 95 of the director's approval of the voluntary investigation and remediation plan described in
 96 subsection (a) of this Code section, the director shall cause any relevant voluntary

97 remediation property listed on the inventory under Part 2 of this article to be designated as
98 undergoing corrective action pursuant to the voluntary remediation program.

99 (c) The director may issue an order requiring the participant to submit proof of financial
100 assurance for continuing actions or controls upon issuance of the director's approval with
101 ~~the voluntary investigation and remediation plan~~ compliance status report described in
102 subsection (e) of this Code section.

103 (d) The participant may terminate at any time the enrollment of the property in the
104 voluntary remediation program and the participant's requirements under this part. The
105 director may terminate, at any time prior to approval of the compliance status report
106 described in subsection (e) of this Code section, the enrollment of the property in the
107 voluntary remediation program and the participant's requirements under this part if the
108 director determines that either:

109 (1) The participant has failed to implement the voluntary investigation and remediation
110 plan in accordance with the provisions, purposes, standards, and policies of the voluntary
111 remediation program; or

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

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

119 (f) Upon receipt of the compliance status report described in subsection ~~(d)~~ (e) of this
120 Code section, a decision of concurrence with the report and certification shall be issued on
121 evidence satisfactory to the director that it is consistent with the provisions, purposes,
122 standards, and policies of the voluntary remediation program. The participant shall comply
123 with the applicable public participation requirements for compliance status reports as
124 promulgated pursuant to Part 2 of this article. Within 90 days of the director's written
125 concurrence of compliance with any applicable cleanup standards, the director shall cause
126 ~~the~~ that part of the site that is the voluntary remediation property to be removed from the
127 inventory under Part 2 of this article.

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

129 (1) The director shall remove the voluntary remediation property from the inventory if
130 the participant demonstrates to the director at the time of enrollment, in accordance with
131 rules and regulations promulgated by the board pursuant to Part 2 of this article, that a
132 release exceeding a reportable quantity did not exist at the voluntary remediation

133 property, unless the director issues a decision that such release poses an imminent or
 134 substantial danger to human health and the environment;

135 (2) The participant shall not be required to perform corrective action or to certify
 136 compliance for ~~groundwater~~ ground water if the voluntary remediation property was
 137 listed on the inventory as a result of a release to soil exceeding a reportable quantity for
 138 soil but was not listed on the inventory as a result of a release to ~~groundwater~~ ground
 139 water exceeding a reportable quantity, and if the participant further demonstrates to the
 140 director at the time of enrollment that a release exceeding a reportable quantity for
 141 ~~groundwater~~ ground water does not exist at the voluntary remediation property; and the
 142 ~~groundwater~~ ground-water protection requirements for soils shall be based on protection
 143 of the established point of exposure for ~~groundwater~~ ground water as provided under this
 144 part. The director may require annual ~~groundwater~~ ground-water monitoring for up to
 145 five years for a voluntary remediation property removed from the inventory pursuant to
 146 this paragraph unless the director determines that further monitoring is necessary to
 147 protect human health and the environment; and

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

150 (h) Any voluntary remediation property or site relying on controls, including, but not
 151 limited to, ~~groundwater~~ ground water use restrictions for the purposes of certifying
 152 compliance with cleanup standards, shall execute a covenant restricting such use in
 153 conformance with Chapter 16 of Title 44, the 'Uniform Environmental Covenants Act.'
 154 The division shall maintain an inventory of such properties as provided for in that statute.

155 (i) An owner of property that is affected by, but is not a source of, a release from another
 156 property that is enrolled in the voluntary remediation program shall, upon enrollment of his
 157 or her property in such program and execution and recording of the covenant described in
 158 subsection (h) of this Code section, not be liable to the state or any third party for costs
 159 incurred in the remediation of, equitable relief relating to, or damages resultant from such
 160 release, so long as such owner did not actively cause or contribute to the release addressed
 161 by the certification of compliance. Such limitation of liability shall automatically inure to
 162 the benefit of heirs, successors, successors in title, tenants, and assigns of such owner so
 163 long as such persons did not cause or contribute to any release of regulated substances
 164 addressed by the certification of compliance. The director shall issue limitation of liability
 165 certificates for voluntary remediation properties at the same time as the issuance of
 166 decisions of concurrence described in subsection (f) of this Code section. The limitation
 167 of liability provided by this subsection shall not limit the authority of the director to take
 168 action in response to any release or threat of release which poses an imminent or substantial
 169 danger to human health and the environment."

