

GEORGIA HAZARDOUS WASTE MANAGEMENT ACT

ARTICLE 3 – HAZARDOUS WASTE

PART 1 – HAZARDOUS WASTE MANAGEMENT

PART 2 – HAZARDOUS SITE RESPONSE

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*Includes amendments through 2002 Legislative Session

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TITLE 12. CONSERVATION AND NATURAL RESOURCES

CHAPTER 8. WASTE MANAGEMENT

ARTICLE 3. HAZARDOUS WASTE

**PART 1.
HAZARDOUS WASTE MANAGEMENT**

§ 12-8-60. Short title

This part shall be known as and may be cited as the "Georgia Hazardous Waste Management Act."

HISTORY: Ga. L. 1979, p. 1127, § 1; Ga. L. 1992, p. 2234, § 5.

JUDICIAL DECISIONS

CONSTITUTIONALITY. --Section 50-13-10 did not authorize plaintiffs to obtain declaratory judgment as to validity of rules enacted pursuant to the Hazardous Waste Management Act, where plaintiffs were contending that the Act and rules promulgated thereunder were unconstitutional. *George v. Department of Natural Resources*, 250 Ga. 491, 299 S.E.2d 556 (1983).

CITED in *Earth Mgt., Inc. v. Heard County*, 248 Ga. 442, 283 S.E.2d 455 (1981); *South Carolina Ins. Co. v. Coody*, 813 F. Supp. 1570 (M.D. Ga. 1993); *Georgia Ports Auth. v. Diamond Mfg. Co.*, 164 Bankr. 189 (Bankr. S.D. Ga. 1994).

RESEARCH REFERENCES

ALR. --Right to maintain action based on violation of § 7003 of Resource Conservation and Recovery Act (42 USCS § 6973) pertaining to imminent hazards from solid or hazardous waste, 105 ALR Fed. 800.

NOTES APPLICABLE TO ENTIRE TITLE

CROSS REFERENCES. --Authority of General Assembly to restrict land use so as to protect and preserve natural resources, environment, and vital areas of state, Ga. Const., 1983, Art. III, Sec. VI, Para. II. Game and fish generally, T. 27. Water rights generally, Ch. 8, T. 44.

LAW REVIEWS. --For annual survey of law on environment, natural resources, and land use, see 35 *Mercer L. Rev.* 147 (1983). For article discussing recent developments in environmental law, see 39 *Mercer L. Rev.* 411 (1987).

NOTES APPLICABLE TO ENTIRE CHAPTER

CROSS REFERENCES. --Waste control, Pt. 3, Ch. 7, T. 16. Establishment of public authorities for recovery and utilization of resources contained in sewage sludge and solid waste, Ch. 63, T. 36.

LAW REVIEWS. --For article, "Recent Developments in Georgia Solid Waste Law Pile Up," see *28 Ga. St. B.J.* 182 (1992). For annual survey article on local government law, see *50 Mercer L. Rev.* 263 (1998).

OPINIONS OF THE ATTORNEY GENERAL

PROBATE COURT HAS NO JURISDICTION OVER WASTE MANAGEMENT VIOLATIONS. --The probate court does not have jurisdiction to try or sentence an individual accused of violating the criminal provisions concerning waste management or air pollution. 1995 Op. Att'y Gen. No. U95-1.

NOTES APPLICABLE TO ENTIRE ARTICLE

CROSS REFERENCES. --Regulation of transportation, storage, and disposal of pesticides and pesticide containers, § 2-7-106. Regulation of storage, handling, and transportation of gasoline, liquefied petroleum gases, anhydrous ammonia, and other flammable or hazardous substances, § 25-2-16. General power of Department of Human Resources and county boards of health to prevent environmental conditions which, if permitted to develop or continue, would endanger public health, Ch. 12, T. 31. Permits for disposal of radioactive waste, § 31-13-7. Regulation of transportation of radioactive materials, liquefied natural gas, and polychlorinated biphenyl, Ch. 11, T. 46. Abatement and removal of asbestos and other hazardous materials from public premises, § 50-9-80 et seq.

ADMINISTRATIVE RULES AND REGULATIONS. --Hazardous waste management, Official Compilation of Rules and Regulations of State of Georgia, Department of Natural Resources, Chapter 391-3-11.

LAW REVIEWS. --For survey article on constitutional law, see *34 Mercer L. Rev.* 53 (1982). For survey article on environment, natural resources, and land use, see *34 Mercer L. Rev.* 145 (1982). For article, "The Resource Conservation and Recovery Act (RCRA) and the Georgia Solid Waste Management Act," see *38 Mercer L. Rev.* 569 (1987). For article, "The Installation Restoration Programs (IRP): Georgia's Perspective," see *38 Mercer L. Rev.* 665 (1987).

RESEARCH REFERENCES

ALR. --Validity of local regulation of hazardous waste, *67 ALR4th* 822.

Validity, construction, and application of state hazardous waste regulations, *86 ALR4th* 401.

NOTES APPLICABLE TO ENTIRE PART

EDITOR'S NOTES. --Ga. L. 1992, p. 2234, § 5 designated the existing provisions of Article 3, Code Sections 12-8-60 through 12-8-83, as Part 1.

§ 12-8-61. Legislative policy

It is declared to be the public policy of the State of Georgia, in furtherance of its responsibility to protect the public health, safety, and well-being of its citizens and to protect and enhance the quality of its environment, to institute and maintain a comprehensive state-wide program for the management of hazardous wastes through the regulation of the generation, transportation, storage, treatment, and disposal of hazardous wastes.

HISTORY: Ga. L. 1979, p. 1127, § 2; Ga. L. 1992, p. 2234, § 5.

RESEARCH REFERENCES

AM. JUR. 2D. --2 Am. Jur. 2d, Administrative Law, § 52 et seq. 25 Am. Jur. 2d, Drains and Drainage Districts, § 3 et seq. 61C Am. Jur. 2d, Pollution Control, §§ 1151 et seq., 1270 et seq.

C.J.S. --28 C.J.S., Drains, § 3 et seq.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-62. Definitions

As used in this part, the term:

(1) "Board" means the Board of Natural Resources of the State of Georgia.

(2) "Designated hazardous waste" means any solid waste identified as such in regulations promulgated by the board. The board may identify as "designated hazardous waste" any solid waste which the board concludes is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed, based on the factors set forth in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are codified as 40 C.F.R. Section 261.11(a)(3), in force and effect on February 1, 1996, if such solid waste contains any substance which is listed on any one or more of the following lists:

(A) List of Hazardous Constituents, codified as 40 C.F.R. Part 261, Appendix VIII, in force and effect on February 1, 1996;

(B) Ground-water Monitoring List, codified as 40 C.F.R. Part 264, Appendix IX, in force and effect on February 1, 1996;

(C) List of Hazardous Substances and Reportable Quantities, codified as 40 C.F.R. Table 302.4, and all appendices thereto, in force and effect on February 1, 1996;

(D) List of Regulated Pesticides, codified as 40 C.F.R. Part 180, in force and effect on February 1, 1996;

(E) List of Extremely Hazardous Substances and Their Threshold Planning Quantities, codified as 40 C.F.R. Part 355, Appendix A, in force and effect on February 1, 1996; or

(F) List of Chemicals and Chemical Categories, codified as 40 C.F.R. Part 372.65 in force and effect on February 1, 1996.

(3) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(5) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(6) "Federal act" means the federal Solid Waste Disposal Act, as amended, particularly by the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. Section 6901, et seq.), as amended, particularly by but not limited to the Used Oil Recycling Act of 1980 (Public Law 96-463), the Solid Waste Disposal Act Amendments of 1980 (Public Law 96-482), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510), the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616), and the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499), as amended.

(7) "Final disposition" means the location, time, and method by which hazardous waste loses its identity or enters the environment, including, but not limited to, disposal, disposal site closure and post closure, resource recovery, and treatment.

(8) "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to this article.

(9) "Hazardous constituent" means any substance listed as a hazardous constituent in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are in force and effect on February 1, 1996, codified as Appendix VIII to 40 C.F.R. Part 261--Identification and Listing of Hazardous Waste.

(10) "Hazardous waste" means any solid waste which has been defined as a hazardous waste in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are in force and effect on February 1, 1996, codified as 40 C.F.R. Section 261.3 and any designated hazardous waste.

(11) "Hazardous waste facility" means any property or facility that is intended or used for storage, treatment, or disposal of hazardous waste.

(12) "Hazardous waste generation" means the act or process of producing hazardous waste.

(13) "Hazardous waste management" means the systematic recognition and control of hazardous wastes from generation to final disposition or disposal, including, but not limited to, identification, containerization, labeling, storage, collection, source separation, transfer, transportation, processing, treatment, facility closure, post closure, perpetual care, resource recovery, and disposal.

(14) "Land disposal" means any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave.

(15) "Large quantity generator" means a hazardous waste generator who generates 2.2 pounds or more of acute hazardous waste or 2,200 pounds or more of hazardous waste in one month, as defined in the Rules for Hazardous Waste Management, Chapter 391-3-11, of the Board of Natural Resources.

(16) "Manifest" means a form or document used for identifying the quantity and composition, and the origin, routing and destination, of hazardous waste during its transportation from the point of generation, through any intermediate points, to the point of disposal, treatment, or storage.

(17) "Organization" means a legal entity, other than a government agency or authority, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(18) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, municipality, commission, or political subdivision, or any agency, board, department, or bureau of this state or of any other state or of the federal government.

(19) "Serious bodily injury" means a bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(20) "Solid waste" means solid waste as defined by regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are in force and effect on February 1, 1996, codified as 40 C.F.R. Sections 261.1, 261.2(a)-(d), and 261.4(a).

(21) "Storage" means the containment or holding of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

(22) "Transport" means the movement of hazardous waste from the point of generation to any point of final disposition, storage, or disposal, including any intermediate point.

(23) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safe for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(24) "Waste reduction" means a practice, other than dewatering, dilution, or evaporation, by an environmental waste generator, including changes in production technology, materials, processes, operations or procedures or use of in-process, in-line, or closed loop recycling according to standard engineering practices, that reduces the environmental and health hazards associated with waste without diluting or concentrating the waste before release, handling,

storage, transport, treatment, or disposal of the waste. The term does not include a practice applied to environmental waste after it is generated and exits a production or commercial operation. Waste reduction shall not in any way be inferred to promote, include, or require:

- (A) Waste burning in industrial furnaces, boilers, or cement kilns;
- (B) Transfer of an environmental waste from one environmental medium to another environmental medium (otherwise known as waste shifting);
- (C) Conversion of a potential waste into another form for use in a production process or operation without serving any substantial productive function;
- (D) Off-site waste recycling; or
- (E) Any other method of end-of-pipe management of environmental wastes.

HISTORY: Ga. L. 1979, p. 1127, § 4; Ga. L. 1985, p. 266, § § 1, 2; Ga. L. 1986, p. 10, § 12; Ga. L. 1986, p. 761, § § 1, 2; Ga. L. 1987, p. 3, § 12; Ga. L. 1988, p. 727, § 1; Ga. L. 1990, p. 1427, § 1; Ga. L. 1991, p. 456, § 1; Ga. L. 1992, p. 2234, § 5; Ga. L. 1996, p. 319, § 2.

NOTES:

U.S. CODE. --The federal Solid Waste Disposal Act, referred to in paragraph (6) of this Code section, was formerly codified at *42 U.S.C. § 3251 et seq.* The federal Solid Waste Disposal Act was amended, reorganized, and expanded by the federal Resource Conservation and Recovery Act of 1976, referred to and cited in paragraph (6) of this Code section.

RESEARCH REFERENCES

ALR. --What constitutes "hazardous waste" subject to regulation under Resource Conservation and Recovery Act (*42 USCS § 6901, et seq.*), *135 ALR Fed 197.*

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-63. Administration of article by division; enforcement of article by director

The division shall be the state agency to administer this article. The director shall be the official charged with the primary responsibility for the enforcement of this article. In exercising any authority or power granted by this article and in fulfilling his duties under this article, the director shall conform to and implement the policies outlined in this article.

HISTORY: Ga. L. 1979, p. 1127, § 2; Ga. L. 1992, p. 2234, § 5.

RESEARCH REFERENCES

AM. JUR. 2D. --2 Am. Jur. 2d, Administrative Law, § 52 et seq. 25 Am. Jur. 2d, Drains and Drainage Districts, § 3 et seq. 61A Am. Jur. 2d, Pollution Control, § § 1151 et seq., 1270 et seq.

C.J.S. --73 C.J.S., Public Administrative Law and Procedure, § § 8 et seq., 49 et seq., 100.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-64. Powers and duties of board as to hazardous waste

In the performance of its duties, the board shall have and may exercise the power to:

(1) Adopt, promulgate, modify, amend, and repeal rules and regulations to implement and enforce the provisions of this article as the board may deem necessary to provide for the control and management of hazardous waste to protect the environment and the health of humans. Such rules and regulations may be applicable to the state as a whole or may vary from area to area, as may be appropriate to facilitate the accomplishment of the provisions, purposes, and policies of this article. The rules and regulations shall include, but shall not be limited to, the following:

(A) Rules and regulations governing and controlling standards applicable to hazardous waste generators, hazardous waste transporters, and owners or operators of hazardous waste treatment, storage, or disposal facilities. These rules and regulations may include measures to ensure that hazardous waste management practices are regulated, governed, and controlled in the public interest. Such measures may include, but shall not be limited to:

- (i) The establishment of record-keeping procedures;
- (ii) Requirements calling for the submission of reports to the director; and
- (iii) The establishment of monitoring practices;

(B) Rules and regulations governing and controlling the treatment, storage, and disposal of hazardous waste;

(C) Rules and regulations specifying the terms, provisions, and conditions under which the director shall issue, modify, amend, revoke, or deny permits pursuant to this article;

(D) Rules and regulations governing and controlling hazardous waste management;

(E) Rules and regulations establishing procedures and requirements for the reporting of the generation of hazardous wastes and governing and controlling the activities of hazardous waste generators;

(F) Rules and regulations establishing standards and procedures for the operation and maintenance of hazardous waste facilities;

(G) Rules and regulations establishing the use of a manifest during the generation and handling of hazardous wastes;

(H) Rules and regulations establishing procedures to ensure public access to records and to ensure protection of trade secrets and confidential information, the disclosure of which to the director is required by this article or the rules and regulations adopted under this article;

(I) Rules and regulations establishing procedures and requirements for the use and disposition of hazardous waste or hazardous constituents;

(J) Rules and regulations deleting certain solid wastes from the definition of hazardous waste;

(K) Rules and regulations exempting from some or all regulation certain small quantities of hazardous waste;

(L) Rules and regulations exempting from some or all regulation certain hazardous wastes that are recyclable; and

(M) Rules and regulations designating certain solid wastes as designated hazardous wastes; and

(2) Take all necessary steps to ensure the effective enforcement of this article.

HISTORY: Ga. L. 1979, p. 1127, § 5; Ga. L. 1985, p. 266, § 3; Ga. L. 1988, p. 727, § 2; Ga. L. 1992, p. 2234, § 5.

NOTES:

ADMINISTRATIVE RULES AND REGULATIONS. --Official Compilation of Rules and Regulations of the State of Georgia Department of Natural Resources, Ch. 391-3-11.

RESEARCH REFERENCES

C.J.S. --73 C.J.S., Public Administrative Law and Procedure, § 87 et seq.

ALR. --Vendor's obligation to disclose to purchaser of land presence of contamination from hazardous substances or wastes, *12 ALR5th 630*.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-65. Powers and duties of director as to hazardous waste

(a) The director shall have and may exercise the following powers and duties:

(1) To exercise general supervision over the administration and enforcement of this article and all rules and regulations, orders, or permits promulgated or issued under this article;

(2) To encourage, participate in, or conduct studies, reviews, investigations, research, and demonstrations relating to hazardous waste management practices in this state as he deems advisable and necessary;

(3) To issue all permits contemplated by this article, stipulating in each permit the conditions or limitations under which such permit is issued, and to deny, revoke, modify, or amend such permits;

(4) To make investigations, analyses, and inspections to determine and ensure compliance with this article, the rules and regulations promulgated under this article, and any permits or orders which the director may issue;

(5) To enter into such contracts as may be required or necessary to effectuate this article or the rules and regulations promulgated under this article;

(6) To prepare, develop, amend, modify, submit, and enforce any comprehensive plan or program sufficient to comply with this article or the federal act, or both, for the control, regulation, and monitoring of hazardous waste management practices in this state;

(7) To develop and implement plans to achieve goals and objectives set by any comprehensive plan or program;

(8) To conduct such public hearings as are required by this article or as he deems necessary for the proper administration of this article and to control and manage the conduct and procedure for such public hearings;

(9) To advise, consult, cooperate, and contract on hazardous waste management matters with other agencies of this state, political subdivisions thereof, and other designated organizations or entities, and, with the approval of the Governor, to negotiate and enter into agreements with the governments of other states and the United States and their several agencies, subdivisions, or designated organizations or entities, provided that nothing in this article shall authorize the division to own or operate a hazardous waste storage, treatment, or disposal facility;

(10) To collect and disseminate information and to provide for public notification in matters relating to hazardous waste management;

(11) To issue, amend, modify, or revoke orders as may be necessary to ensure and enforce compliance with this article and all rules or regulations promulgated under this article;

(12) To institute, in the name of the division, proceedings of mandamus, injunction, or other proper administrative, civil, or criminal proceedings to enforce this article, the rules and regulations promulgated under this article, or any orders or permits issued under this article;

(13) To accept, receive, administer, or disburse grants from public or private sources for the purpose of the proper administration of this article or for the purpose of carrying out any of the duties, powers, or responsibilities under this article;

(14) To grant variances in accordance with this article and the rules and regulations promulgated under this article, provided that such variances are not inconsistent with the federal act and rules or regulations promulgated thereunder;

(15) To encourage voluntary cooperation by persons and affected groups to achieve the purposes of this article;

(16) To assure that the State of Georgia complies with the federal act and retains maximum control thereunder and receives all desired federal grants, aid, and other benefits;

(17) To require any person who is generating, transporting, treating, storing, or disposing of hazardous waste to notify the division in writing, within a reasonable number of days which the director shall specify, of the location and general description of such activity and identifying the hazardous waste handled, and any other information which may be deemed relevant, under such conditions as the director may prescribe;

(18) To maintain an inventory of hazardous wastes within the state, including such information as location, identity, quantity, method of storage, rate of accumulation, disposal

practices, and any other information which the director may deem necessary to administer and enforce this article;

(19) To exclude from regulation under this article the solid waste at any particular generating facility if it is determined that such solid waste does not pose a danger to human health or the environment;

(20) To establish hazardous waste management standards for the state, provided that they are in all cases not less stringent than those standards provided by the federal act;

(21) To take all necessary steps to ensure that the administration of this article is consistent with and equivalent to the provisions of the federal act and any standards, rules, or regulations promulgated thereunder toward the end that the State of Georgia shall have maximum control over hazardous waste management practices in this state; and

(22) To exercise all incidental powers necessary to carry out the purposes of this article.

