

KAZMAREK GEIGER & LASETER LLP

ENVIRONMENTAL ADVISORY

Georgia SB-78 and HB-248: Voluntary Remediation Program (February 10, 2009)

Almost all business owners have encountered environmental regulations and programs are complex, confusing, and expensive. This has certainly been the experience of responsible parties at federal "Superfund" sites and its state-level equivalents. As a result, when companies want to take environmentally responsible action to clean up sites where hazardous materials are located, they often find themselves stymied by seemingly endless arrays of formal requirements, red tape, and needlessly high costs. Recognizing that their overly regimented programs slowed down the process of improving the environment, many states have developed "voluntary remediation programs" under which private parties can proceed with clean ups under the supervision of registered environmental professional, with the certified results then presented to the state for approval. These streamlined programs not only produce quicker and less expensive cleanups, but also free up state resources to address sites where there are no such cooperative private parties such that government intervention is necessary.

Georgia's "Hazardous Site Response Act" ("HSRA") program has been plagued with numerous inefficiencies characteristic of government-led processes, as evidenced by:

- Although the HSRA program has been around more than a dozen years, less than 10% of the sites have been cleaned up to applicable standards;

- An industry sponsored study found clean ups in Georgia cost up to 10 times more than it cost to address similar sites on other states;

- Private volunteers often wait many months and sometimes years for the overworked personnel at the Georgia Environmental Protection Division ("EPD") to respond to reports and proposals to advance clean ups.

In an effort to create a more efficient path for parties wishing to push clean ups on a faster and more efficient track, Members from both the House and Senate sides of the Georgia Assembly have introduced mirror bills to create a "Voluntary Remediation Program" in Georgia. In the Senate, bipartisan group of state senators, including Senators Tolleson (R-20th), Golden (D-8th), Wiles (R-37th), Stoner (D-6th), and Hudgens (R-47th), and others, have recently introduced Senate Bill 78, which would allow responsible parties to enroll properties on the hazardous site inventory, as well as non-HSI sites, into a voluntary remediation program. This program would allow the responsible parties to conduct cleanups at a much faster pace. Additionally, SB-78 would address a number of technical points that have impeded cost efficient and timely clean ups under the existing HSRA program. Representative Terry Barnard, a Republican from the 166th district, introduced the substantially identical legislation on the House side as HB 248.

More particularly, SB-78/HB-248 would establish a Voluntary Remediation Program that would allow a property owner of a contaminated site to initiate remediation by making an application to GA EPA with a proposed conceptual remediation plan. The division would review the conceptual plan and approve the application. Once approved, the property owner would implement the remediation plan under supervision of privately paid registered or licensed environmental professionals. Once the private environmental professional determines the clean up is finished, the participant would submit a final Compliance Status Report for the division to review and approve.

Further, SB 78/HB 248 would provide some important and progressive modifications to the corrective action remediation criteria. Among the more important would be:

- The ability to locate a point of compliance outside of the source area at a place designed to measure actual threat to potential receptors;
- The ability to use certain institutional or engineering controls without showing more expensive alternatives are technically infeasible;
- Clean ups would be based upon exposure pathways present for the specific site and not theoretical circumstances;
- Site delineation could be based on clean up standards;

We believe that SB-78/HB-248 would provide a valuable way to make the most cost-effective use of cleanup funds, protect human health and the environment in Georgia, and preserve increasingly scarce state resources. We are familiar with the

bills and believe passage of the legislation would be in Georgia's best interests.

If you have questions about how SB78 might impact particular sites, please feel free to contact Scott Laseter, slaseter@kglattorneys.com, 404-812-0844, for further information.