170 **SECTION 5.**

171 Said chapter is further amended in Code Section 12-8-108, relating to standards and policies
 172 to be considered when investigating voluntary remediation property, by revising paragraphs
 173 (1), (5), and (7) as follows:

174 "(1) **Site delineation concentration criteria.** Satisfactory evidence of the definition of
 175 the horizontal and vertical delineation of soil or ~~groundwater~~ ground-water contamination
 176 for the purposes of this part may be determined on the basis of any of the following
 177 concentrations; provided, however, that the provisions of subparagraphs (B) and (C) of
 178 this paragraph shall not be used if the concentrations are higher than as provided in
 179 subparagraph (E) of this paragraph:

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

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

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

188 (D) For metals in soils, the concentrations reported for Georgia undisturbed native soil
 189 samples as reported in the United States Geological Survey (USGS) Open File Report
 190 8 1-197 (Boerngen and Shacklette, 1981), or such later version as may be adopted by
 191 rule or regulation of the board; or

192 (E) Default; or site-specific residential cleanup standards;"

193 "(5) **Cleanup standards for soil.** Compliance with site-specific cleanup standards for
 194 ~~soil~~ may be based on:

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

196 (B) Construction worker exposure factors for subsurface soils to a specified subsurface
 197 construction depth; ~~and~~

198 (C) Soil concentrations for protection of ~~groundwater~~ ground-water criteria (at an
 199 established point of exposure for ~~groundwater~~ ground water as defined under this part)
 200 for soils situated above the uppermost ~~groundwater~~ ground-water zone; ~~and~~

201 (D) Current and reasonably foreseeable future use for ground water, which may be
 202 established by controls.

203 Whenever such depth-specific soil criteria are applied, the voluntary investigation and
 204 remediation plan for the site shall include a description of the continuing actions and
 205 controls necessary to maintain compliance;"

206 "(7) **Fate and transport parameters.** Compliance with site-specific cleanup standards
 207 may be determined on the basis of any fate and transport model or protocol recognized
 208 by the United States Environmental Protection Agency or United States Geological
 209 Survey and using most probable representative values for model or protocol parameters
 210 as adopted by the board;"

211 **SECTION 6.**

212 Said chapter is further amended in Code Section 12-8-202, relating to definitions relative to
 213 hazardous site reuse and redevelopment, by revising paragraph (6) of subsection (b) as
 214 follows:

215 "(6) 'Prospective purchaser' means a person who intends to purchase or lease a property
 216 where there is a preexisting release or a person who has applied for a limitation of
 217 liability pursuant to this article within 30 days of acquiring title to, or executing a lease
 218 for, a property where there is a preexisting release."

219 **SECTION 7.**

220 Said chapter is further amended in Code Section 12-8-207, relating to expense limitations
 221 following approval of a corrective action plan, by revising subsection (a) and paragraph (1)
 222 of subsection (b) as follows:

223 "(a) Upon the director's approval of the prospective purchaser corrective action plan or
 224 concurrence with the certification of compliance described in this Code section, whichever
 225 first occurs, a prospective purchaser shall not be liable to the state or any third party for
 226 costs incurred in the remediation of, equitable relief relating to, or damages resultant from
 227 the preexisting release, nor shall the prospective purchaser be required to certify
 228 compliance with risk reduction standards for ground water, perform corrective action, or
 229 otherwise be liable for any preexisting releases to ground water associated with the
 230 qualifying property. The limitation of liability provided under this Code section shall apply
 231 retroactively for the benefit of a qualifying prospective purchaser who has applied for a
 232 limitation of liability within 30 days following acquisition of title or execution of a lease,
 233 so long as the prospective purchaser acquired title or executed the lease on or after May 1,
 234 2012, and no right of action has accrued against such prospective purchaser prior to July
 235 1, 2013.