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

HISTORY: Ga. L. 1979, p. 1127, § 6; Ga. L. 1988, p. 727, § 3; Ga. L. 1992, p. 2234, § 5; Ga. L. 1996, p. 6, § 12.

NOTES:

CROSS REFERENCES. --Permits for disposal of radioactive wastes, § 31-13-7.

RESEARCH REFERENCES

AM. JUR. 2D. --2 Am. Jur. 2d, Administrative Law, § 52 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 241 et seq.

C.J.S. --67 C.J.S., Officers and Public Employees, § 190 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-65.1. Hazardous waste reduction plans; specific performance goals; biennial progress reports; rules and regulations

(a) By not later than March 1, 1992, large quantity hazardous waste generators shall develop hazardous waste reduction plans and submit such plans to the director. At a minimum, the plans shall include:

(1) A written policy articulating upper management and corporate support for the generator's hazardous waste reduction plan and a commitment to implement plan goals;

(2) The scope and objectives of the plan, including the evaluation of technologies, procedures, and personnel training programs to ensure unnecessary hazardous waste is not

generated and specific goals for hazardous waste reduction, based on what is technically and economically practical;

(3) Internal analysis of hazardous waste streams, with periodic hazardous waste reduction assessments, to review individual processes or facilities and other activities where hazardous waste may be generated and identify opportunities to reduce or eliminate hazardous waste generation. Such assessments shall evaluate data on the types, amount, and hazardous constituents of hazardous waste generated, where and why that hazardous waste was generated within the production process or other operations, and potential hazardous waste reduction and recycling techniques applicable to those hazardous wastes;

(4) Hazardous waste accounting systems that identify hazardous waste management costs and factor in liability, compliance, and oversight costs to the extent technically and economically practical;

(5) Employee awareness and training programs to involve employees in hazardous waste reduction planning and implementation to the maximum extent feasible;

(6) Institutionalization of the plan to ensure an ongoing effort as demonstrated by incorporation of the plan into management practice and procedures; and

(7) Implementation of technically and economically practical hazardous waste reduction options, including a plan for implementation.

(b) As part of each hazardous waste reduction plan developed under subsection (a) of this Code section, each large quantity hazardous waste generator shall establish specific performance goals for the reduction of hazardous waste. Wherever technically and economically practical, the specific performance goals established under this subsection shall be expressed in numeric terms. If the establishment of numeric performance goals is not practical, the performance goals shall include a clearly stated list of objectives designed to lead to the establishment of numeric goals as soon as practical. Each large quantity hazardous waste generator shall explain the rationale for each performance goal. The rationale for a particular performance goal shall address any impediments to hazardous waste reduction, including but not limited to the following:

(1) The availability of technically practical hazardous waste reduction methods, including any anticipated changes in the future;

(2) Previously implemented reductions of hazardous waste; and

(3) The economic practicability of available hazardous waste reduction methods, including any anticipated changes in the future.

(c) Examples of situations where hazardous waste reduction may not be economically practical as provided for in paragraph (3) of subsection (b) of this Code section include but are not limited to:

(1) For valid reasons of priority, a particular company may choose first to address other more serious hazardous waste reduction concerns;

(2) Necessary steps to reduce hazardous waste are likely to have significant adverse impacts on product quality; or

(3) Legal or existing contractual obligations interfere with the necessary steps that would lead to hazardous waste reduction.

(d) All large quantity hazardous waste generators shall complete biennially a hazardous waste reduction progress report. A biennial progress report shall:

(1) Analyze and quantify progress made, if any, in hazardous waste reduction, relative to each performance goal established under subsection (b) of this Code section; and

(2) Set forth amendments to the hazardous waste reduction plan and explain the need for the amendments.

(e) The board may adopt and promulgate such rules and regulations as may be necessary to further define and implement the provisions of this Code section and Code Section 12-8-65.2, provided such rules and regulations are supplemental to and not in conflict with this Code section and Code Section 12-8-65.2.

HISTORY: Code 1981, § 12-8-65.1, enacted by Ga. L. 1990, p. 1427, § 2; Ga. L. 1992, p. 2234, § 5.

NOTES:

CODE COMMISSION NOTES. --Pursuant to Code Section 28-9-5, in 1990, ". Such" was substituted for "; such" in the middle of paragraph (a)(3) and a comma was deleted following "programs" in paragraph (a)(5).

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-65.2. Updating plans and reports; technical assistance; information available to public

(a) All large quantity hazardous waste generators shall complete and submit to the director a hazardous waste reduction plan on or before March 1, 1992. The plans shall be updated and progress reported on a biennial basis thereafter. The first updated biennial report shall be due in 1994 and shall be submitted to the director as prescribed in rules or regulations adopted by the board.

(b) Subject to available funding, the Georgia Institute of Technology shall provide technical assistance, if requested, to hazardous waste generators in reducing the amount and toxicity of hazardous waste generated, in preparing hazardous waste reduction plans, and in preparing biennial progress reports.

(c) The director shall maintain a copy of each hazardous waste reduction plan and biennial progress report received. This information shall be available to the public at the director's or the division's office.

HISTORY: Code 1981, § 12-8-65.2, enacted by Ga. L. 1990, p. 1427, § 2; Ga. L. 1992, p. 2234, § 5.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-65.3. Plans and reports by out-of-state generators storing, treating, or disposing of hazardous waste in state

(a) For the purposes of this Code section, "out-of-state generator" means any large quantity hazardous waste generator generating hazardous waste at a location outside the State of Georgia.

(b) As a condition of allowing any out-of-state generator to store, treat, or dispose of hazardous waste at a hazardous waste disposal facility located within the State of Georgia, such out-of-state generator shall prepare and submit to the director upon his request a hazardous waste reduction plan and biennial hazardous waste reduction progress reports in substantial compliance with the requirements of Code Sections 12-8-65.1 and 12-8-65.2.

(c) No hazardous waste disposal facility shall accept hazardous waste from an out-of-state generator unless the out-of-state generator presents to the owner or operator of the hazardous waste facility certification that the out-of-state generator is in compliance with the provisions of subsection (b) of this Code section. Such certification shall be made under oath or affirmation of the person making such certification that the contents of such certification are true and shall be made by a corporate officer, partner, or owner of such generator. It shall be unlawful to make a false statement on such certification and the making of a false statement shall be punishable as an act of false swearing under Code Section 16-10-71.

(d) The requirements of Code Sections 12-8-65.1 and 12-8-65.2 and of subsections (a), (b), and (c) of this Code section shall not apply to any hazardous waste generator which is a generator as a consequence of any remediation or cleanup programs conducted either voluntarily or through legal actions under either the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, *42 U.S.C. Section 6901*, et seq.), as amended, or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510), as amended, and shall not apply to a commercial hazardous waste treatment, storage, or disposal facility upon certification to the director that because of the nature of its business operation or process such facility cannot meet the waste reduction requirement prescribed under Code Sections 12-8-65.1 and 12-8-65.2 and subsections (a), (b), and (c) of this Code section. Such certification shall be made under oath or affirmation of the person making such certification that the contents of such certification are true and shall be made by a corporate officer, partner, or owner of such facility. It shall be unlawful to make a false statement on such certification and the making of such false statement shall be punishable as an act of false swearing under Code Section 16-10-71.

HISTORY: Code 1981, § 12-8-65.3, enacted by Ga. L. 1990, p. 1427, § 2; Ga. L. 1992, p. 2234, § 5.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-65.4. Duplication of prior reporting requirements not required

Nothing contained in Code Sections 12-8-65.1 through 12-8-65.3 or Code Section 12-8-66 shall require a duplication of reporting requirements under this article as it existed prior to July 1, 1990.

HISTORY: Code 1981, § 12-8-65.4, enacted by Ga. L. 1990, p. 1427, § 2; Ga. L. 1992, p. 2234, § 5.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-66. Permits for construction, installation, operation, or alteration of hazardous waste facilities

(a) No person shall, and it shall be unlawful and a violation of this part to, construct, install, operate, or substantially alter a hazardous waste facility without first obtaining and possessing a hazardous waste facility permit from the director. An application for a permit shall be submitted in such manner and on such forms as the director may prescribe. A permit shall be issued to an applicant on evidence, satisfactory to the director, of compliance with this part and any standards, requirements, or rules and regulations effective pursuant to this part.

(b) The director may require that applications for such permits shall be accompanied by plans, data, specifications, engineering reports, designs, and such other information as the director deems necessary to make a determination of compliance with this part and the standards, requirements, or rules and regulations promulgated pursuant to this part.

(c) The director may amend, modify, suspend, or revoke any permit issued for cause, including, but not limited to, the following:

(1) Violation of any condition or provision of such permit or failure to comply with any final order of the director;

(2) Failure to comply with this part or any rules or regulations promulgated pursuant to this part;

(3) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or

(4) When the permitted activity poses a threat to the environment or to the health of humans.

(d) An application for a permit shall include a demonstration of financial responsibility, including, but not limited to, guarantees, liability insurance, the posting of bonds, or any combination of guarantees, liability insurance, or bonds in accordance with Code Section 12-8-68, which financial responsibility shall be related to the type and size of facility.

(e) Permits issued under this Code section shall contain such terms and conditions, including conditions requiring corrective action beyond the facility boundary, as are deemed necessary by the director to protect the environment and the health of humans, and the director may require such testing and construction supervision as said officer deems necessary to protect the environment and the health of humans. Any permit issued subsequent to November 8, 1984, shall contain conditions requiring corrective action for any releases into the environment of

hazardous waste or hazardous constituents at the facility seeking a permit, regardless of the time at which waste was placed at such facility.

(f) In the event of denial, amendment, modification, suspension, or revocation of a permit, the director shall send written notice of such action to the permit holder or applicant and shall set forth in such notice the reason for the action.

(g) The issuance, denial, amendment, modification, suspension, or revocation of any permit by the director shall become final unless a petition for hearing in accordance with Code Section 12-8-73 is filed.

(h) Upon the first receipt of an application for a hazardous waste facility permit, the director, within 15 days, shall provide to the government of the county in which the facility is located or is proposed to be located, to each city government located wholly or partially within that county, and to the government of each county and city having territorial boundaries within two miles of the hazardous waste facility, or proposed hazardous waste facility a written notice indicating that an application has been received and describing the hazardous waste activities the applicant proposes to conduct. Within a 30 day period after first receipt of such application, the director shall also publish in at least one local newspaper of general circulation in the county a public notice that an application for a hazardous waste facility permit has been received. A public hearing shall be held if such is requested in writing within 30 days after publication of notification and is requested by 25 or more persons who claim to be affected by the pending permit application, by a governmental subdivision, or by an association having not fewer than 25 members. If requested, the public hearing shall be conducted at the county seat of the county in which the hazardous waste facility is proposed to be located. At least 45 days prior to the date of the public hearing, the director shall provide written notice to the various local governmental subdivisions and other interested parties in the locality in which the proposed facility may be located that a public hearing has been requested, which written notice shall also include the date, time, location, and purpose of the public hearing. The date, time, location, and purpose of such public hearing shall be advertised in the legal organ of the county in which the facility is proposed at least 45 days in advance of the date set for the hearing. Such public hearings shall be held for the purpose of receiving comments and suggestions concerning the location and requirements for the operation of a hazardous waste facility. The director shall consider fully all written and oral submissions regarding the proposed facility and the pending application.

(i) Any person who owns or operates a facility required to have a permit under this Code section, which facility was in existence on November 19, 1980, or is in existence on the effective date of any amendment to this part or any regulation promulgated pursuant to this part which renders the facility subject to the requirement to have a permit pursuant to this Code section shall be accorded interim status, which means that such person shall be treated as having been issued a permit until such time as final administrative disposition of the person's application has been made, if and to the extent the person:

(1) Has notified the director of the existence of such facility as required pursuant to paragraph (17) of subsection (a) of Code Section 12-8-65;

(2) Has filed an application for a permit as required pursuant to this Code section;

(3) Furnishes to the director information reasonably required or requested for processing such application;

(4) Does not treat, store, or dispose of hazardous waste not specified in the permit application, nor employ processes not specified in the permit application, nor exceed the design capacity specified in the permit application; and

(5) Complies with all standards applicable to interim status facilities as have been or may be promulgated by the board.

(j) In the case of any land disposal facility which had interim status prior to November 8, 1984, interim status shall terminate on November 8, 1985, unless the owner or operator of such facility:

(1) Applies for a final determination regarding the issuance of a permit pursuant to this Code section for such facility prior to November 8, 1985; and

(2) Certifies that such facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements.

(k) In the case of any land disposal facility that has interim status due to any amendments to this part or any regulations promulgated pursuant to this part on or subsequent to November 8, 1984, which render the facility subject to the requirement to have a permit pursuant to this part, interim status shall terminate on the date 12 months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility:

(1) Applies for a final determination regarding the issuance of a permit pursuant to this Code section for such facility before the date 12 months after the date on which the facility first becomes subject to such permit requirement; and

(2) Certifies that such facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements.

(l) In the case of any hazardous waste incinerator which had interim status prior to November 8, 1984, interim status shall terminate on November 8, 1989, unless the owner or operator of such facility applies for a final determination regarding the issuance of a permit pursuant to this Code section for such facility prior to November 8, 1986.

(m) In the case of all hazardous waste facilities which had interim status prior to November 8, 1984, other than land disposal facilities and incinerators, interim status shall terminate on November 8, 1992, unless the owner or operator of such facility applies for a final determination regarding the issuance of a permit pursuant to this Code section for such facility prior to November 8, 1988.

(n) In the case of all hazardous waste facilities in existence on November 8, 1984, the director must make a decision to issue or deny a permit pursuant to this Code section by the following dates:

(1) By November 8, 1988, for all land disposal facilities;

(2) By November 8, 1989, for all incinerators; and

(3) By November 8, 1992, for all other hazardous waste facilities.

(o) The director shall not issue a permit allowing any owner or operator of a cement kiln to burn hazardous waste as fuel until the U.S. Environmental Protection Agency has completed

developing its strategy for hazardous waste reduction and combustion which may affect the burning of hazardous wastes in cement kilns.

HISTORY: Ga. L. 1979, p. 1127, § 8; Ga. L. 1982, p. 3, § 12; Ga. L. 1985, p. 266, § § 4, 5; Ga. L. 1986, p. 10, § 12; Ga. L. 1989, p. 240, § 1; Ga. L. 1990, p. 1427, § 3; Ga. L. 1992, p. 2234, § 5; Ga. L. 1993, p. 500, § 2; Ga. L. 1994, p. 483, § 1.

NOTES:

CODE COMMISSION NOTES. --Pursuant to Code Section 28-9-5, in 1990, the paragraph (1) designation in subsection (h) was deleted and a comma was deleted preceding "a written notice" near the end of the first sentence in subsection (h).

JUDICIAL DECISIONS

FINANCIAL RESPONSIBILITY REQUIREMENTS under this article and the regulations adopted thereunder meet the constitutional due process standard of bearing a rational relation to a proper and constitutionally permitted legislative purpose. *Georgia Dep't of Natural Resources v. Union Timber Corp.*, 258 Ga. 873, 375 S.E.2d 856 (1989).

The director is not obligated to establish financial responsibility requirements for individual hazardous-waste facilities. Indeed, if the director is obligated at all, the director is to exercise discretion in a manner consistent with the federal act and such criteria as the board shall establish. *Georgia Dep't of Natural Resources v. Union Timber Corp.*, 258 Ga. 873, 375 S.E.2d 856 (1989).

CITED in *George v. Department of Natural Resources*, 250 Ga. 491, 299 S.E.2d 556 (1983); *Board of Natural Resources v. Walker County*, 200 Ga. App. 301, 407 S.E.2d 436 (1991).

RESEARCH REFERENCES

AM. JUR. 2D. --51 Am. Jur. 2d, Licenses and Permits, § § 10 et seq., 74 et seq.

C.J.S. --53 C.J.S., Licenses, § 5 et seq.

ALR. --Common-law strict liability in tort of prior landowner or lessee to subsequent owner for contamination of land with hazardous waste resulting from prior owner's or lessee's abnormally dangerous or ultrahazardous activity, 13 ALR5th 600.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-67. Hazardous waste in transit to be accompanied by manifest

No hazardous waste shall be transported across, within, or through this state unless it is accompanied by a manifest properly issued, completed, and filled out in accordance with the rules and regulations promulgated by the board. The manifest shall accompany all hazardous

waste from the point of generation through handling, storage, treatment, and disposal. A copy of the manifest shall be transmitted to the director as often as is required by the rules and regulations adopted by the board pursuant to this article.

HISTORY: Ga. L. 1979, p. 1127, § 9; Ga. L. 1992, p. 2234, § 5.

