
**Liens for Hazardous Waste Trust Fund (HWTF) Expenditures
Frequently Asked Questions (FAQ)**

August 2023

The Georgia [Hazardous Waste Trust Fund](#) (HWTF) is established by Section 12-8-95 of the Georgia Hazardous Site Response Act (Act). The EPD Director has the authority to utilize the HWTF to address abandoned sites/releases, and to file a claim of lien on properties under Code Section 12-8-96. The following FAQs are provided for general information, but do not supersede the Act or the Rules. Please contact the Response and Remediation Program (RRP) at 404-657-8600 with additional questions or to discuss a property subject to a HWTF lien.

Why is a lien placed on a property?

The Act and associated Rules for Hazardous Site Response establish requirements for sites placed on the [Hazardous Site Inventory](#) (HSI). In some instances, identified responsible parties are unable or unwilling to conduct the required investigation and/or cleanup, and EPD may perform these actions using state funding from the Hazardous Waste Trust Fund (HWTF). If HWTF funds are used to investigate or cleanup a property or otherwise address a release, the expenditure constitutes a debt owed to the State. The debt along with interest accruing at twelve percent (12%) per year will constitute the lien. *See* O.C.G.A. § 12-8-96 (e).

How can I obtain a copy of the lien?

The lien is filed with the Superior Court Clerk for the County where the property is located. A copy of the lien can be requested from the County Clerk, who will usually provide for a fee.

Typically, Georgia EPD can also provide a copy of the lien for a property.

Is this the only lien that will be placed on the property?

Site investigation and cleanup typically occurs in multiple phases. Therefore, if a property is still on the HSI, additional funds may be expended in the future. In that case, an updated lien may be placed on the property to bring the lien amount current.

In some cases, the HWTF expenditures exceed both the current lien amount and the property value. In this instance, EPD may choose not to update the lien. In addition, a lien amendment may be filed if EPD discovers information that requires correction.

How can the lien be removed? Must the entire lien amount be paid?

Many of the liens exceed the value of the property and/or additional work is required to bring the property into compliance with State regulations. The Director has the authority to negotiate, settle, release, or cancel liens where such action is in the best interest of the State. O.C.G.A. § 12-8-

94(a)(6). The lien amount is typically negotiated with a prospective purchaser in the interest of returning property to productive use. The starting point for lien negotiations is typically the appraised value of the property (under the assumption that the property meets cleanup standards) and the amount is then reduced based upon anticipated costs that remain for required investigation and cleanup work. Note that a responsible party cannot receive a benefit due to a lien reduction and an acquiring party should not receive a windfall. EPD has released liens with no required payment in instances where the purchaser will be investing more into investigation / cleanup than the appraised value (net negative value).

Interested parties should contact the Response and Remediation Program (RRP) to begin the negotiations. Obtaining a current property appraisal and corrective action cost estimate in advance will allow for informed discussions. Once agreed to in concept, the interested party should submit a lien settlement request with backup documentation for RRP concurrence and recommendation to the Director. Financial Assurance may be required as part of the agreement to ensure performance of investigation/cleanup proposed during negotiations. Typically, the proposed work is described in a Prospective Purchaser Corrective Action Plan, and the Director will issue a letter confirming that the lien will be released upon completion of certain activities.

Can I acquire the property with the lien in place? Are there any protections for buying a property listed on the Hazardous Site Inventory?

The lien survives a transfer of ownership as noted below. In addition, a property owner is included in the definition of a Potentially Responsible Party (PRP - those who may have responsibility for pre-existing contamination). Therefore, a new owner would be designated as a PRP for the site if they do not apply for protection under the Georgia Brownfield Act (GBA). This Act provides a limitation of liability (LOL) from the State and third parties for pre-existing groundwater impacts in exchange for the purchaser certifying soils and source material to State cleanup standards.

Code Section 12-8-205 requires that the lien be satisfied or settled and released in order for the property to qualify for the LOL. EPD recommends that a prospective purchaser consult with an environmental attorney and consultant to determine remaining cleanup requirements and to evaluate enrollment in the Brownfield Program, prior to purchasing an impacted property. Costs related to the Brownfield Program and other regulatory programs may be included in lien negotiations. Note also that the GBA allows for recoupment of eligible costs through a temporary freeze on the county assessed value for property tax purposes.

More information on the Brownfield Program can be found at <http://epd.georgia.gov/brownfield>.

If the lien property was inherited, acquired via tax sale foreclosure, or otherwise acquired and the current owner had nothing to do with what occurred on the property, can the lien be removed?

Generally, if the lien was filed prior to your ownership, the lien cannot be removed without negotiations referenced above. See also response above about the potential of becoming a PRP via property acquisition. Tax lien sales are 'as-is, buyer beware.' Although inheritors generally do have protection from being designated as a PRP, that generally does not affect the lien. However, EPD may enter into an agreement with owners that are not PRPs to accept a reduced payment (for

example, share sale proceeds to incentivize selling property at full value in lieu of abandoning). Code Section 12-8-96(e) does provide lien protection for certain innocent owners, but that is very narrowly defined. Please contact RRP if you believe you qualify under that provision.

I've been designated as a responsible party. Can I settle the lien directly?

EPD is required to seek full reimbursement of the lien amount from any responsible parties. For a PRP to settle the lien at less than the full amount, the PRP may enter a sales contract at a cost representative of Fair Market Value. Once the sale is finalized and payment of the sale price is received as settlement, EPD will cancel the lien. EPD may allow reasonable third-party fees such as real estate broker fees to be paid from the sale proceeds.

If the lien is settled, will a cancelation of lien be filed in the County?

Once the Director has agreed to settle the lien and any required conditions have been met, a Cancellation of Lien will be filed by EPD in the County Deed records.

Does the lien ever expire?

These liens do not expire. Code Section 12-8-96(e) states “No transferal of title, sale, or execution of lien, whether juridical or nonjudicial, shall divest the lien”.

See also: Civil Action No. 19-CV-007, ORDER, Superior Court of Telfair County; efiled April 15, 2019: (F) The recorded claims of lien filed by the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources under O.C.G.A. § 12-8-96 (e) of the Georgia Hazardous Site Response Act which provides that no transferal of title divests the EPD liens.

What priority does the lien take in relation to other liens?

Code Section 12-8-96(e) states “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.”

If a purchaser must pay other superior liens to acquire clean title, EPD may consider those costs in the lien negotiations.