

GEORGIA CODE

(effective July 1, 2014)

TITLE 12. CONSERVATION AND NATURAL RESOURCES

CHAPTER 8. WASTE MANAGEMENT

ARTICLE 9. GEORGIA BROWNFIELD ACT

O.C.G.A. § 12-8

§ 12-8-200. Short title

This article shall be known and may be cited as the "**Georgia Brownfield Act.**"

§ 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.

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

(2) "Ground water" means any subsurface water that is in a zone of saturation.

(3) "Petroleum" means petroleum, including crude oil or any fraction thereof (including gasoline, gasohol, diesel fuel, fuel oils including #2 fuel oil, kerosene, or jet turbine fuel) that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(4) "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. The term "preexisting release" includes but is not limited to release of petroleum even if such release is from an underground storage tank system as defined in paragraph (18) of Code Section 12-13-3.

(5) "Property interest" means any interest in real property, without regard to whether such interest is exclusive or possessory.

(6) "Prospective purchaser" means a person who intends to acquire a property interest in a property where there is a preexisting release or a person who has applied for a limitation of liability pursuant to this article within 30 days of acquiring such property interest in a property where there is a preexisting release.

(7) "Qualifying property" means a property which meets the criteria of Code Section 12-8-205.

(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 preexisting release that acts or may likely act as a reservoir for continued releases to ground water, soil, surface water, or air or act as a source for direct exposure.

§ 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.

§ 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.

§ 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 shall meet the following criteria:

(1) The property shall have a preexisting release;

(2) Any lien filed under subsection (e) of Code Section 12-8-96 or subsection (b) of Code Section 12-13-12 against the property shall be satisfied or settled and released by the director pursuant to Code Section 12-8-94 or 12-13-6, and satisfactory provision shall have been made as determined by the director for the repayment to the division of any funds expended by the division from the federal Leaking Underground Storage Tank Trust Fund;

(3) The property shall 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, that is currently subject to a permit for the treatment, storage, or disposal of hazardous waste issued pursuant to Code Section 12-8-66; 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.

§ 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.

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

(a)(1) 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 ground water, perform corrective action, or otherwise be liable for any preexisting releases to ground water associated with the qualifying property.

(2) The limitation of liability provided under this Code section shall also benefit a qualifying purchaser who applies for a limitation of liability within 30 days following acquisition of title or any other new property interest in the qualifying property and subsequently receives the director's approval of a prospective purchaser corrective action plan or concurrence with a certification of compliance described in this Code section.

(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.

§ 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 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)(1) The limitation of liability provided by this article shall survive any subsequent change in the nature of a prospective purchaser's interest in the qualifying property and shall automatically inure to the benefit of heirs, assigns, successors in title, and designees of the person to whom such limitation of liability is granted and to any person acquiring any other property interest in the property for which the limitation of liability was 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.

(2) Any voluntary transfer of the title to a property or any portion thereof for which a limitation of liability has been granted to any party that would be disqualified from obtaining a limitation of liability for such property 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.

§ 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.

§ 12-8-210. Applicability of limitation of liability to persons who purchased after July 1, 2002, and before July 1, 2005

The provisions of this article applicable to prospective purchasers shall also apply to any person who purchased a property after July 1, 2002, and before July 1, 2005, where there was a preexisting release at the time of purchase, such purchaser did not cause or contribute to such preexisting release, and such purchaser applies for the limitation of liability provided by this article on or before January 1, 2006.

§ 12-8-211. Applicability of limitation of liability to persons who applied after May 1, 2012.

The limitation of liability provided under this article shall also apply to any qualifying prospective purchaser who, after May 1, 2012, has applied for a limitation of liability for a qualifying property and who subsequently obtains the director's approval of a prospective purchaser corrective action plan or concurrence with a certification of compliance for the qualifying property.

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