RESEARCH REFERENCES

AM. JUR. 2D. --15A Am. Jur. 2d, Commerce, § § 68, 96. 39 Am. Jur. 2d, Health, § § 1, 3, 5, 7, 16.

C.J.S. --39A C.J.S., Health and Environment, § 5.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-68. Requirement of financial responsibility for persons operating or maintaining hazardous waste storage, treatment, or disposal facility; hazardous waste facility trust fund

(a) No hazardous waste storage, treatment, or disposal facility shall be operated or maintained by any person unless adequate financial responsibility, by bonding or other methods approved by the director, has been demonstrated to the director to ensure the satisfactory maintenance, operation, closure, and postclosure care of the facility, any corrective action which may be required as a condition of a permit, and payment of any liabilities to third parties as set forth in the regulations adopted pursuant to this part.

(b) The director may require the demonstration of financial responsibility prior to issuing a permit for any hazardous waste storage, treatment, or disposal facility to assure the availability of funds to meet sufficiently the requirements for proper closure, maintenance, or postclosure care of the facility and the hazardous waste contained therein, to assure any corrective action required as a condition of such a permit, and to guarantee payment of any liabilities to third parties as set forth in regulations adopted pursuant to this part. The director is authorized to establish the financial responsibility requirements for permit applicants and classes of permit applicants, including the establishment of a range of monetary amounts.

(c) The board may adopt rules and regulations pursuant to this article establishing the criteria for approval, time periods for coverage, and other terms and conditions for the demonstration of financial responsibility required by this article and for the implementation of financial responsibility instruments.

(d) If the director determines that a hazardous waste storage, treatment, or disposal facility has been abandoned, that the owner or operator thereof has become insolvent, or that for any other reason there is a demonstrated inability of the owner or operator to maintain, operate, or close the facility, to carry out postclosure care of the facility, or to carry out corrective action required as a condition of a permit, to the satisfaction of the director, the director may implement the applicable financial responsibility instruments. The proceeds from any applicable financial responsibility instruments shall be deposited in a special account designated as the hazardous waste facility trust fund. The director shall serve as trustee of any such hazardous waste facility

trust fund and the funds deposited in any such fund shall be used only for closure, postclosure care, or corrective action required for the facility. The determination of whether there has been an abandonment, default, or other refusal or inability to perform and comply with closure, postclosure, or corrective action requirements shall be made by the director.

(e) An order or other action of the director under this Code section shall become final unless a petition for hearing in accordance with Code Section 12-8-73 is filed.

(f) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal Bankruptcy Code or where, with reasonable diligence, jurisdiction in any state court or any federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this Code section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which will have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(g) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this part. Nothing in this subsection shall be construed to limit any other state or federal statutory contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under Section 107 or 111 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or other, applicable law.

HISTORY: Ga. L. 1979, p. 1127, § 10; Ga. L. 1985, p. 266, § 6; Ga. L. 1986, p. 761, § 3; Ga. L. 1992, p. 2234, § 5.

NOTES:

U.S. CODE. --The federal Bankruptcy Code, referred to in this Code section, is codified at *11 U.S.C. § 1 et seq.* The federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in this Code section, is codified throughout Titles 26, 42, and 49 U.S.C.

JUDICIAL DECISIONS

CONSTITUTIONALITY. --The financial responsibility requirements under this article and the regulations adopted thereunder meet the constitutional due process standard of bearing a rational relation to a proper and constitutionally permitted legislative purpose. *Georgia Dep't of Natural Resources v. Union Timber Corp.*, 258 Ga. 873, 375 S.E.2d 856 (1989).

DIRECTOR NOT OBLIGATED TO ESTABLISH REQUIREMENTS FOR INDIVIDUAL FACILITIES. --The director is not obligated to establish financial responsibility requirements for individual hazardous-waste facilities. Indeed, if the director is obligated at all, the director is to exercise discretion in a manner consistent with the federal act and such criteria as the board shall

establish. *Georgia Dep't of Natural Resources v. Union Timber Corp.*, 258 Ga. 873, 375 S.E.2d 856 (1989).

OPINIONS OF THE ATTORNEY GENERAL

THIRD PARTY'S ACTION ON CORPORATE GUARANTEE FOR SUBSIDIARY'S LIABILITY. --A parent corporation's guarantee for its subsidiary's liability for sudden and nonsudden accidental occurrences at hazardous waste treatment, storage and disposal facilities would be fully valid and enforceable by third parties who have sustained injury or damage caused by such occurrences. 1986 Op. Att'y Gen. No. 86-35.

RESEARCH REFERENCES

AM. JUR. 2D. --51 Am. Jur. 2d, Licenses and Permits, § § 60 et seq., 80 et seq.

C.J.S. --53 C.J.S., Licenses, § § 37 et seq., 61 et seq.

ALR. --Equitable considerations in allocating response costs to owner or occupant of previously contaminated facility in action pursuant to § 113(f) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCA § 9613(f)), 148 ALR Fed. 203.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-69. Variances

(a) Unless variances are prohibited by the federal act or the standards, rules, and regulations promulgated thereunder, the director may grant variances from the requirements of this article or the rules and regulations effective under this article whenever the director finds that compliance with any provision of this article or any standard, rule, or regulation will result in an arbitrary and unreasonable taking of property or will result, in effect, in the closing and elimination of any lawful business, occupation, or activity without sufficient corresponding benefit or advantage to the public, provided that no variance shall be granted where the effect of a variance will permit the continuation of a condition which poses an undue present or potential threat to the environment or to the health of humans; provided, further, that any variance so granted shall not be construed so as to relieve any person from any liability imposed by law or rule and regulation.

(b) Variances may be granted for such periods of time and under such provisions and conditions as shall be specified by the director.

(c) As a condition precedent to the issuance of a variance, the director may require the filing of a bond in accordance with Code Section 12-8-68, sufficient to ensure compliance with the terms and conditions of the variance. The director may require that the bond shall remain in effect until all terms and conditions of the variance are met and compliance is achieved with this article and the rules and regulations promulgated under this article.

(d) Upon failure of a person to comply with the terms and conditions of any bond or any variance issued by the director, a variance may be amended, modified, suspended, or revoked, or

the bond may be forfeited by the director or ordered to be modified or amended. The proceeds from any forfeited bond shall be deposited in either the hazardous waste facility trust fund in accordance with Code Section 12-8-68 or the hazardous waste trust fund in accordance with Code Section 12-8-91, as the director deems appropriate.

HISTORY: Ga. L. 1979, p. 1127, § 11; Ga. L. 1992, p. 2234, § 5; Ga. L. 1994, p. 483, § 2; Ga. L. 1996, p. 6, § 12.

RESEARCH REFERENCES

AM. JUR. 2D. --2 Am. Jur. 2d, Administrative Law, § § 63, 65, 191.

C.J.S. --73 C.J.S., Public Administrative Law and Procedure, § 60.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-70. Inspections and investigations

(a) The director or the director's authorized representative, upon presentation of his credentials, shall have a right to enter upon, to, or through premises of persons subject to this article, or premises whereon a violation of the article or rules and regulations is reasonably believed to be occurring or is reasonably believed to be about to occur, to investigate, take samples, copy all records relating to hazardous wastes, and inspect for compliance with the requirements imposed under this article or the rules and regulations or to determine whether such a violation or threatened violation exists in accordance with the following purposes:

(1) For the purpose of determining whether any person subject to the requirements of this article is in compliance with any standard or requirement imposed pursuant to this article;

(2) For the purpose of investigating conditions relating to hazardous waste management or hazardous waste management practices where the director is in possession of information sufficient to form a reasonable belief that a violation of this article or the rules and regulations is occurring or is about to occur;

(3) For the purpose of determining whether there has been a violation of any of the provisions of this article, the rules and regulations promulgated under this article, or any permit or order issued pursuant to this article and the rules and regulations; or

(4) For the purpose of determining whether a release of hazardous wastes, hazardous constituents, or hazardous substances is occurring or has occurred.

(b) In the event any person does not consent to an inspection or investigation, the director or his authorized representative may seek to obtain a warrant authorizing the inspection or investigation.

(c) Each such inspection or investigation shall be commenced and completed with reasonable promptness. If the director or his authorized representatives obtain any samples prior to leaving the premises, he or they shall give to the owner, operator, or agent in charge a receipt describing

the sample obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(d) Any person whom the agency has reason to believe is contributing to or may have contributed to or may be responsible for a release of or the disposal of hazardous wastes, hazardous constituents, or hazardous substances or who is the owner of real property where a release or disposal has occurred or is suspected to have occurred, when requested by the director, shall furnish to the director any information which that person may have or may reasonably obtain which is relevant to the release and has been requested by the director.

HISTORY: Ga. L. 1979, p. 1127, § 12; Ga. L. 1992, p. 2234, § 5; Ga. L. 1996, p. 6, § 12.

JUDICIAL DECISIONS

CITED in *Price v. State*, 250 Ga. App. 872, 553 S.E.2d 194 (2001).

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-71. Proceedings for enforcement

(a) Whenever the director has reason to believe that a violation of any provision of this part, a violation of any rule or regulation of the board, or a violation of any order of the director has occurred, the director shall attempt to remedy the same by conference, conciliation, and persuasion. In the case of failure of such conference, conciliation, or persuasion to correct or remedy any violation, the director may issue an order directed to such violator or violators. The order shall specify the provisions of this part, the rules and regulations, or the order alleged to have been violated and may direct that necessary corrective action be taken within a reasonable time to be prescribed in the order.

(b) Whenever the director has reason to believe that there is or has been a release of hazardous waste or hazardous constituents into the environment, regardless of the time at which release of such hazardous waste or hazardous constituents occurred, and has reason to believe that such release poses a danger to health or the environment, the director shall attempt to obtain corrective action for such release by conference, conciliation, and persuasion. In the case of failure of such conference, conciliation, or persuasion to obtain corrective action, the director may issue an order directed to any person, including any past or present generator, past or present transporter, or past or present owner or operator of a hazardous waste treatment, storage, or disposal facility, who has contributed or who is contributing to such release. The order may direct that necessary corrective action be taken within a reasonable time to be prescribed in the order.

(c) Any order issued by the director under this Code section shall be signed by the director. Any such order shall become final unless the person or persons named therein request in writing a hearing pursuant to Code Section 12-8-73.

HISTORY: Ga. L. 1979, p. 1127, § 13; Ga. L. 1985, p. 266, § 7; Ga. L. 1988, p. 727, § 4; Ga. L. 1992, p. 2234, § 5.

JUDICIAL DECISIONS

OBLIGATION TO REMEDY VIOLATIONS BY "CONFERENCE, CONCILIATION, OR PERSUASION." --Finding that company holding a "corrective action permit" wilfully and flagrantly violated the corrective action plan and that the Environmental Protection Division acted reasonably in attempting to obtain compliance were sufficient to show the division acted in accord with the requirements of this section. *Reheis v. AZS Corp.*, 232 Ga. App. 852, 503 S.E.2d 36 (1998).

RESEARCH REFERENCES

C.J.S. --73 C.J.S., Public Administrative Law and Procedure, § § 100, 73A C.J.S., Public Administrative Law, § 115.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-72. Application for injunctive relief

Whenever, in the judgment of the director, any person has engaged in or is about to engage in any act or practice which constitutes or would constitute a violation of this article, the rules and regulations, or any order or permit conditions, he may apply to the superior court of the county in which the violative act or practice has been or is about to be engaged in, or in which jurisdiction is appropriate, for an order enjoining such act or practice or for an order requiring compliance with the article, the rules and regulations, or the order or permit condition. Upon a showing by the director that such person has engaged in or is about to engage in any such violative act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing the lack of an adequate remedy at law.

HISTORY: Ga. L. 1979, p. 1127, § 14; Ga. L. 1982, p. 3, § 12; Ga. L. 1992, p. 2234, § 5.

RESEARCH REFERENCES

AM. JUR. 2D. --2 Am. Jur. 2d, Administrative Law, § 420 et seq.

C.J.S. --73 C.J.S., Public Administrative Law and Procedure, § 45 et seq., 73A C.J.S., Public Administrative Law, § 272 et seq.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-73. Hearings on contested matters; judicial review

All hearings on and the review of contested matters, orders, or permits and all hearings on and the review of any other enforcement actions or orders under this article shall be provided and conducted in accordance with subsection (c) of Code Section 12-2-2. The hearing and review procedure herein provided is to the exclusion of all other means of hearing or review.

HISTORY: Ga. L. 1979, p. 1127, § 15; Ga. L. 1992, p. 2234, § 5.

JUDICIAL DECISIONS

CITED in *George v. Department of Natural Resources*, 250 Ga. 491, 299 S.E.2d 556 (1983).

RESEARCH REFERENCES

AM. JUR. 2D. --2 Am. Jur. 2d, Administrative Law, § § 262 et seq., 420.

C.J.S. --73A C.J.S., Public Administrative Law and Procedure, § § 115, 116, 172 et seq.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-74. Judgment in accordance with final orders

Any order of the hearing officer issued after a hearing as provided in Code Section 12-8-73 or any order of the director issued pursuant to Code Section 12-8-71 or 12-8-96, either unappealed from as provided in those Code sections or affirmed or modified on any review or appeal pursuant to Code Section 12-8-73, and from which no further review is taken or allowed under Code Section 12-8-73, may be filed, as unappealed from or as affirmed or modified, if reviewed or appealed, by certified copy from the director in the superior court of the county wherein the person under order resides, or if such person is a corporation in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred or in which jurisdiction is appropriate, whereupon such superior court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though such judgment had been rendered in an action duly heard and determined by such court.

HISTORY: Ga. L. 1979, p. 1127, § 16; Ga. L. 1992, p. 2234, § 5.

RESEARCH REFERENCES

AM. JUR. 2D. --2 Am. Jur. 2d, Administrative Law, § § 380, 381.

C.J.S. --73A C.J.S., Public Administrative Law and Procedure, § 143 et seq.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-75. Powers of director in situations involving imminent and substantial endangerment to environment or to public health

Notwithstanding any provision of this article to the contrary, the director, upon receipt of evidence that the past or present handling, storage, treatment, transportation, or disposal of any solid waste or hazardous waste is presenting or may present imminent and substantial endangerment to the environment or to the health of humans, may bring an action as provided in Code Section 12-8-72 to restrain immediately any person, including any past or present generator, past or present transporter, or past or present owner or operator of a hazardous waste treatment, storage, or disposal facility, who has caused or is causing or has contributed or is contributing to such handling, storage, treatment, transportation, or disposal to stop such handling, storage, treatment, transportation, or disposal or to take such other action as may be necessary. If it is not practicable to assure prompt protection of the environment or the health of humans solely by commencement of such a civil action, the director, with the concurrence of the Governor, may issue such emergency orders as may be necessary to protect the environment or the health of humans who are or may be affected by such past or present handling, storage, treatment, transportation, or disposal. Notwithstanding Code Sections 12-8-71, 12-8-72, 12-8-73, 12-8-74, 12-8-81, and 12-8-96, such order shall be immediately effective for a period of not more than 48 hours unless the director brings an action under the first sentence of this Code section before the expiration of such period. Whenever the director brings such an action within such period, such order shall be effective for such period of time as may be authorized by the court pending litigation or thereafter.

HISTORY: Ga. L. 1979, p. 1127, § 18; Ga. L. 1982, p. 3, § 12; Ga. L. 1985, p. 266, § 8; Ga. L. 1992, p. 2234, § 5.

NOTES:

CROSS REFERENCES. --Emergency powers of Governor generally, § § 38-3-22, 38-3-51, 45-12-29 et seq.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-76. Legal assistance by Attorney General

It shall be the duty of the Attorney General or his representative to represent the director in all actions in connection with this article.

HISTORY: Ga. L. 1979, p. 1127, § 22; Ga. L. 1992, p. 2234, § 5.

RESEARCH REFERENCES

AM. JUR. 2D. --7 Am. Jur. 2d, Attorney General, § § 45, 46.

C.J.S. --7A C.J.S., Attorney General, § 7.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-77. Contracts to provide solid waste handling, reclamation, or recycling services

(a) Any provision of law to the contrary notwithstanding, in order to comply with this article, with the federal act, or with applicable state and federal rules, regulations, or guidelines, or in order to be eligible for grants-in-aid and other allotments, the State of Georgia, the division, and each municipal corporation and county in this state are authorized, at the discretion of its governing authority, to enter into valid and binding contracts with each other or with private persons, firms, associations, or corporations to provide solid waste handling, reclamation, and recycling services to such private persons, firms, associations, or corporations, or to each other.

(b) As used in this Code section, the terms "solid waste handling," "solid waste," "reclamation," and "recycling" shall be construed to have the meanings given them in Code Section 12-8-62 or in the rules and regulations effective under this article.

HISTORY: Ga. L. 1979, p. 1127, § 19; Ga. L. 1992, p. 2234, § 5.

NOTES:

CROSS REFERENCES. --Authority of municipalities and counties to enter into contracts to provide industrial waste water treatment services, § 36-60-2.

RESEARCH REFERENCES

C.J.S. --73 C.J.S., Public Administrative Law and Procedure, § 70.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-78. Public access to information; protection of confidential information; access to confidential information by federal government and courts

(a) Any records, reports, or information obtained from any person by the director under this part or the rules and regulations promulgated under this part shall be available to the public for inspection and copying at the expense of the person requesting copies.

(b) Notwithstanding subsection (a) of this Code section, upon a showing satisfactory to the director by any person that any records, reports, or information, or any particular part thereof, to which the director has access under this article or the rules and regulations would, if made public, divulge information entitled to protection or confidentiality under law, the director shall consider such information or any particular portion thereof confidential in accordance with the purposes of the law under which confidentiality or protection is claimed, provided that such records, reports, documents, or information may be disclosed to officers, employees, or

authorized representatives of the United States government concerned with carrying out the terms of the federal act or when required by any court in any proceeding under the federal act or under this article.