236 (b)(1) For qualifying properties which the director has designated as needing corrective
 237 action in accordance with paragraph (8) of subsection (a) of Code Section 12-8-97, any
 238 party desiring to qualify for a limitation of liability pursuant to this Code section shall,
 239 at the same time as the application for a limitation of liability pursuant to this article,
 240 submit a prospective purchaser corrective action plan to the division. The corrective

241 action plan shall, at minimum, enumerate and describe in detail those actions planned and
 242 proposed to bring any source material or soil found on the qualifying property into
 243 compliance with all applicable rules and regulations adopted by the board governing the
 244 investigation, cleanup, and corrective action at properties listed on the hazardous site
 245 inventory. A corrective action plan submitted by a prospective purchaser under this
 246 subsection shall be in such form and meet such criteria as established by the board."

247 **SECTION 8.**

248 Said chapter is further amended in Code Section 12-8-208, relating to exceptions to
 249 limitations of liability for hazardous site reuse and redevelopment, by revising subsection (c)
 250 as follows:

251 "(c) The limitation of liability provided by this article shall automatically inure to the
 252 benefit of heirs, assigns, successors in title, and designees of the person to whom such
 253 limitation of liability is granted and to the benefit of any tenant executing a lease on or after
 254 the date such limitation of liability is granted; provided, however, that in no event shall the
 255 director's approval of a corrective action plan or concurrence with a certification of
 256 compliance operate to absolve from liability any party deemed to be a person who has
 257 contributed or is contributing to a release at the qualifying property; and provided, further,
 258 that a transfer of the title to the qualifying property or any portion thereof from the
 259 prospective purchaser to any other party deemed to be a person who has contributed or is
 260 contributing to a release at the property, to any person disqualified from obtaining a
 261 limitation of liability under Code Section 12-8-206, or back to the owner of the property
 262 from which the subject property was purchased shall terminate any limitation of liability
 263 applicable to the transferor under this article."

264 **SECTION 9.**

265 Code Section 12-2-2 of the Official Code of Georgia Annotated, relating to the
 266 Environmental Protection Division and Environmental Advisory Council, is amended by
 267 revising paragraph (3) of subsection (c) as follows:

268 "(3)(A) Persons are 'aggrieved or adversely affected,' ~~except as set forth in~~
 269 ~~subparagraph (B) of this paragraph,~~ affected where the challenged action has caused
 270 or will cause them injury in fact and where the injury is to an interest within the zone
 271 of interests to be protected or regulated by the statutes that the director is empowered
 272 to administer and enforce. In the event the director asserts in response to the petition
 273 before the administrative law judge that the petitioner is not aggrieved or adversely
 274 affected, the administrative law judge shall take evidence and hear arguments on this
 275 issue and thereafter make a ruling on this issue before continuing with the hearing. The

276 burden of going forward with evidence on this issue shall rest with the petitioner.
277 Nothing in this subsection shall limit the director's emergency authority under Code
278 Section 12-8-30.1.

279 ~~(B) Persons are not aggrieved or adversely affected by the listing of property in the~~
280 ~~hazardous site inventory in accordance with Code Section 12-8-97, nor are persons~~
281 ~~aggrieved or adversely affected by an order of the director issued pursuant to Part 2 of~~
282 ~~Article 3 of Chapter 8 of this title, the 'Georgia Hazardous Site Response Act,' unless~~
283 ~~or until the director seeks to recover response costs, enforce the order, or recover a~~
284 ~~penalty for violation of such order; provided, however, that persons are aggrieved or~~
285 ~~adversely affected if the director designates property as needing corrective action~~
286 ~~pursuant to paragraph (8) of subsection (a) of Code Section 12-8-97. Any person~~
287 ~~aggrieved or adversely affected by such designation shall be entitled to a hearing as~~
288 ~~provided in Code Section 12-8-73 Reserved."~~

289 **SECTION 10.**

290 This Act shall become effective on July 1, 2013.

291 **SECTION 11.**

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