HISTORY: Ga. L. 1979, p. 1127, § 20; Ga. L. 1992, p. 2234, § 5; Ga. L. 1996, p. 6, § 12.

RESEARCH REFERENCES

AM. JUR. 2D. --2 Am. Jur. 2d, Administrative Law, § 120.

C.J.S. --73 C.J.S., Public Administrative Law and Procedure, § 22.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-79. Effect of other laws on permits issued under article and rules and regulations

Subject to the provisions of the Constitution of Georgia, no other law of this state and no action, ordinance, regulation, or law of any county, municipality, or other political subdivision shall operate to prevent the location or operation of a hazardous waste facility holding a valid hazardous waste facility permit issued under this article and the rules and regulations promulgated hereunder, provided that nothing in this Code section shall prevent any county, municipality, or other political subdivision from challenging a facility's compliance with this article or any rule or regulation, order, or permit provision or condition adopted or issued under this article.

HISTORY: Ga. L. 1979, p. 1127, § 21; Ga. L. 1992, p. 2234, § 5.

NOTES:

LAW REVIEWS. --For survey article on constitutional law, see *34 Mercer L. Rev. 53 (1982)*. For survey article on environment, natural resources, and land use, see *34 Mercer L. Rev. 145 (1982)*. For survey article on real property, see *34 Mercer L. Rev. 255 (1982)*.

JUDICIAL DECISIONS

PREEMPTION FEATURE OF THIS ARTICLE operates only in regard to facility already holding valid permit. *Earth Mgt., Inc. v. Heard County*, 248 Ga. 442, 283 S.E.2d 455 (1981).

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-80. Applicability of article

Reserved. Repealed by Ga. L. 1992, p. 2234, § 5, effective July 1, 1992.

NOTES:

EDITOR'S NOTES. --The former Code section was based on Ga. L. 1979, p. 1127, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

[Repealed]

§ 12-8-81. Civil penalties; procedures for imposing penalties

(a) Any person violating any provision of this article, the rules or regulations effective under this article, or any permit condition or limitation established pursuant to this article or any person negligently or intentionally failing or refusing to comply with any final or emergency order of the director issued as provided in this article shall be liable for a civil penalty not to exceed \$25,000.00 per day. Each day during which the violation or failure or refusal to comply continues shall be a separate violation.

(b) Whenever the director has reason to believe that any person has violated any provision of this article, any rule or regulation effective under this article, or any permit condition or has negligently or intentionally failed or refused to comply with any final order or emergency order of the director, he may upon written request cause a hearing to be conducted before a hearing officer appointed by the board. Upon finding that such person has violated any provision of this article, any rule or regulation effective under this article, or any permit condition or has negligently or intentionally failed or refused to comply with any final order or emergency order of the director, the hearing officer shall issue his decision imposing civil penalties as provided in this Code section. Such hearing and any administrative or judicial review thereof shall be conducted in accordance with Code Section 12-8-73.

(c) In rendering a decision under this Code section imposing civil penalties, the hearing officer shall consider all factors which are relevant, including, but not limited to, the following:

(1) The amount of civil penalty necessary to ensure immediate and continued compliance and the extent to which the violator may have profited by failing or delaying to comply;

(2) The character and degree of impact of the violation or failure on the natural resources of the state, especially any rare or unique natural phenomena;

(3) The conduct of the person incurring the civil penalty in promptly taking all feasible steps or procedures necessary or appropriate to comply with this article or to correct the violation or failure;

(4) Any prior violations of, or failures by, such person to comply with statutes, rules, regulations, orders, or permits administered, adopted, or issued by the director;

(5) The character and degree of injury to or interference with public health or safety which is caused or threatened to be caused by such violation or failure; and

(6) The character and degree of injury to or interference with reasonable use of property which is caused or threatened to be caused by such violation or failure.

HISTORY: Ga. L. 1979, p. 1127, § 17; Ga. L. 1992, p. 2234, § 5; Ga. L. 1996, p. 6, § 12.

RESEARCH REFERENCES

C.J.S. --36A C.J.S., Fines, § 2.

ALR. --Recovery of cumulative statutory penalties, *71 ALR2d 986*.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-82. Criminal penalty

(a) Any person who:

(1) Knowingly transports or causes to be transported any hazardous waste as defined in this article to a facility which does not have a permit or interim status pursuant to Code Section 12-8-66, which does not have a variance pursuant to Code Section 12-8-69, or which is not subject to an order of the director which specifically authorized continued operation of such facility;

(2) Knowingly treats, stores, or disposes of any hazardous waste as defined in this article:

(A) Without a permit or interim status pursuant to Code Section 12-8-66, a variance pursuant to Code Section 12-8-69, or an order of the director allowing such treatment, storage, or disposal of hazardous waste;

(B) In knowing violation of any material condition or requirement of such permit, interim status, variance, or order; or

(C) In knowing violation of any material condition or requirement of any applicable regulations or standards promulgated in accordance with Code Section 12-8-64;

(3) Knowingly omits material information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with this article or regulations promulgated in accordance with Code Section 12-8-64;

(4) Knowingly generates, stores, treats, transports, disposes of, exports, or otherwise handles any hazardous waste as defined in this article, whether such activity took place before or takes place after March 14, 1985, and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with this article or regulations promulgated in accordance with Code Section 12-8-64; or

(5) Knowingly transports without a manifest or causes to be transported without a manifest, any hazardous waste required by this article or regulations promulgated in accordance with Code Section 12-8-64 to be accompanied by a manifest shall, upon conviction, be subject to a fine of not more than \$50,000.00 for each day of violation, or imprisonment for not less than one nor more than two years, or three years in the case of a violation of paragraph (1) or (2) of this subsection, or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, the maximum punishment under the respective paragraphs shall be doubled with respect to both fine and imprisonment.

(b) Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste as defined in this article in violation of paragraph (1), (2), (3), (4), or (5) of subsection (a) of this Code section and who knows at that time that by such action another person is placed in imminent danger of death or serious bodily injury shall, upon conviction, be subject to a fine of not more than \$250,000.00 or imprisonment for not less than one nor more than 15 years, or both. A defendant that is an organization shall, upon conviction of violating this subsection, be subject to a fine of not more than \$1 million.

(c) An organization may be convicted for the criminal acts set forth in subsections (a) and (b) of this Code section, if an agent of the organization performs the conduct which is an element of the crime while acting within the scope of such agent's office or employment and in behalf of the organization or if the commission of the criminal act set forth in subsection (a) or (b) of this Code section is authorized, requested, commanded, performed, or recklessly tolerated by the board of directors of the organization or by a managerial official who is acting within the scope of such official's employment on behalf of the organization.

HISTORY: Ga. L. 1979, p. 1127, § 7; Ga. L. 1982, p. 3, § 12; Ga. L. 1985, p. 266, § 10; Ga. L. 1986, p. 10, § 12; Ga. L. 1992, p. 2234, § 5; Ga. L. 1994, p. 1101, § 4.

RESEARCH REFERENCES

AM. JUR. 2D. --21A Am. Jur. 2d, Criminal Law, § § 911 et seq., 808, 940 et seq.

C.J.S. --22 C.J.S., Criminal Law, § § 19, 21, 34 et seq. 22B C.J.S., Criminal Law, § 2002.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-83. Use of material mixed with dioxin or other hazardous waste for dust suppression or road treatment prohibited

The use of waste or used oil or other material which is contaminated or mixed with dioxin or any other hazardous waste as defined in this article, other than a waste identified as a hazardous waste solely on the basis of ignitibility, for dust suppression or road treatment is prohibited.

HISTORY: Code 1981, § 12-8-83, enacted by Ga. L. 1985, p. 266, § 11; Ga. L. 1992, p. 2234, § 5.

NOTES:

LAW REVIEWS. --For note, "Regulating a Toxic Chemical: The Dioxin Controversy in Georgia," see 9 *Ga. St. U.L. Rev* 717 (1993).

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

PART 2
HAZARDOUS SITE RESPONSE

§ 12-8-90. Short title

This part shall be known and may be cited as the “Georgia Hazardous Site Response Act.”

HISTORY: Code 1981, § 12-8-90, enacted by Ga. L. 1992, p. 2234, § 5.

NOTES APPLICABLE TO ENTIRE TITLE

CROSS REFERENCES. --Authority of General Assembly to restrict land use so as to protect and preserve natural resources, environment, and vital areas of state, Ga. Const., 1983, Art. III, Sec. VI, Para. II. Game and fish generally, T. 27. Water rights generally, Ch. 8, T. 44.

LAW REVIEWS. --For annual survey of law on environment, natural resources, and land use, see *35 Mercer L. Rev. 147 (1983)*. For article discussing recent developments in environmental law, see *39 Mercer L. Rev. 411 (1987)*.

NOTES APPLICABLE TO ENTIRE CHAPTER

CROSS REFERENCES. --Waste control, Pt. 3, Ch. 7, T. 16. Establishment of public authorities for recovery and utilization of resources contained in sewage sludge and solid waste, Ch. 63, T. 36.

LAW REVIEWS. --For article, "Recent Developments in Georgia Solid Waste Law Pile Up," see *28 Ga. St. B.J. 182 (1992)*. For annual survey article on local government law, see *50 Mercer L. Rev. 263 (1998)*.

OPINIONS OF THE ATTORNEY GENERAL

PROBATE COURT HAS NO JURISDICTION OVER WASTE MANAGEMENT VIOLATIONS. --The probate court does not have jurisdiction to try or sentence an individual accused of violating the criminal provisions concerning waste management or air pollution. 1995 Op. Att'y Gen. No. U95-1.

NOTES APPLICABLE TO ENTIRE ARTICLE

CROSS REFERENCES. --Regulation of transportation, storage, and disposal of pesticides and pesticide containers, § 2-7-106. Regulation of storage, handling, and transportation of gasoline, liquefied petroleum gases, anhydrous ammonia, and other flammable or hazardous substances, § 25-2-16. General power of Department of Human Resources and county boards of health to prevent environmental conditions which, if permitted to develop or continue, would endanger public health, Ch. 12, T. 31. Permits for disposal of radioactive waste, § 31-13-7. Regulation of transportation of radioactive materials, liquefied natural gas, and polychlorinated biphenyl, Ch.

11, T. 46. Abatement and removal of asbestos and other hazardous materials from public premises, § 50-9-80 et seq.

ADMINISTRATIVE RULES AND REGULATIONS. --Hazardous waste management, Official Compilation of Rules and Regulations of State of Georgia, Department of Natural Resources, Chapter 391-3-11.

LAW REVIEWS. --For survey article on constitutional law, see *34 Mercer L. Rev. 53 (1982)*. For survey article on environment, natural resources, and land use, see *34 Mercer L. Rev. 145 (1982)*. For article, "The Resource Conservation and Recovery Act (RCRA) and the Georgia Solid Waste Management Act," see *38 Mercer L. Rev. 569 (1987)*. For article, "The Installation Restoration Programs (IRP): Georgia's Perspective," see *38 Mercer L. Rev. 665 (1987)*.

RESEARCH REFERENCES

ALR. --Validity of local regulation of hazardous waste, *67 ALR4th 822*.

Validity, construction, and application of state hazardous waste regulations, *86 ALR4th 401*.

NOTES APPLICABLE TO ENTIRE PART

ADMINISTRATIVE RULES AND REGULATIONS. --Hazardous site response, Official Compilation of Rules and Regulations of State of Georgia, Department of Natural Resources, Chapter 391-3-19.

LAW REVIEWS. --For article on the Georgia Hazardous Site Response Act, see *44 Mercer L. Rev. 1 (1992)*.

For note on 1992 enactment of this part, see *9 Ga. St. U.L. Rev. 190 (1992)*. For note on 1993 amendment of this part, see *10 Ga. St. U.L. Rev. 55 (1993)*.

§ 12-8-91. Declaration of policy and legislative intent

(a) It is declared to be the public policy of the State of Georgia, in furtherance of its responsibility to protect the public health, safety, and well-being of its citizens and to protect and enhance the quality of its environment, to require corrective action for releases of hazardous wastes, hazardous constituents, and hazardous substances, without regard to when such releases may have occurred, into the environment that may pose a threat to human health or the environment and to provide incentives for the reduction of the amount of hazardous wastes generated or managed in the state. Additionally, the purpose of this part is to reduce the generation of hazardous wastes in this state and to encourage hazardous waste generators, prior to considering landfill disposal, to consider the following measures in descending order of preference:

- (1) Reduce the amount of wastes generated through improvement in industrial processes;
- (2) Isolate hazardous materials from mixtures in which they occur;
- (3) Reuse and recycle wastes in accordance with state and federal requirements;

(4) Transfer wastes through clearing-houses so that they may be recycled in industrial processes;

(5) Detoxify or neutralize wastes into less harmful substances or destroy such wastes; and

(6) Store hazardous waste residues in aboveground facilities using encapsulation and monitoring.

(b) The General Assembly declares its intent to fund the execution of the public policy set forth in subsection (a) of this Code section by and through the division with the fees established and collected by the division pursuant to subsection (e) of Code Section 12-2-2, subsection (e) of Code Section 12-8-39, subsection (d) of Code Section 12-8-68, and Code Section 12-8-95.1. The General Assembly further declares its intent to ensure that the funding provided by fees on hazardous waste management activities and hazardous substance reporting and by owners and operators of solid waste disposal facilities pursuant to those Code sections and through the collection of civil penalties will not be diverted for any purpose other than the administration of this article by the division, including reviewing and overseeing investigations, corrective action, and other actions by federal agencies required under this article and supporting the reduction of hazardous waste and pollution prevention activities by federal agencies; the prevention of pollution, including reduction of hazardous wastes generated; and the effectuation of corrective action at sites that may threaten human health or the environment where hazardous wastes, hazardous constituents, or hazardous substances have been disposed of or released. Appropriation of funds to the department for inclusion in the hazardous waste trust fund continued in existence by subsection (a) of Code Section 12-8-95 shall be deemed consistent with this declaration of legislative intent.

HISTORY: Code 1981, § 12-8-91, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 2002, p. 927, § 2.

NOTES:

THE 2002 AMENDMENT, effective July 1, 2002, in the second sentence of subsection (b), inserted "and hazardous substance reporting", inserted "including reviewing and overseeing investigations, corrective action, and other actions by federal agencies;", and substituted a semicolon for a comma after "generated".

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-92. Definitions

Unless otherwise defined in this part, the definition of all terms included in Code Section 12-8-62 shall be applicable to this part. As used in this part, the term:

(1) "Corrective action contractor" means any person contracting with the division to perform any activities authorized to be paid from the hazardous waste trust fund.

(2) "Environment" means:

(A) The navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act; and

(B) Any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

(3) "Facility" means:

(A) Any building, structure, installation, equipment, pipe or pipeline, pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(B) Any site or area where a hazardous waste, hazardous constituent, or hazardous substance has been deposited, stored, disposed of, placed, or has otherwise come to be located. This term does not include any consumer product in consumer use but does include any vessel.

(4) "Hazardous substance" means any substance listed on the List of Hazardous Substances and Reportable Quantities, codified as 40 C.F.R., Part 302, Table 302.4, in force and effect on February 1, 1996, or any substance listed on the List of Extremely Hazardous Substances and Their Threshold Planning Quantities, codified as 40 C.F.R., Part 355, Appendix A, in force and effect on February 1, 1996.

(5) "Inventory" means the hazardous site inventory compiled and updated by the division pursuant to Code Section 12-8-97.

(6) "Onshore facility" means any facility of any kind including, but not limited to, motor vehicles and rolling stock located in, on, or under any land or nonnavigable waters within the United States.

(7) "Owner" or "operator" means:

(A) In the case of a vessel, any person owning, operating, or chartering by demise such vessel;

(B) In the case of an onshore facility or an offshore facility, any person owning or operating such facility; and

(C) In the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of state or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand.

Such term does not include a person who holds indicia of ownership primarily to protect said person's security interest in the facility or who acts in good faith solely in a fiduciary capacity and who did not actively participate in the management, disposal, or release of hazardous wastes, hazardous constituents, or hazardous substances from the facility. Such term does not include a unit of state or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign; provided, however, that this

exclusion shall not apply to any state or local government which has caused or contributed to the release of a hazardous waste, hazardous constituent, or hazardous substance from the facility.

(8) "Person" means an individual, trust, firm, joint-stock company, corporation, partnership, association, authority, county, municipality, commission, political subdivision of this state, or any agency, board, department, or bureau of any other state or of the federal government.

(9) "Person who has contributed or who is contributing to a release" means:

(A) The owner or operator of a facility;

(B) Any person who at the time of disposal of any hazardous waste, hazardous constituent, or hazardous substance owned or operated any facility at which such hazardous waste, hazardous constituent, or hazardous substance was disposed of;

(C) Any person who by contract, agreement, or otherwise arranged for disposal or treatment of or arranged with a transporter for transport for disposal or treatment of hazardous wastes, hazardous constituents, or hazardous substances owned or possessed by such person or by any other party or entity at any facility owned or operated by another party or entity and containing such hazardous wastes, hazardous constituents, or hazardous substances. A person who arranged for the recycling of recovered materials consisting solely of scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber other than whole tires, scrap metal or spent lead-acid, nickel-acid, nickel-cadmium, and other batteries, and not consisting of any residue from a pollution control device, shall not be deemed to have arranged for treatment or disposal under this subparagraph; and

(D) Any person who accepts or accepted any hazardous wastes, hazardous constituents, or hazardous substances for transport to disposal or treatment facilities or sites selected by such person, from or at which facility or site there is a release of a hazardous waste, a hazardous constituent, or a hazardous substance.

(10) "Pollution prevention" means:

(A) The elimination at the source of the use, generation, or release of hazardous constituents, hazardous substances, or hazardous wastes; or

(B) Reduction at the source in the quantity and toxicity of such substances.

(11) "Release" means any intentional or unintentional act or omission resulting in the spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including without limitation the abandonment or discarding of barrels, containers, and other closed receptacles, of any hazardous waste, hazardous constituent, or hazardous substance; provided, however, that such term shall not include any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons; emissions from the engine exhaust of any motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station; or the normal application of fertilizer.

(12) "Site" means that portion of the owner's contiguous property and any other owner's property affected by a release exceeding a reportable quantity.

(13) "Small quantity generator" means a hazardous waste generator who generates greater than 220 pounds but less than 2,200 pounds of hazardous waste in one month, as provided by rules promulgated by the board in accordance with this article.

HISTORY: Code 1981, § 12-8-92, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 1993, p. 500, § 3; Ga. L. 1994, p. 483, § 3; Ga. L. 1996, p. 319, § 3; Ga. L. 1996, p. 993, § 1.

NOTES:

CODE COMMISSION NOTES. --Pursuant to Code Section 28-9-5, in 1994, near the end of subparagraph (9)(D), "constituent" was substituted for "constituent".

JUDICIAL DECISIONS

CITED in *Georgia Ports Auth. v. Diamond Mfg. Co.*, 164 *Bankr.* 189 (*Bankr. S.D. Ga.* 1994); *South Carolina Ins. Co. v. Coody*, 957 *F. Supp.* 234 (*M.D. Ga.* 1997); *Canadyne-Georgia Corp. v. Nationsbank*, 982 *F. Supp.* 886 (*M.D. Ga.* 1997); *Canadyne-Georgia Corp. v. NationsBank*, 183 *F.3d* 1269 (*11th Cir.* 1999).

RESEARCH REFERENCES

ALR. --What are "navigable waters" subject to Federal Water Pollution Control Act (33 *USCA* § 1251 et seq.), 160 *ALR Fed.* 585.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-93. Powers and duties of board

(a) In the performance of its duties, and in addition to the powers set forth in Code Section 12-8-64, the board shall have the power to adopt, promulgate, modify, amend, and repeal rules and regulations to implement and enforce the provisions of this part as the board may deem necessary to provide for corrective action for releases of hazardous wastes, hazardous constituents, and hazardous substances into the environment that pose a present or future danger to human health or the environment and to provide incentives for the reduction of the amount of hazardous wastes generated or managed in the state. Such rules and regulations may be applicable to the state as a whole or may vary from region to region, as may be appropriate to facilitate the accomplishment of the provisions, purposes, and policies of this part.

(b) The board's rules and regulations shall include, but shall not be limited to, the following:

(1) Rules and regulations governing the reporting of releases of hazardous wastes, hazardous constituents, and hazardous substances, including rules and regulations governing reportable quantities;

(2) Rules and regulations governing the investigation, cleanup, and corrective action at sites where hazardous wastes, hazardous constituents, or hazardous substances have been disposed of or released regardless of the date when such disposal or release occurred, including rules and regulations establishing cleanup standards;

(3) Rules and regulations governing procedures for placement of sites on and removal of sites from the hazardous site inventory required under the provisions of Code Section 12-8-97;

(4) Rules and regulations governing procedures and criteria for making a determination whether property requires corrective action pursuant to paragraph (8) of subsection (a) of Code Section 12-8-97;

(5) Rules and regulations governing procedures for the filing in the deed records of the superior courts of additional affidavits concerning property for which an initial affidavit has been filed pursuant to Code Section 12-8-97; and

(6) Rules and regulations governing the waiver of hazardous waste management fees and hazardous substance reporting fees as provided in subsection (i) of Code Section 12-8-95.1.

HISTORY: Code 1981, § 12-8-93, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 1993, p. 500, § 4; Ga. L. 1997, p. 564, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-94. (For effective date, see note) Powers and duties of director

(a) In addition to the powers and duties specified in Code Section 12-8-65, the director shall have and may exercise the following powers and duties:

(1) To make determinations, in accordance with procedures and criteria established by the board, as to whether property requires corrective action pursuant to the provisions of paragraph (8) of subsection (a) of Code Section 12-8-97;

(2) To ensure that corrective action is taken for releases of hazardous wastes, hazardous constituents, or hazardous substances into the environment that pose a present or future danger to human health or the environment;

(3) To collect fees for hazardous waste management activities and hazardous substance reporting;

(4) To administer the hazardous waste trust fund and expend the principal and interest of such trust fund;

(5) To appoint a hazardous waste trust fund advisory committee and to consult with that committee in developing rules and regulations regarding criteria for compilation of the hazardous site inventory, site priorities, uses of the fund, cleanup standards, and deed notations. At a minimum, the director shall appoint to the committee four representatives from local government, four representatives from business and industry, and four representatives from other interested parties. Upon promulgation of rules and regulations in accordance with this part, the director shall no longer be required to consult with the committee; provided, however, that the director shall consult with the committee from time to time as necessary to adopt, promulgate, modify, amend, or repeal rules and regulations in accordance with this part; and

(6) The director shall have the authority to perfect, foreclose, negotiate, settle, release or cancel any lien filed under subsection (e) of Code Section 12-8-96, where such action is in the best interest of the state.

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

HISTORY: Code 1981, § 12-8-94, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 1993, p. 500, § 5; Ga. L. 1994, p. 483, § 4; Ga. L. 1997, p. 1050, § 2.

NOTES:

DELAYED EFFECTIVE DATE. --The second 1994 amendment, by Ga. L. 1994, p. 1101, in subsection (a), deleted "and" from the end of paragraph (4), substituted "; and" for the period at the end of paragraph (5), and added a paragraph (6) which would read "To request the Georgia State Financing and Investment Commission for the issuance of public debt to fund corrective action pursuant to this part; provided, however, that any moneys recovered from persons found to be legally liable for such corrective action shall be used to reduce any such public debt incurred." Ga. L. 1994, p. 1101, § 6, provided that the amendment to this Code section by that Act "shall become effective only upon the effective date of a duly ratified amendment to the Constitution authorizing the state to incur indebtedness to fund activities associated with the investigation, detoxification, removal, and disposal of any hazardous wastes, hazardous constituents, or hazardous substances at certain sites." As of July, 2001, no vote had been taken on the constitutional amendment, and the Code section set out above does not reflect the amendment by that Act.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-95. Hazardous waste trust fund

(a) There shall continue in existence the hazardous waste trust fund. The hazardous waste trust fund shall be funded in accordance with subsection (b) of Code Section 12-8-91. All moneys deposited in the fund shall be deemed expended and contractually obligated and shall not lapse to the general fund. The director shall serve as trustee of the hazardous waste trust fund.

(b) The moneys deposited in the hazardous waste trust fund may be expended by the director as follows:

(1) For activities associated with the investigation, detoxification, removal, and disposal of any hazardous wastes, hazardous constituents, or hazardous substances at sites where corrective action is necessary to mitigate a present or future danger to human health or the environment;

(2) For emergency actions the director considers necessary to protect public health, safety, or the environment whenever there is a release of hazardous wastes, hazardous constituents, or hazardous substances;

(3) For activities of the division associated with the administration of this part, including reviewing and overseeing investigations, corrective action, and other actions by federal agencies

required under this article and supporting the reduction of hazardous waste and pollution prevention activities by federal agencies;

(4) In accordance with rules promulgated by the board, for financing of the state and local share of the costs associated with the investigation, remediation, and postclosure care and maintenance of sites placed on the National Priority List pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or sites placed on the hazardous site inventory pursuant to Code Section 12-8-97; provided, however, that the director shall ensure that beginning July 1, 2003, and annually in each following year, an amount equal to at least one-half of the sum of annual collections made pursuant to subsection (e) of Code Section 12-8-39 and appropriated to the department in accordance with subsection (b) of Code Section 12-8-91 shall be available to be used for the purposes of this paragraph; provided, further, that if a county or municipal corporation has been or is the owner of or operator of such site, not less than \$500,000.00 of such costs shall be paid from the hazardous waste trust fund;

(5) For activities administered by the director associated with pollution prevention, including reduction of hazardous wastes generated in the state.

(c) The director may require the demonstration of financial responsibility as a condition of an order requiring corrective action for the release of hazardous wastes, hazardous constituents, or hazardous substances.

(d) If the director determines that corrective action has not been carried out as required by a condition of an order of the director to the reasonable satisfaction of the director, the director may implement the applicable financial responsibility instruments. The proceeds from any applicable financial responsibility instruments shall be deposited in the hazardous waste trust fund.

(e) In any case where a person is in bankruptcy, reorganization, or other arrangement pursuant to the federal Bankruptcy Code or where, with reasonable diligence, jurisdiction in any state court or any federal court cannot be obtained over a person likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this Code section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the person if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(f) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this Code section. Nothing in this subsection shall be construed to limit any other state or federal statutory, contractual, or common-law liability of a guarantor to a person including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under Section 107 or 111 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or any other applicable law.

HISTORY: Code 1981, § 12-8-95, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 2002, p. 415, § 12; Ga. L. 2002, p. 927, § 3.

NOTES:

THE 2002 AMENDMENTS. --The first 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, substituted a period for a semicolon at the end of paragraph (b)(5) and deleted paragraph (b)(6), which read: "Provided that annual appropriations are made to the Department of Natural Resources in accordance with subsection (b) of Code Section 12-8-91, for transfer on an annual basis to the Georgia Hazardous Waste Management Authority in an amount equal to 10 percent of the previous year's payment into the state treasury by the division of fees and penalties pursuant to subsection (e) of Code Section 12-2-2, subsection (e) of Code Section 12-8-39, and Code Section 12-8-95.1. If in any year the fees cease to be collected due to the unencumbered principal balance exceeding \$25 million in the hazardous waste trust fund, a transfer of funds shall be made to the Georgia Hazardous Waste Management Authority from the principal of the hazardous waste trust fund equal to the average transfer for the three preceding years. Such transferred funds are to be administered by the chief administrative officer of the Georgia Hazardous Waste Management Authority to fund source reduction and project activities as set forth in Article 4 of this chapter and in accordance with the policies of the board." The second 2002 amendment, effective July 1, 2002, in subsection (b), added the language beginning ", including reviewing and overseeing" at the end of paragraph (b)(3) and, in paragraph (b)(4), added the first proviso and substituted "provided, further" for "provided, however" near the end.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-95.1. (For effective date, see note) Hazardous waste management fees and hazardous substance reporting fees

(a) The division is authorized and directed to charge and collect the fees for hazardous waste management activities and hazardous substance reporting fees as provided in this subsection. As used in this Code section, the term "hazardous waste" shall not include any material excluded by 40 C.F.R. Part 261 of the Code of Federal Regulations. Every large quantity generator and every small quantity generator shall pay the greater of \$115.00 per calendar year or the total of the hazardous waste management fees, and every person who is required to report pursuant to Section 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 shall pay the annual hazardous substance reporting fees, imposed as follows:

(1) Every large quantity generator of hazardous waste shall pay an annual fee of \$23.00 per ton for hazardous waste shipped off site for disposal or incineration, \$18.40 per ton for hazardous waste shipped off site for treatment or storage, and \$10.35 per ton for hazardous waste shipped off site for treatment by being burned for energy recovery in accordance with rules and regulations promulgated pursuant to Part 1 of this article; provided, however, that no large quantity generator shall be liable for off-site hazardous waste management fees exceeding \$75,000.00 in any calendar year. In no event shall any person be liable for an off-site hazardous waste management fee on any hazardous waste for which an off-site hazardous waste management fee has previously been paid;

(2) Every large quantity generator of hazardous waste shall pay an annual fee of \$11.50 per ton for hazardous waste disposed of or incinerated on site, \$4.60 per ton for hazardous waste treated or stored on site, and \$2.90 per ton for hazardous waste treated on site by being burned for energy recovery in accordance with rules and regulations promulgated pursuant to Part 1 of this article; provided, however, that no large quantity generator shall be liable for on-site hazardous waste management fees for disposal or incineration, treatment or storage, or treatment by burning for energy recovery in any calendar year exceeding the following amounts and according to the following schedule:

(A) Twenty-five thousand dollars for such payments due on July 1, 1993, and on July 1, 1994;

(B) Fifty thousand dollars for such payments, excluding payments for the on-site treatment of waste water which is a hazardous waste, due on July 1, 1995, and on July 1, 1996;

(C) Seventy-five thousand dollars for such payments, excluding payments for the on-site treatment of waste water which is a hazardous waste, due on and after July 1, 1997;

(D) One thousand five hundred dollars for waste water which is a hazardous waste which is treated on site for payments due on July 1, 1995;

(E) Three thousand dollars for waste water which is a hazardous waste treated on site for payments due on July 1, 1996; and

(F) Seven thousand five hundred dollars for waste water which is a hazardous waste treated on site for payments due on and after July 1, 1997.

For the purposes of this paragraph, a generator who generates waste water which is a hazardous waste shall not be required to count such hazardous waste in determining its status as a large quantity generator, a small quantity generator, or a conditionally exempt small quantity generator. For the purposes of this paragraph, dilution of waste water that is a hazardous waste shall be considered treatment subject to the fees established by this paragraph. A large quantity generator which pays fees for the off-site management of hazardous waste under paragraph (1) of this subsection for a hazardous waste which was previously managed on site shall not pay the applicable on-site management fee for that hazardous waste;

(3) Every person who receives hazardous waste generated outside this state shall pay an annual fee of \$23.00 per ton for hazardous waste disposed of or incinerated, \$18.40 per ton for hazardous waste treated or stored, and \$10.35 per ton for hazardous waste treated by being burned for energy recovery in accordance with rules and regulations promulgated pursuant to Part 1 of this article; provided, however, that no person shall be liable for importation fees exceeding \$75,000.00 per out-of-state generator in any calendar year. In no case shall any person who receives hazardous waste from any person outside this state and who pays an importation fee on such waste pursuant to this paragraph be liable for the off-site hazardous waste management fees required by paragraph (1) of this subsection. Persons who receive hazardous waste generated outside this state are not required to pay the fees required by this paragraph for those wastes generated by conditionally exempt small quantity generators which are located outside this state. For the purposes of this paragraph, a "conditionally exempt small quantity generator" means a generator who generates 220 pounds or less of hazardous waste in one month, as provided by rules promulgated by the board in accordance with this article; and

(4) Each person who is required to report pursuant to Section 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 shall pay to the division an annual hazardous substance reporting fee as follows:

(A) A facility with no reported release shall pay no fee;

(B) A facility with a reported release of less than 1,000 pounds during the calendar year shall pay a fee of \$575.00 for that calendar year;

(C) A facility with a reported release equal to or greater than 1,000 pounds but less than 10,000 pounds during the calendar year shall pay a fee of \$1,150.00 for that calendar year; and

(D) A facility with a reported release equal or greater than 10,000 pounds during the calendar year shall pay a fee of \$1,725.00 for that calendar year.

(b) All hazardous waste and hazardous substance fees required by subsection (a) of this Code section shall be paid to the division for transfer into the state treasury to the credit of the general fund. The division shall collect such fees until the unencumbered principal balance of the hazardous waste trust fund equals or exceeds \$25 million, at which time no hazardous waste or hazardous substance fees shall be levied until the balance in that fund is less than or equal to an unencumbered balance of \$12.5 million, in which case the levy and collection of hazardous waste fees shall resume at the beginning of the next calendar year following the year in which such unencumbered balance occurs. The director shall provide written notice to all large quantity generators and hazardous waste treatment, storage, and disposal facilities and all persons who are required to report pursuant to Section 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 at such time as the director receives notice that the unencumbered principal balance of the fund equals or exceeds \$25 million or is equal to or less than \$12.5 million.

(c) All hazardous waste fees levied under this Code section shall be based on the amounts of hazardous waste managed or imported within the preceding calendar year. Such fees for the period July 1, 1992, through December 31, 1992, shall be paid to the division not later than July 1, 1993. All subsequent hazardous waste fees shall be paid not later than the first day of July of each year for the preceding calendar year.

(d) All hazardous substance fees levied under this Code section shall be based on the hazardous substances reported for the preceding calendar year. All hazardous substance fees shall be paid not later than the first day of July of each year for the preceding calendar year.

(e) Persons who make payments of fees levied by this Code section later than 30 days after the due date specified in subsection (c) of this Code section shall pay a penalty of 15 percent of the balance due and shall pay interest on the unpaid balance at the rate imposed by law for delinquent taxes due to the state. Delinquent fees may be collected in a civil action instituted in the name of the director. In addition to the 15 percent penalty and the interest that may be collected along with the delinquent fees as provided in this subsection, the director shall be entitled to collect all costs, including administrative costs, and legal expenses incurred by the state in connection with its collection efforts.

(f) Hazardous waste which is generated by any of the following means is exempted from the fees required by this Code section:

(1) Corrective action required by an order, permit, or approved closure plan issued pursuant to Part 1 of this article;

(2) Voluntary corrective action required by any person in accordance with applicable laws and regulations; and

(3) Response actions required under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(g) The following persons shall not be required to pay the hazardous substance reporting fees required by this Code section:

(1) Persons who report pursuant to Section 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 only for substances not designated as regulated substances pursuant to rules and regulations of the board; and

(2) Persons who report pursuant to Section 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 only for petroleum fuels, lubricants, and hydraulic fluids and components thereof that are designated as regulated substances pursuant to rules and regulations of the board.

(h) Unless fee requirements established in this Code section are reimposed by the General Assembly, no such fees shall be levied after July 1, 2013.

(i) In accordance with rules promulgated by the board pursuant to paragraph (6) of subsection (b) of Code Section 12-8-93, the director is authorized to grant a waiver of a portion of the hazardous waste management fees and hazardous substance reporting fees provided by subsection (a) of this Code section not to exceed a 25 percent reduction per year for a maximum of three years for any company as an incentive upon the recommendation of the director of the Pollution Prevention Assistance Division made in conjunction with programs and activities designed to encourage industries in the state to reduce their generation of wastes, including but not limited to programs established to recognize and reward pollution performance and environmental improvement.

(j) Beginning July 1, 2003, and continuing annually thereafter, federal agencies shall pay the hazardous waste management fees required by this Code section provided an amount not less than the sum of all fees collected from federal agencies is appropriated annually to the department and used in accordance with subsection (b) of Code Section 12-8-91 and used for the purposes set forth in paragraph (3) of subsection (b) of Code Section 12-8-95.

HISTORY: Code 1981, § 12-8-95.1, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 1993, p. 500, § 6; Ga. L. 1994, p. 483, § 5; Ga. L. 1996, p. 993, § 2; Ga. L. 1997, p. 564, § 2; Ga. L. 2002, p. 927, § 4.

NOTES:

DELAYED EFFECTIVE DATE. --This Code section, as set out above, becomes effective July 1, 2003. Until July 1, 2003, this Code section reads as follows:

(a) The division is authorized and directed to charge and collect the fees for hazardous waste management activities and hazardous substance reporting fees as provided in this subsection. As used in this Code section, the term "hazardous waste" shall not include any material excluded by

40 C.F.R. Part 261 of the Code of Federal Regulations. Every large quantity generator and every small quantity generator shall pay the greater of \$100.00 per calendar year or the total of the hazardous waste management fees, and every person who is required to report pursuant to Section 312 or 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 shall pay the annual hazardous substance reporting fees, imposed as follows:

(1) Every large quantity generator of hazardous waste shall pay an annual fee of \$20.00 per ton for hazardous waste shipped off site for disposal or incineration, \$16.00 per ton for hazardous waste shipped off site for treatment or storage, \$2.00 per ton for hazardous waste shipped off site for recycling or reuse, and, beginning January 1, 1995, \$9.00 per ton for hazardous waste shipped off site for treatment by being burned for energy recovery in accordance with rules and regulations promulgated pursuant to Part 1 of this article; provided, however, that no large quantity generator shall be liable for off-site hazardous waste management fees exceeding \$75,000.00 in any calendar year. In no event shall any person be liable for an off-site hazardous waste management fee on any hazardous waste for which an off-site hazardous waste management fee has previously been paid;

(2) Every large quantity generator of hazardous waste shall pay an annual fee of \$10.00 per ton for hazardous waste disposed of or incinerated on site, \$4.00 per ton for hazardous waste treated or stored on site, \$1.00 per ton for hazardous waste reused or recycled on site, and, beginning January 1, 1995, \$2.50 per ton for hazardous waste treated on site by being burned for energy recovery in accordance with rules and regulations promulgated pursuant to Part 1 of this article; provided, however, that no large quantity generator shall be liable for on-site hazardous waste management fees for disposal or incineration, treatment or storage, recycling or reuse, or treatment by burning for energy recovery in any calendar year exceeding the following amounts and according to the following schedule:

(A) Twenty-five thousand dollars for such payments due on July 1, 1993, and on July 1, 1994;

(B) Fifty thousand dollars for such payments, excluding payments for the on-site treatment of waste water which is a hazardous waste, due on July 1, 1995, and on July 1, 1996;

(C) Seventy-five thousand dollars for such payments, excluding payments for the on-site treatment of waste water which is a hazardous waste, due on and after July 1, 1997;

(D) One thousand five hundred dollars for waste water which is a hazardous waste which is treated on site for payments due on July 1, 1995;

(E) Three thousand dollars for waste water which is a hazardous waste treated on site for payments due on July 1, 1996; and

(F) Seven thousand five hundred dollars for waste water which is a hazardous waste treated on site for payments due on and after July 1, 1997.

For the purposes of this paragraph, a generator who generates waste water which is a hazardous waste shall not be required to count such hazardous waste in determining its status as

a large quantity generator, a small quantity generator, or a conditionally exempt small quantity generator. For the purposes of this paragraph, dilution of waste water that is a hazardous waste shall be considered treatment subject to the fees established by this paragraph. A large quantity generator which pays fees for the off-site management of hazardous waste under paragraph (1) of this subsection for a hazardous waste which was previously managed on site shall not pay the applicable on-site management fee for that hazardous waste;

(3) Every person who receives hazardous waste generated outside this state shall pay an annual fee of \$20.00 per ton for hazardous waste disposed of or incinerated, \$16.00 per ton for hazardous waste treated or stored, \$2.00 per ton for hazardous waste that is recycled or reused, and, beginning January 1, 1995, \$9.00 per ton for hazardous waste treated by being burned for energy recovery in accordance with rules and regulations promulgated pursuant to Part 1 of this article; provided, however, that no person shall be liable for importation fees exceeding \$75,000.00 per out-of-state generator in any calendar year. In no case shall any person who receives hazardous waste from any person outside this state and who pays an importation fee on such waste pursuant to this paragraph be liable for the off-site hazardous waste management fees required by paragraph (1) of this subsection. Persons who receive hazardous waste generated outside this state are not required to pay the fees required by this paragraph for those wastes generated by conditionally exempt small quantity generators which are located outside this state. For the purposes of this paragraph, a "conditionally exempt small quantity generator" means a generator who generates 220 pounds or less of hazardous waste in one month, as provided by rules promulgated by the board in accordance with this article; and

(4) Each person who is required to report pursuant to Section 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 shall pay to the division an annual hazardous substance reporting fee as follows:

(A) A facility with no reported release shall pay no fee;

(B) A facility with a reported release of less than 1,000 pounds during the calendar year shall pay a fee of \$500.00 for that calendar year;

(C) A facility with a reported release equal to or greater than 1,000 pounds but less than 10,000 pounds during the calendar year shall pay a fee of \$1,000.00 for that calendar year; and

(D) A facility with a reported release equal or greater than 10,000 pounds during the calendar year shall pay a fee of \$1,500.00 for that calendar year.

(b) All hazardous waste and hazardous substance fees required by subsection (a) of this Code section shall be paid to the division for transfer into the state treasury to the credit of the general fund. The division shall collect such fees until the unencumbered principal balance of the hazardous waste trust fund equals or exceeds \$25 million, at which time no hazardous waste or hazardous substance fees shall be levied until the balance in that fund is less than or equal to an unencumbered balance of \$12.5 million, in which case the levy and collection of hazardous waste fees shall resume at the beginning of the next calendar year following the year in which such unencumbered balance occurs. The director shall provide written notice to all large

quantity generators and hazardous waste treatment, storage, and disposal facilities and all persons who are required to report pursuant to Sections 312 and 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 at such time as the director receives notice that the unencumbered principal balance of the fund equals or exceeds \$25 million or is equal to or less than \$12.5 million.

(c) All hazardous waste fees levied under this Code section shall be based on the amounts of hazardous waste managed or imported within the preceding calendar year. Such fees for the period July 1, 1992, through December 31, 1992, shall be paid to the division not later than July 1, 1993. All subsequent hazardous waste fees shall be paid not later than the first day of July of each year for the preceding calendar year. DESIG

(d) All hazardous substance fees levied under this Code section shall be based on the hazardous substances reported for the preceding calendar year. All hazardous substance fees shall be paid not later than the first day of July of each year for the preceding calendar year.

(e) Persons who make payments of fees levied by this Code section later than 30 days after the due date specified in subsection (c) of this Code section shall pay a penalty of 15 percent of the balance due and shall pay interest on the unpaid balance at the rate imposed by law for delinquent taxes due to the state. Delinquent fees may be collected in a civil action instituted in the name of the director. In addition to the 15 percent penalty and the interest that may be collected along with the delinquent fees as provided in this subsection, the director shall be entitled to collect all costs, including administrative costs, and legal expenses incurred by the state in connection with its collection efforts.

(f) Hazardous waste which is generated by any of the following means is exempted from the fees required by this Code section:

(1) Corrective action required by an order, permit, or approved closure plan issued pursuant to Part 1 of this article;

(2) Voluntary corrective action required by any person in accordance with applicable laws and regulations; and

(3) Response actions required under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(g) The following persons shall not be required to pay the hazardous substance reporting fees required by this Code section:

(1) Persons who report pursuant to Section 312 or 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 only for substances not designated as regulated substances pursuant to rules and regulations of the board; and

(2) Persons who report pursuant to Section 312 or 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 only for petroleum fuels, lubricants, and

hydraulic fluids and components thereof that are designated as regulated substances pursuant to rules and regulations of the board.

(h) Unless fee requirements established in this Code section are reimposed by the General Assembly, no such fees shall be levied after July 1, 2003.

(i) In accordance with rules promulgated by the board pursuant to paragraph (6) of Code Section 12-8-93, the director is authorized to grant a waiver of a portion of the hazardous waste management fees and hazardous substance reporting fees provided by subsection (a) of this Code section not to exceed a 25 percent reduction per year for a maximum of three years for any company as an incentive upon the recommendation of the director of the Pollution Prevention Assistance Division made in conjunction with programs and activities designed to encourage industries in the state to reduce their generation of wastes, including but not limited to programs established to recognize and reward pollution performance and environmental improvement."

THE 2002 AMENDMENT, effective January 1, 2003, rewrote this Code section.

CODE COMMISSION NOTES. --Pursuant to Code Section 28-9-5, in 1996, "40 C.F.R. Part 261" was substituted for "40 CFR Part 261" in the second sentence of subsection (a).

Pursuant to Code Section 28-9-5, in 2002, "paragraph (6) of subsection (b) of Code Section 12-8-93" was substituted for "paragraph (6) of Code Section 12-8-93" in subsection (i).

LAW REVIEWS. --For review of 1996 waste management legislation, see *13 Ga. St. U. L. Rev. 54*. For review of 1996 waste management legislation, see *13 Ga. St. U. L. Rev. 54*.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-96. Corrective action upon release of hazardous wastes, hazardous constituents, or hazardous substances; notice; administrative consent order; expenditure of funds from trust fund

(a) Whenever the director has reason to believe that there is or has been a release of hazardous wastes, hazardous constituents, or hazardous substances into the environment, regardless of the time at which release of such hazardous wastes, hazardous constituents, or hazardous substances occurred, and has reason to believe that such release poses a danger to health or the environment, the director shall make a reasonable effort to identify each person who has contributed or who is contributing to such a release. The director shall then notify each such person in writing of the opportunity to perform voluntarily corrective action in accordance with an administrative consent order entered into with the director within such period of time as may be specified by the director in written correspondence to the person. If the person fails or refuses to enter into an administrative consent order with the director within the period of time specified by the director, the director may issue an order directed to any such person. The order may direct that necessary corrective action be taken within a reasonable time to be prescribed in the order.

(b) If a person fails to comply with such an order or if all necessary corrective action cannot be obtained from the responsible person or persons, the director may undertake corrective action utilizing funds from the hazardous waste trust fund.

(c) The division or its corrective action contractors may enter upon the property of any person, at such time and in such manner as deemed necessary by the director, to effectuate the necessary corrective action to protect human health and the environment.

(d) The State of Georgia and the hazardous waste trust fund are relieved from all liability for loss of business, damages, and taking of property associated with the corrective action.

(e) Whenever the director utilizes funds from the hazardous waste trust fund, such expenditure shall constitute a debt to the state. Any such debt, together with interest accruing at a rate of 12 percent per annum, shall constitute a lien on the real property for which such funds are being expended or have been expended. In order to perfect the lien created by this article, the director shall file a claim of lien with the clerk of the superior court in the county in which the real property is located. Such claim of lien shall, at a minimum, accurately describe the property on which the lien is imposed and shall state the type of corrective action, the authority pursuant to which the corrective action is being performed, the date the corrective action began, the cost to date of the claim, and the estimated total cost. Such claim of lien may be updated from time to time. The director shall mail a copy of the claim of lien to the owner of the real property and to all other persons the director believes to be liable for the cost of the corrective action. The clerk of the superior court shall index the claim of lien in the land records of the court. The filing of the claim of lien shall be notice to all persons of the state's lien against the real property. The lien provided by this Code section shall be superior to all other liens except liens for taxes and other prior perfected recorded liens or claims of record. The lien created by this Code section may be foreclosed as provided in Code Section 44-14-530. All funds obtained from the foreclosure or settlement of any lien filed under this Code section shall be deposited into the hazardous waste trust fund subject to the provisions of Code Section 45-12-92. No transferral of title, sale, or execution of lien, whether judicial or nonjudicial, shall divest the lien provided by this Code section. However, the lien provided for in this subsection shall not be available where the present owner of the real property otherwise subject to such lien did not cause or contribute to a release which resulted in the expenditure of hazardous waste trust funds upon the property, unless that owner knew or in the exercise of reasonable diligence should have known that the release was occurring during his or her period of ownership or that the release had occurred prior to his or her acquisition of ownership.

HISTORY: Code 1981, § 12-8-96, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 1997, p. 1050, § 1.

NOTES:

CODE COMMISSION NOTES. --Pursuant to Code Section 28-9-5, in 1997, "lien" was substituted for "liens" in the eighth sentence of subsection (e).

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-96.1. Liability for cleanup costs; punitive damages; action for recovery of costs and damages; claims for contribution

(a) Each and every person who contributed to a release of a hazardous waste, a hazardous constituent, or a hazardous substance shall be jointly, severally, and strictly liable to the State of Georgia for the reasonable costs of activities associated with the cleanup of environmental hazards, including legal expenses incurred by the state pursuant to subsection (a) of Code Section 12-8-96, as a result of the failure of such person to comply with an order issued by the director. Any such person shall be so liable notwithstanding the absence of the issuance of an order to such person pursuant to subsection (a) of Code Section 12-8-96 if the director is unable to identify such person prior to the commencement of clean-up action after making a reasonable effort to do so pursuant to such Code section, or if such person contributed to a release which resulted in an emergency action by the director and issuance of such an order would cause a delay in corrective action that could endanger human health and the environment. The person may, in addition, be liable for punitive damages in an amount at least equal to the costs incurred by the state and not more than three times the costs incurred by the state for activities associated with the cleanup of environmental hazards. Costs and damages incurred by the state may be recovered in a civil action instituted in the name of the director. All costs recovered by the state pursuant to this Code section shall be deposited into the hazardous waste trust fund.

(b) Any action for the recovery of costs and for punitive damages shall be commenced within six years of the date on which all costs have been incurred.

(c) No person shall be liable for costs or damages pursuant to this Code section if he can show by a preponderance of the evidence that the release of a hazardous waste, a hazardous constituent, or a hazardous substance was caused solely by:

(1) An act of God;

(2) An act of war;

(3) An act or omission of a third party other than an employee or agent of the person or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by a preponderance of the evidence that:

(A) He had no relationship with the third party nor exercised any control over activities of the third party; and

(B) He took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(4) Any combination of paragraph (1), (2), or (3) of this subsection.

(d)(1) For purposes of paragraph (3) of subsection (c) of this Code section, a contractual relationship may be conclusively established by, but not limited to, land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the disposal or release of hazardous wastes, hazardous constituents, or hazardous substances has occurred or is occurring was acquired by the person after the disposal or release of the hazardous wastes, hazardous constituents, or hazardous substances and one or more of the following circumstances are established by a preponderance of the evidence:

(A) At the time the person acquired the site, the person did not know and had no reason to know that any hazardous waste, hazardous constituent, or hazardous substance had been disposed of or released at the site;

(B) The person is a government entity which acquired the site by escheat, through any other involuntary transfer or acquisition, or through the exercise of eminent domain by purchase or condemnation; or

(C) The person acquired the site by inheritance or bequest and that one or more of the circumstances described in paragraph (1), (2), or (3) of subsection (c) of this Code section are applicable.

(2) To establish that the person had no reason to know as provided in subparagraph (A) of paragraph (1) of this subsection, the person must have undertaken, at the time of acquisition, all appropriate inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence, the finder of fact shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

(3) Nothing in this subsection shall diminish the liability of any previous owner of such property who would otherwise be liable under this part. Notwithstanding this paragraph, if a person obtained actual knowledge of the disposal or release of a hazardous waste, hazardous constituent, or hazardous substance at the site when the person owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, the person so transferring the property shall be treated as liable under subsection (a) of this Code section, and no defense under subsection (c) of this Code section shall be available to such person. Nothing in this subsection shall affect the liability under this part of a person who, by any act or omission, causes or contributes to the disposal or release of a hazardous waste, a hazardous constituent, or a hazardous substance which is the subject of the action relating to the site.

(e) During or following the undertaking of any corrective action, any person may seek contribution from any other person who has contributed or is contributing to any release of a hazardous waste, a hazardous constituent, or a hazardous substance. Such claims for contribution shall be governed by the law of this state. In resolving contribution claims, the court may allocate costs among liable parties using such equitable factors as the court determines to be appropriate. In any action filed by the director for the recovery of costs and damages pursuant to this Code section, any third-party claim for contribution may, upon the motion of the director, be severed and maintained as a separate action.

(f) A person who has voluntarily agreed to perform corrective action pursuant to an administrative consent order with the director shall not be liable for claims for contribution regarding matters addressed in the administrative consent order. Such administrative consent order does not discharge any other person who has contributed or is contributing to a release of hazardous wastes, hazardous constituents, or hazardous substances unless the terms of the administrative consent order so provide, and the other persons remain liable for any corrective action deemed necessary by the director but not agreed to in the administrative consent order.

HISTORY: Code 1981, § 12-8-96.1, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 1993, p. 500, § 7; Ga. L. 2002, p. 927, § 5.

NOTES:

THE 2002 AMENDMENT, effective July 1, 2002, added the second sentence in subsection (a).

CODE COMMISSION NOTES. --Pursuant to Code Section 28-9-5, in 1992, "paragraph" was substituted for "paragraphs" in the undesignated language following subparagraph (d)(1)(C).

Pursuant to Code Section 28-9-5, in 1994, near the middle of the introductory language in paragraph (1) of subsection (d), "constituents" was substituted for "constitutents".

JUDICIAL DECISIONS

THIRD PARTY DEFENSE. --The statute requires that in addition to establishing the lack of a contractual relationship in connection with the release of a hazardous waste, the party asserting the third party defense under subsection (c) must also establish the lack of any other relationship between himself and the third party. *Briggs & Stratton Corp. v. Concrete Sales & Servs., 20 F. Supp. 2d 1356 (M.D. Ga. 1998)*.

RESEARCH REFERENCES

ALR. --Secured lender liability: application of security interest exemption from definition of "owner or operator" under § 101(20)(A) of Comprehensive Environmental Response, Compensation, and Liability Act (*42 USCS § 9601(20)(A)*), *131 ALR Fed. 293*.

Construction and application of § 2Q1.2 and 2Q1.3 of United States Sentencing Guidelines (*18 USCS Appx 2Q1.2 and 2Q1.3*), pertaining to offenses involving hazardous or toxic substances, or other environmental pollutants, *138 ALR Fed 507*.

Equitable considerations in allocating response costs to owner or occupant of previously contaminated facility in action pursuant to § 113(f) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (*42 USCA § 9613(f)*), *148 ALR Fed. 203*.

Amount and characteristics of wastes as equitable factors in allocation of response costs pursuant to § 113(f)(1) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), *42 USCA § 9613(f)(1)*: multiple waste streams, *162 ALR Fed. 371*.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-96.2. Limitation of liability of corrective action contractors

(a) No corrective action contractor engaged in activities associated with the cleanup of environmental hazards created by others shall be liable for any damages arising from the release of a hazardous waste, hazardous constituent, or hazardous substance resulting from such activity

in an amount greater than \$1 million to any one person or \$3 million to all persons for a single occurrence. The limitation of liability of this Code section shall not:

(1) Affect any right of indemnification which such person has, or may acquire by contract, against any other person who is liable for creating an environmental hazard; or

(2) Apply to persons who intentionally, wantonly, or willfully violate federal or state regulations in the cleanup process.

(b) For purposes of Code Section 12-8-96.1 and this Code section, the phrase "activities associated with the cleanup of environmental hazards" shall mean activities including investigation, evaluation, planning, design, engineering, removal, construction, and ancillary services which are carried out to abate or cleanup a hazardous waste, hazardous constituent, or hazardous substance.

(c) Nothing contained in this Code section shall be construed to be a waiver of the sovereign immunity of this state or of any agency or political subdivision of this state.

HISTORY: Code 1981, § 12-8-96.2, enacted by Ga. L. 1992, p. 2234, § 5.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-96.3. Limitation of liability for release of hazardous substances for subsequent purchasers of property

(a) As used in this Code section, the term:

(1) "Affected property" means real property listed on the hazardous site inventory maintained pursuant to Code Section 12-8-97.

(2) "Bona fide purchaser" means a person who has purchased affected property and has complied with the provisions of subsection (b) of this Code section relative to such property; provided, however, that no person may qualify as a bona fide purchaser if such person:

(A) Is a person who has contributed or is contributing to a release;

(B) Has or in the past has had a contractual relationship with a person who has contributed or is contributing to a release;

(C) Is related by blood or marriage to a previous owner of the property or to a person who contributed or is contributing to the release or is a shareholder, employee, agent, or is otherwise affiliated with such person;

(D) Is a predecessor or successor entity, subsidiary, owner, or division of any person who has contributed to or is contributing to a release;

(E) Is in violation of any order, judgment, statute, rule, or regulation within the jurisdiction of the division;

(F) Is an owner or operator of an underground storage tank, as defined by Code Section 12-13-3, located at the affected property and subject to the financial responsibility regulations promulgated pursuant to Code Section 12-13-9;

(G) Is an owner or operator of a solid waste handling, disposal, or thermal treatment technology facility, as defined by Code Section 12-8-22, located at the affected property and subject to permitting requirements pursuant to Code Section 12-8-24;

(H) Is an owner or operator of a "hazardous waste facility" as defined by paragraph (11) of Code Section 12-8-62; or

(I) Is not able to meet such other criteria as may be established by the board pursuant to Code Section 12-8-93.

(3) "Cleanup standards" means those rules adopted by the board pursuant to Code Section 12-8-93.

(4) "Contractual relationship" means a contractual relationship established as provided in subsection (d) of Code Section 12-8-96.1.

(5) "Person who has contributed or is contributing to a release" means such term as defined in paragraph (9) of Code Section 12-8-92.

(b) A person desiring to qualify as a bona fide purchaser shall, before purchasing the affected property, present to the director a corrective action plan which describes in detail those actions needed to bring the affected property into compliance with cleanup standards. The director shall approve the plan if, in his or her opinion, the plan will bring the property into compliance with the cleanup standards. Such plan shall include a schedule for completion, which shall be not longer than one year following the date the plan is finally approved, which shall be the date the purchaser and the director enter into an administrative consent order incorporating the plan; provided, however, that the director may extend the completion date by up to six months if, in his or her opinion, the purchaser has made a good faith attempt to complete the corrective action within the time provided in the consent order and that the corrective action can be completed within the period of the extension. If the corrective action provided for in the administrative consent order is completed to the satisfaction of the director, the director shall certify that the purchaser is a bona fide purchaser of the affected property for purposes of this Code section.

(c) A bona fide purchaser shall not be liable for third-party claims for contribution or for third-party claims for damages arising from a release of the hazardous waste, hazardous substance, or hazardous constituent which is the subject of the corrective action included in the consent order provided for in subsection (b) of this Code section.

(d) The limitation of liability provided for in subsection (c) of this Code section shall commence on the date of execution of the consent order provided for in subsection (b) of this Code section; provided, however, that such limitation shall be withdrawn automatically if the director determines at the end of the cleanup period or any extension thereof to certify that the property has not been brought into compliance with the cleanup standards. The limitation shall apply only to the parties to the consent order and for the hazardous waste, hazardous substance, or hazardous constituent addressed in the consent order. The limitation shall not apply with respect to any release occurring in conjunction with an activity related to a corrective action which results in injury to a person not a party to the consent order.

HISTORY: Code 1981, § 12-8-96.3, enacted by Ga. L. 1996, p. 993, § 3.

NOTES:

LAW REVIEWS. --For review of 1996 waste management legislation, see *13 Ga. St. U. L. Rev.* 54.

RESEARCH REFERENCES

ALR. --Equitable considerations in allocating response costs to owner or occupant of previously contaminated facility in action pursuant to § 113(f) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (*42 USCA § 9613(f)*), *148 ALR Fed.* 203.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-97. Hazardous site inventory

(a) Beginning on July 1, 1994, the division shall compile and update as necessary an inventory of all known or suspected sites where hazardous wastes, hazardous constituents, or hazardous substances have been disposed of or released in quantities deemed reportable by rules or regulations of the board. At least annually, beginning July 1, 1994, the division shall send a copy of the inventory with the sites listed by county to the clerk of each superior court of the state, who shall place and maintain the most current copy of the inventory in the room or rooms in which the deed records of the county are kept. This inventory shall be called the hazardous site inventory. The inventory shall include:

- (1) The name of the property or another description identifying the site;
- (2) The location of the site;
- (3) The name of the owner of the site at the time of the site's inclusion in the inventory;
- (4) A general description of the type and quantity of hazardous wastes, hazardous constituents, or hazardous substances known or suspected to be at the site;
- (5) A general description of possible or known threats to human health or the environment posed by the site;
- (6) The status of any cleanup activities conducted by any person;
- (7) A relative priority for cleanup;
- (8) If a site is determined, in accordance with rules and regulations promulgated by the board, to require corrective action, a designation that corrective action is needed and a summary of needed actions;
- (9) If a site is considered not capable of posing or is no longer posing an environmental or human health hazard, a designation that no further action is required; and
- (10) The status of any actions contesting a determination that corrective action is needed.

The division shall also publish annually a report of the fees collected and the funds appropriated to the hazardous waste trust fund and an accounting of all disbursements from such trust fund.

(b) After July 1, 1993, the property owner of any site listed on the inventory which is designated as having a known release and which is designated as needing corrective action shall include the following notice in any deed, mortgage, deed to secure debt, lease, rental agreement, or other instrument given or caused to be given by the property owner which creates an interest in or grants a use of the property:

"This property has been listed on the state's hazardous site inventory and has been designated as needing corrective action due to the presence of hazardous wastes, hazardous constituents, or hazardous substances regulated under state law. Contact the property owner or the Georgia Environmental Protection Division for further information concerning this property. This notice is provided in compliance with the Georgia Hazardous Site Response Act."

(c) After July 1, 1993, each property owner who owns a site listed on the inventory which is designated as having a known release and which is designated as needing corrective action shall cause to be prepared an affidavit of such fact in recordable form as set forth in subsection (c) of Code Section 44-2-20 and shall file such affidavit with the clerk of the superior court of each county in which the real property or any part thereof lies. Such affidavit shall be recorded in the clerk's deed records pursuant to Code Section 44-2-20. Such affidavit shall include a statement that the property has been listed on the state's hazardous site inventory and has been designated as needing corrective action due to the presence of hazardous wastes, hazardous constituents, or hazardous substances regulated under state law. Such affidavit shall be filed with the clerk within 45 days after receipt of notice by the property owner that the director has designated the property as needing corrective action; provided, however, that neither the affidavit required by this subsection or the notice required by subsection (b) of this Code section shall be required until any contest under subsection (f) of this Code section has been resolved adversely to the property owner.

(d) After July 1, 1993, each property owner who owns real property upon which hazardous wastes, hazardous constituents, or hazardous substances have been disposed of or released in amounts exceeding reportable quantities shall, within 30 days of receipt of knowledge by the property owner of the release or disposal, notify the division in writing on such forms as may be provided by the director. This notification shall include the location, type, quantity, and date of such disposal or release, if known, and a summary of actions taken to investigate, clean up, or remediate the site. Such notification shall include a quadrangle map prepared in accordance with the National Ocean Survey/National Geodetic Survey or a Georgia Coordinate System pursuant to Article 2 of Chapter 4 of Title 44 that clearly indicates the location of the disposal or release; provided, however, that any property owner that has notified the United States Environmental Protection Agency under Section 103(c) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, may satisfy this notification requirement by submitting a copy of the 103(c) notice together with such quadrangle map.

(e) The provisions of this Code section shall not be applicable to emissions regulated under Article 1 of Chapter 9 of this title, "The Georgia Air Quality Act," point source discharges regulated under Article 2 of Chapter 5 of this title, the "Georgia Water Quality Control Act," or sites regulated solely by Chapter 13 of this title, the "Georgia Underground Storage Tank Act," or substances regulated under Chapter 12 of this title, the "Georgia Asbestos Safety Act."

(f) The director shall provide a property owner with written notice of any determination to designate property as needing corrective action, including a statement concerning the requirements of subsections (b) and (c) of this Code section. The requirements of subsections (b)

and (c) of this Code section shall be stayed by the filing of a petition for a hearing in accordance with Code Section 12-8-73 within 30 days of the issuance of the director's written notice of the director's determination to designate property as needing corrective action.

HISTORY: Code 1981, § 12-8-97, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 1993, p. 91, § 12; Ga. L. 1993, p. 500, § 8.

NOTES:

CODE COMMISSION NOTES. --Pursuant to Code Section 28-9-5, in 1993, "clean up" was substituted for "cleanup" in the second sentence in subsection (d).

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

ARTICLE 9. HAZARDOUS SITE REUSE AND REDEVELOPMENT

§ 12-8-200. Short title

This article shall be known and may be cited as the "Georgia Hazardous Site Reuse and Redevelopment Act."

HISTORY: Code 1981, § 12-8-200, enacted by Ga. L. 2002, p. 927, § 6.

NOTES:

EDITOR'S NOTES. --Ga. L. 2002, p. 927, § 6, reenacted this Code section without change.

NOTES APPLICABLE TO ENTIRE TITLE

CROSS REFERENCES. --Authority of General Assembly to restrict land use so as to protect and preserve natural resources, environment, and vital areas of state, Ga. Const., 1983, Art. III, Sec. VI, Para. II. Game and fish generally, T. 27. Water rights generally, Ch. 8, T. 44.

LAW REVIEWS. --For annual survey of law on environment, natural resources, and land use, see *35 Mercer L. Rev. 147 (1983)*. For article discussing recent developments in environmental law, see *39 Mercer L. Rev. 411 (1987)*.

NOTES APPLICABLE TO ENTIRE CHAPTER

CROSS REFERENCES. --Waste control, Pt. 3, Ch. 7, T. 16. Establishment of public authorities for recovery and utilization of resources contained in sewage sludge and solid waste, Ch. 63, T. 36.

LAW REVIEWS. --For article, "Recent Developments in Georgia Solid Waste Law Pile Up," see *28 Ga. St. B.J. 182 (1992)*. For annual survey article on local government law, see *50 Mercer L. Rev. 263 (1998)*.

OPINIONS OF THE ATTORNEY GENERAL

PROBATE COURT HAS NO JURISDICTION OVER WASTE MANAGEMENT VIOLATIONS. --The probate court does not have jurisdiction to try or sentence an individual accused of violating the criminal provisions concerning waste management or air pollution. 1995 Op. Att'y Gen. No. U95-1.

NOTES APPLICABLE TO ENTIRE ARTICLE

LAW REVIEWS. --For review of 1998 legislation relating to conservation and natural resources, see *15 Ga. St. U. L. Rev. 21 (1998)*.

§ 12-8-201. Public policy

(a) It is declared to be the public policy of the State of Georgia, in furtherance of its responsibility to protect the public health, safety, and well-being of its citizens and to protect and enhance the quality of its environment, to encourage the clean up, reuse, and redevelopment of properties where there have been releases of hazardous waste, hazardous constituents, and hazardous substances, into the environment.

(b) The General Assembly declares its intent to fund the execution of the public policy set forth in subsection (a) of this Code section by and through the division with application review fees established and collected by the division pursuant to Code Section 12-8-209. The General Assembly further declares its intent to ensure that the funding provided by the application review fees will not be diverted for any purpose other than the administration of this article by the division. Appropriation of funds to the Department of Natural Resources for inclusion in the hazardous waste trust fund continued in existence by subsection (a) of Code Section 12-8-95 shall be deemed consistent with this declaration of legislative intent.

HISTORY: Code 1981, § 12-8-201, enacted by Ga. L. 2002, p. 927, § 6.

NOTES:

EFFECTIVE DATE. --This Code section became effective July 1, 2002.

EDITOR'S NOTES. --Ga. L. 2002, p. 927, § 6, effective July 1, 2002, redesignated former Code Section 12-8-201 as present Code Section 12-8-202.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-202. Definitions

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

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

(1) "Certificate of compliance" means the certification of compliance with a corrective action plan required by Code Section 12-8-207.

(2) "Corrective action plan" means the corrective action plan required by Code Section 12-8-207.

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

(4) "Hazardous site inventory" means the hazardous site inventory published by the division pursuant to Code Section 12-8-97.

(5) "Preexisting release" means a release, as such term is defined in paragraph (11) of Code Section 12-8-92, which occurred prior to the prospective purchaser's application for a limitation of liability pursuant to this article.

(6) "Prospective purchaser" means a person who intends to purchase a property where there is a preexisting release.

(7) "Qualifying property" means a property which meets the criteria of Code Section 12-8-205 which a prospective purchaser intends to purchase and bring into compliance with the risk reduction standards.

(8) "Risk reduction standards" means those standards promulgated by the board pursuant to Part 2 of Article 3 of this chapter.

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

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

HISTORY: Code 1981, § 12-8-201, enacted by Ga. L. 1996, p. 993, § 4; Ga. L. 1998, p. 1667, § 2; Code 1981, § 12-8-202, as redesignated by Ga. L. 2002, p. 927, § 6.

NOTES:

THE 2002 AMENDMENT, effective July 1, 2002, redesignated former Code Section 12-8-201 as this Code section; designated the existing provisions of this Code section as subsection (b); added subsection (a); substituted "Code Section 12-8-207" for "Code Section 12-8-206" in paragraphs (b)(1) and (b)(2), added paragraph (b)(3), redesignated former paragraph (b)(3) as present paragraph (b)(4), deleted former paragraph (b)(4) which read: "'HSI site' means a property listed on the hazardous site inventory.", substituted "this article" for "Code Section 12-8-206" at the end of paragraph (b)(5), substituted "where there is a preexisting release" for "which is part of a site listed on the hazardous site inventory" in paragraph (b)(6), substituted "Code Section 12-8-205" for "Code Section 12-8-204" in paragraph (b)(7), and added paragraphs (9) and (10).

CODE COMMISSION NOTES. --Pursuant to Code Section 28-9-5, in 2002, "constituent" was substituted for "constituent" and "this chapter." was substituted for "Chapter 8 of Title 12, the "Georgia Hazardous Site Response Act." in paragraph (b)(10).

EDITOR'S NOTES. --Ga. L. 2002, p. 927, § 6, effective July 1, 2002, redesignated former Code Section 12-8-202 as present Code Section 12-8-203.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-203. Rules and regulations

(a) The board shall have the power to adopt, promulgate, modify, amend, and repeal rules and regulations to implement and enforce the provisions of this article as necessary to provide for the redevelopment and return to productive use certain qualifying properties. Such rules and regulations may be applicable to the state as a whole or may vary from region to region, as may be appropriate to facilitate the accomplishment of the provisions, purposes, and policies of this article.

(b) The board's rules and regulations shall include, but shall not be limited to, the following:

(1) Rules and regulations governing the eligibility criteria of prospective purchasers seeking a limitation of liability;

(2) Rules and regulations governing procedures for application and approval of prospective purchasers seeking a limitation of liability; and

(3) Rules and regulations governing procedures and criteria for determining whether a prospective purchaser qualifies for a limitation of liability.

HISTORY: Code 1981, § 12-8-202, enacted by Ga. L. 1996, p. 993, § 4; Ga. L. 1998, p. 1667, § 2; Code 1981, § 12-8-203, as redesignated by Ga. L. 2002, p. 927, § 6.

NOTES:

THE 2002 AMENDMENT, effective July 1, 2002, redesignated former Code Section 12-8-202 as this Code section and substituted "qualifying properties" for "property or properties listed on the hazardous site inventory" at the end of the first sentence in subsection (a).

EDITOR'S NOTES. --Ga. L. 2002, p. 927, § 6, effective July 1, 2002, redesignated former Code Section 12-8-203 as present Code Section 12-8-204.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-204. Powers and duties of director

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

(1) To make determinations, in accordance with procedures and criteria enumerated in this article and rules and regulations promulgated pursuant to this article, as to whether a prospective purchaser qualifies for a limitation of liability;

(2) To make determinations, in accordance with procedures and criteria enumerated in this article and rules and regulations promulgated pursuant to this article, as to whether a proposed corrective action plan is sufficient to bring the qualifying property into compliance with the risk reduction standards;

(3) To ensure that all actions in an approved corrective action plan are completed within the time specified, the corrective action requirements are implemented, and the risk reduction standards are achieved and certified for a qualifying property prior to concurrence with a certification of compliance;

(4) To approve corrective action plans;

(5) To concur with certifications of compliance; and

(6) To assess and collect application review fees from prospective purchasers.

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

HISTORY: Code 1981, § 12-8-203, enacted by Ga. L. 1996, p. 993, § 4; Ga. L. 1998, p. 1667, § 2; Code 1981, § 12-8-204, redesignated by Ga. L. 2002, p. 927, § 6.

NOTES:

THE 2002 AMENDMENT, effective July 1, 2002, redesignated former Code Section 12-8-203 as this Code section and, in subsection (a), deleted "and" from the end of paragraph (a)(4), substituted "; and" for a period at the end of paragraph (a)(5), and added paragraph (a)(6).

EDITOR'S NOTES. --Ga. L. 2002, p. 927, § 6, effective July 1, 2002, redesignated former Code Section 12-8-204 as present Code Section 12-8-205.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-205. Criteria for property to qualify for limitation of liability

In order to be considered a qualifying property for a limitation of liability as provided in Code Section 12-8-207, a property must meet the following criteria:

- (1) The property must have a preexisting release;
- (2) Any lien filed under subsection (e) of Code Section 12-8-96 against the property must be satisfied or settled and released by the director pursuant to Code Section 12-8-94;
- (3) The property must not:
 - (A) Be listed on the federal National Priorities List pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, *42 U.S.C. Section 9601*, et seq.;
 - (B) Be currently undergoing response activities required by an order of the regional administrator of the federal Environmental Protection Agency issued pursuant to the provisions of such act; or
 - (C) Be a hazardous waste facility as defined in Code Section 12-8-62; and
- (4) The property shall meet other criteria as may be established by the board as provided in this article and Article 3 of this chapter.

HISTORY: Code 1981, § 12-8-204, enacted by Ga. L. 1996, p. 993, § 4; Ga. L. 1998, p. 1667, § 2; Code 1981, § 12-8-205, as redesignated by Ga. L. 2002, p. 927, § 6.

NOTES:

THE 2002 AMENDMENT, effective July 1, 2002, redesignated former Code Section 12-8-204 as this Code section, substituted "Code Section 12-8-207" for "Code Section 12-8-206" in the introductory paragraph, and substituted "have a preexisting release" for "be part of a site listed on the hazardous site inventory" at the end of paragraph (1).

EDITOR'S NOTES. --Ga. L. 2002, p. 927, § 6, effective July 1, 2002, redesignated former Code Section 12-8-205 as present Code Section 12-8-206.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-206. Criteria for prospective purchasers to qualify for limitation of liability

(a) To qualify for a limitation of liability as provided in Code Section 12-8-207, a prospective purchaser must meet the following criteria:

(1) The prospective purchaser must not be a person who has contributed or who is contributing to a release at the qualifying property;

(2) Where the prospective purchaser is an individual, the party must not: be a relative by blood within the third degree of consanguinity or by marriage; be an employee, shareholder, officer, or agent; or otherwise be affiliated with a current owner of the subject property or any person who has contributed or is contributing to a release at the subject property;

(3) Where the prospective purchaser is a corporation or other legal entity, the party must not: be a current or former subsidiary, division, parent company, or partner; be the employer or former employer; or otherwise have been affiliated with the current owner of the subject property or any person who has contributed or is contributing to a release at the subject property;

(4) The prospective purchaser must not be in violation of any order, judgment, statute, rule, or regulation subject to the enforcement authority of the director; and

(5) The prospective purchaser must meet such other criteria as may be established by the board pursuant to Code Section 12-8-203.

(b) The director may grant a variance from the eligibility requirements contained in paragraphs (2), (3), (4), and (5) of subsection (a) of this Code section if the director finds that such criteria would render a prospective purchaser ineligible for a limitation of liability under this article, that no other qualified prospective purchaser has applied for a limitation of liability for the qualifying property, and that:

(1) Such ineligibility would result in the continuation of a condition which poses a threat to human health and the environment;

(2) The director would likely be required to perform the necessary corrective action using funds from the hazardous waste trust fund; and

(3) In all probability, the director would be unable to recover the cost of the corrective action as provided in Code Section 12-8-96.1.

The director may place such conditions upon the grant of a variance as he or she deems appropriate including, without limitation, a provision relating to the time all or a portion of the corrective action must be completed, and if the applicant fails to comply with such conditions the director may modify or withdraw such variance.

HISTORY: Code 1981, § 12-8-205, enacted by Ga. L. 1996, p. 993, § 4; Ga. L. 1998, p. 1667, § 2; Code 1981, § 12-8-206, as redesignated by Ga. L. 2002, p. 927, § 6.

NOTES:

THE 2002 AMENDMENT, effective July 1, 2002, redesignated former Code Section 12-8-205 as present Code Section 12-8-206, and, in subsection (a), throughout the subsection, inserted "or is contributing" and substituted "property" for "HSI site", substituted "Code Section 12-8-207" for "Code Section 12-8-206" in the introductory paragraph, in paragraph (a)(1), inserted "or who is contributing", substituted "at" for "of regulated substances, as defined in paragraph (9) of Code Section 12-8-92, at the HSI site of which", and deleted "is a part" following "property" at the end, substituted "at" for "of hazardous materials on" near the end of paragraphs (a)(2) and (a)(3), and substituted "Code Section 12-8-203" for "Code Section 12-8-202" at the end of paragraph (a)(5).

EDITOR'S NOTES. --Ga. L. 2002, p. 927, § 6, effective July 1, 2002, redesignated former Code Section 12-8-206 as present Code Section 12-8-207.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-207. Limitation of expenses following approval of a corrective action plan

(a) Upon the director's approval of the prospective purchaser corrective action plan or concurrence with the certification of compliance described in this Code section, whichever first occurs, a prospective purchaser shall not be liable to the state or any third party for costs incurred in the remediation of, equitable relief relating to, or damages resultant from the preexisting release, nor shall the prospective purchaser be required to certify compliance with risk reduction standards for groundwater, perform corrective action, or otherwise be liable for any preexisting releases to groundwater associated with the qualifying property.

(b)(1) For qualifying properties which the director has designated as needing corrective action in accordance with paragraph (8) of subsection (a) of Code Section 12-8-97, any party desiring to qualify for a limitation of liability pursuant to this Code section shall submit a prospective purchaser corrective action plan to the division. The corrective action plan shall, at minimum, enumerate and describe in detail those actions planned and proposed to bring any source material or soil found on the qualifying property into compliance with all applicable rules and regulations adopted by the board governing the investigation, cleanup, and corrective action at properties listed on the hazardous site inventory. A corrective action plan submitted by a prospective purchaser under this subsection shall be in such form and meet such criteria as established by the board.

(2) The prospective purchaser shall submit proof of financial assurance, in such form as specified by the director, of his or her ability to implement the corrective action plan.

(3) Upon the director's approval of the prospective purchaser corrective action plan, it shall be the responsibility of the prospective purchaser to implement said plan. The director's approval of a prospective purchaser corrective action plan shall not in any way be construed as a guarantee, promise, or assurance that the director will concur with the prospective purchaser's certification of compliance for source material and soil in accordance with the provisions of this

Code section. Compliance with the appropriate risk reduction standards for source material or soil in effect at the time the director's concurrence is sought is the sole responsibility of the prospective purchaser. The prospective purchaser shall not acquire a vested right to the director's concurrence regardless of the expenditure of money. The prospective purchaser shall implement the corrective action plan with the understanding that the requirements of corrective action necessary to obtain a limitation of liability are subject to change because of newly discovered facts or subsequent changes in state or federal laws, rules, or regulations.

(4) The director's approval of the prospective purchaser corrective action plan shall specify a time within which the prospective purchaser must certify the qualifying property to be in compliance with the risk reduction standards for source material or soil in order to maintain the limitation of liability provided for by subsection (a) of this Code section. The director may revoke the limitation of liability provided for by subsection (a) of this Code section if the prospective purchaser fails to certify compliance within such time.

(5) If at any time the director determines that any element of an approved prospective purchaser corrective action plan must be modified in order to achieve compliance with the risk reduction standards for source material or soil or that the corrective action is not being implemented in accordance with the corrective action plan, the director may revoke his or her approval of the plan and the limitation of liability by providing the prospective purchaser with written notification specifying the basis for making such determination and requesting modification and resubmission of a modified plan or an opportunity to address any deficiencies in implementing the corrective action plan within a specified time. If at any time the prospective purchaser determines that any element of an approved prospective purchaser corrective action plan must be modified in order to achieve compliance with the risk reduction standards for source material or soil, the prospective purchaser shall notify the director and obtain approval of the proposed modification.

(6) A prospective purchaser shall, upon completion of those activities specified in the corrective action plan, submit to the director a compliance status report certifying the compliance of any source material or soil found on the qualifying property with the risk reduction standards for source material or soil and corrective action requirements. The qualifying property will be deemed in compliance with the source or soil contamination risk reduction standards upon the prospective purchaser's receipt of the director's written concurrence with the compliance status report.

(c) For those qualifying properties which the director has not yet designated as being in need of corrective action, any party desiring to qualify for a limitation of liability as provided in this Code section shall certify the qualifying property to be in compliance with the risk reduction standards for source material or soil by submitting a compliance status report to the division in such form as provided by rules and regulations adopted by the board. A compliance status report submitted by a prospective purchaser under this subsection shall be in such form and meet such criteria as established by the board. The qualifying property will be deemed in compliance with the risk reduction standards for source material or soil upon the prospective purchaser's receipt of the director's written concurrence with the compliance status report.

(d) A person who holds indicia of ownership executed by the prospective purchaser primarily to protect said person's security interest in the qualifying property or who acts in good faith solely in a fiduciary capacity and who did not actively participate in the management, disposal,

or release of hazardous wastes, hazardous constituents, or hazardous substances on or from the qualifying property shall not be liable to the state or any third party for costs incurred in the remediation of, equitable relief relating to, or damages resultant from the preexisting release at the qualifying property.

(e) When a person who holds indicia of ownership executed by the prospective purchaser primarily to protect said person's security interest in the qualifying property takes title to the qualifying property from the prospective purchaser via foreclosure or a deed in lieu of foreclosure, such new titleholder shall maintain his or her limitation of liability under subsection (d) of this Code section if:

(1) The director is informed in writing of the transfer of title; and

(2) Within 180 days, or such other time period as specified by the director, of said transfer of title, the new titleholder:

(A) Presents the name of a new party who qualifies as a prospective purchaser for the qualifying property along with said new party's written assurance, including financial assurance, that the prospective purchaser corrective action plan will be fully implemented; or

(B) Submits a statement in writing that the new titleholder complies with the requirements applicable to prospective purchasers under this article.

HISTORY: Code 1981, § 12-8-206, enacted by Ga. L. 1996, p. 993, § 4; Ga. L. 1998, p. 1667, § 2; Code 1981, § 12-8-207, as redesignated by Ga. L. 2002, p. 927, § 6.

NOTES:

THE 2002 AMENDMENT, effective July 1, 2002, redesignated former Code Section 12-8-206 as this Code section; inserted "for source material or soil" throughout; substituted ", nor shall the prospective purchaser be required to certify compliance with risk reduction standards for groundwater, perform corrective action, or otherwise be liable for any preexisting releases to groundwater associated with the qualifying property" for "at the HSI site of which the qualifying property is part" at the end of subsection (a); in subsection (b), in paragraph (b)(1), in the first sentence, substituted "qualifying properties" for "those HSI sites" at the beginning and inserted "in accordance with paragraph (8) of subsection (a) of Code Section 12-8-97" and inserted "any source material or soil found on" in the second sentence, substituted "for source material and soil in accordance with the provisions of this Code section" for "with the risk reduction standards" at the end of the second sentence in paragraph (b)(3), substituted "certify compliance within such time" for "comply with such time requirement" at the end of the last sentence in paragraph (b)(4), and, in paragraph (b)(6), substituted "any source material or soil found on the qualifying property" for "the qualifying property" in the first sentence and inserted "source or soil contamination" in the last sentence; substituted "qualifying properties" for "sites listed on the hazardous site inventory" at the beginning of subsection (c); and substituted "qualifying property" for "HSI site of which the qualifying property is part" at the end of subsection (d).

EDITOR'S NOTES. --Ga. L. 2002, p. 927, § 6, effective July 1, 2002, redesignated former Code Section 12-8-207 as present Code Section 12-8-208.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-208. Exceptions to limitation of liability

(a) The limitation of liability provided by subsection (a) of Code Section 12-8-207 shall be contingent upon the prospective purchaser's good faith implementation of the corrective action plan as approved by the director as well as the certification of compliance with the risk reduction standards and corrective action requirements. Such limitation of liability shall not be applicable to any activities conducted on the qualifying property before the director's approval of the corrective action plan or concurrence with a certification of compliance, whichever first occurs, or during any time the director's approval of the corrective action plan has been suspended or revoked.

(b) The limitation of liability provided by this article shall not affect any right of indemnification which any person has or may acquire by contract against any other person who is otherwise liable for creating an environmental hazard; apply to persons who intentionally, wantonly, or willfully violate federal or state regulations in the cleanup process; or apply to any release occurring or continuing after the date of the certification of compliance unless any such continuing release is specifically addressed in the director's concurrence with the certification of compliance.

(c) The limitation of liability provided by this article shall be fully transferable to the heirs, assigns, and designees of the person to whom such limitation of liability is granted; provided, however, that in no event shall the director's approval of a corrective action plan or concurrence with a certification of compliance operate to absolve from liability any party deemed to be a person who has contributed or is contributing to a release at the qualifying property. A transfer of the title to the qualifying property or any portion thereof from the prospective purchaser back to the owner of the property from which the subject property was purchased, any other party deemed to be a person who has contributed or is contributing to a release at the property, or any person disqualified from obtaining a limitation of liability under Code Section 12-8-206 shall terminate any limitation of liability applicable to the transferor under this article.

(d) For the purpose of determining liability for continuing or future releases of regulated substances upon or from any qualifying property for which the director has concurred with a certification of compliance pursuant to Code Section 12-8-207, the background or baseline concentration for any and all releases for which corrective action was performed or compliance certified or both shall be equivalent to the risk reduction standard for which compliance was certified in order to invoke the limitation of liability.

(e) The limitation of liability provided by this article shall have no effect on liability for releases of hazardous waste, hazardous constituents, or hazardous substances not addressed in the corrective action plan or the certification of compliance. Any such release shall constitute a new, separate, and distinct release, subject to the provisions of Part 2 of Article 3 of this chapter.

(f) Nothing in this article shall limit the authority of the director or the division to take action in response to any release or threat of release. Except as provided in this article, nothing shall limit the authority of the director or the division to seek recovery of costs from persons liable under Part 2 of Article 3 of this chapter.

HISTORY: Code 1981, § 12-8-207, enacted by Ga. L. 1996, p. 993, § 4; Ga. L. 1998, p. 1667, § 2; Code 1981, § 12-8-208, as redesignated by Ga. L. 2002, p. 927, § 6.

NOTES:

THE 2002 AMENDMENT, effective July 1, 2002, redesignated former Code Section 12-8-207 as this Code section; substituted "Code Section 12-8-207" for "Code Section 12-8-206" at the beginning of the first sentence in subsection (a); in subsection (c), substituted "who has contributed or is contributing to a release at the qualifying property" for "responsible for a release on the HSI site from which the qualifying property originated" at the end of the first sentence and, in the second sentence, substituted "property from which the subject" for "HSI site from which the qualifying", substituted "who has contributed or is contributing to" for "responsible for", substituted "at the property" for "on the HSI site", and substituted "Code Section 12-8-206" for "Code Section 12-8-205" at the end; in the middle of subsection (d), substituted "Code Section 12-8-207" for "Code Section 12-8-206" and substituted "releases" for "regulated substances"; and deleted "of regulated substances" following "release" at the end of first sentence in subsection (f).

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-8-209. Initial compliance status report

The initial compliance status report or a corrective action plan submitted for any qualifying property under Code Section 12-8-207 shall be deemed to be an application to participate in the program described in this article and shall be submitted in such form as may be prescribed by the director. By making said initial submission, the prospective purchaser agrees to the provisions of this Code section. A nonrefundable application review fee of \$3,000.00 shall be submitted with the application. Within 30 days of the receipt of the application, the director shall cause to be prepared and delivered to the applicant an estimate of the projected costs of the division to review the application. The director may, at any time during the application review process, invoice the applicant for any costs of the division in reviewing the application that exceed the initial application review fee. Failure to remit payment within 30 days of receipt of invoice may cause rejection of the application. The director may not issue a written concurrence with a certification of compliance if there is an outstanding fee to be paid by the prospective purchaser.

HISTORY: Code 1981, § 12-8-209, enacted by Ga. L. 2002, p. 927, § 6.

NOTES:

EFFECTIVE DATE. --This Code section became effective July 1, 2002.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.