

**Synopsis of
Proposed Amendments to the Rules of the
Department of Natural Resources
Environmental Protection Division
Relating to Hazardous Site Response
Chapter 391-3-19**

Rule 391-3-19-.03 “Hazardous Waste Management and Hazardous Substance Reporting Fees.” is being amended.

Purpose: To amend the fee waiver rule to reflect the abolition of the Pollution Prevention Assistance Division.

Main Features: Removes references to the Pollution Prevention Assistance Division and gives the director sole authority to provide a partial waiver of hazardous waste management and hazardous waste reporting fees under certain circumstances.

Rule 391-3-19-.04 “Release Notification.” is being amended.

Purpose: To reduce the cost of compliance for brownfield prospective purchasers conducting voluntary corrective action, to minimize the potential for listing properties where releases are unlikely to pose a threat to human health or the environment, and to provide incentives for property owners to take immediate action to abate releases.

Main Features: Eliminates double reporting of soil releases at brownfield properties undergoing cleanup under O.C.G.A. § 12-8-200. Changes groundwater release notification concentrations from background to health-based standards (the Media Target Concentrations promulgated under the Rules for Hazardous Site Response). Allows property owners, who have notified the Director of a release, to petition for a ninety-day deferral of a listing determination in order to conduct verification sampling or perform corrective action.

Rule 391-3-19-.05 “Reporting of Releases Exceeding Reportable Quantities and Listing of Sites on the Hazardous Site Inventory. Amended.” is being amended.

Purpose: To allow the Rules to reflect the passage of the Uniform Environmental Covenants Act, which created a more effective mechanism for maintenance of Type 5 requirements.

Main Features: Would allow de-listing of sites that comply with a Type 5 risk reduction standard upon execution of a Uniform Environmental Covenant.

Rule 391-3-19-.06 “Corrective Action.” is being amended.

Purpose: To improve timeliness of corrective action by reducing the cost of demonstrating and/or achieving compliance with risk reduction standards.

Main Features: Allows delineation of releases to health-based standards instead of background.

Soil releases would be delineated to residential Type 1 or Type 2 risk reduction standards, and groundwater releases would be delineated to Media Target Concentrations promulgated in Appendix III, Table 1 of the Rules. Allows public notices to be placed in the legal organ of the local government and eliminates the requirement to also publish notice in a major local newspaper. Amends corrective action requirements to allow de-listing of Type 5 sites upon execution of an environmental covenant.

Rule 391-3-19-.08 “Property Notices.” is being amended.

Purpose: To reflect that the Uniform Environmental Covenant Act provided a more robust mechanism for providing notice of environmental conditions than was previously available under the Rules and to require a permanent marker on properties subject to Type 5 restrictions.

Main Features: Incorporates use of Uniform Environmental Covenants into the Property Notice requirements for properties that certify to Types 3, 4 and 5 and provides conditions for termination of such covenants. Provides for installation of a single permanent marker on properties subject to Type 5 restrictions. Amends the wording of two property notices required for listed site.

STATEMENT OF RATIONALE
Proposed Amendments to the Rules for Hazardous Site Response

BACKGROUND:

Georgia's Hazardous Site Response Act (HSRA) was enacted in 1992 to protect human health and the environment by requiring corrective action for releases of hazardous constituents. The Rules for Hazardous Site Response lay out the responsibilities for owners of properties where releases have occurred, the procedures the Environmental Protection Division (EPD) will use to determine whether releases pose a threat, the administrative procedures for addressing properties where such a determination has been made, and the requirements for corrective action.

In the years since HSRA was enacted, the regulated community has repeatedly expressed concern over the high costs that must be incurred to bring properties into compliance. EPD has initiated this rule change in an attempt to reduce the cost of compliance and the time required to demonstrate compliance while maintaining the agency's ability to protect human health and the environment.

EXTERNAL REVIEW PROCESS:

EPD convened an informal group of stakeholders to discuss the draft Rule changes. Invited stakeholders included representatives from groups known to have taken an interest in recently proposed legislation. Invitees included members of the Georgia Industry and Environmental Coalition, the Georgia Brownfield Association, the City of Atlanta, DeKalb County, Georgia Power and the Atlanta Gas Light Company. An owner of a listed property and the environmental law firm Greenlaw were also invited to participate.

EPD conducted an informal stakeholder meeting in March of 2014 to discuss the proposed amendments. Copies of the proposed Rule changes were distributed to the stakeholders prior to the meeting, and the resulting discussion was informative and positive. Written comments submitted by stakeholders after the meeting provided additional ideas and insights. EPD made revisions to the proposed Rules based on the feedback received; however, not every comment could be accommodated without defeating the purpose of the proposed amendments. In particular, where such an accommodation would have perpetuated duplicative regulatory requirements created by the passage of other environmental laws, no revisions were made.

PROPOSED AMENDMENTS:**Rule 391-3-19-.03 "Hazardous Waste Management and Hazardous Substance Reporting Fees."**

The proposed amendment reflects the abolition of the Pollution Prevention Assistance Division. The Division was formerly charged with reviewing fee reduction requests from generators of hazardous waste who implemented waste reduction measures. Following review of such requests, the Pollution Prevention Assistance Division made fee waiver recommendations to the Director of EPD. The proposed amendment retains all of the state's capacity to grant partial fee waivers under certain circumstances, but gives the Director of EPD sole authority to grant such waivers of hazardous waste management and hazardous waste reporting fees.

Rule 391-3-19-.04 “Release Notification.”

The amendment restores the word “system” in reference to the notification exclusion for groundwater releases detected during monitoring of public drinking water supplies required under the Rules for Safe Drinking Water.

An additional amendment would add an exclusion from notification requirements for releases of hazardous constituents to soil in cases where the release is already being reported to EPD under the Brownfield Program. This new exclusion would apply only to soil releases that are being addressed under an approved prospective purchaser corrective action plan. The new exclusion would be equivalent to the existing exclusions that refer release reporting to other EPD programs where other statutes are in place to address them (e.g. air emissions regulated under the Air Quality Control Act, petroleum releases regulated under the Underground Storage Tank Act, etc.)

Another amendment would revise the threshold concentrations triggering notification of releases to groundwater. This amendment will allow EPD to compare release data directly to health-based standards in order to evaluate whether a release poses a danger to human health. The amendment will increase the efficiency of the program and reduce the regulatory burden on property owners.

Another amendment would allow the owner of a property where a release has occurred to petition for a 90-day deferment of the Director’s determination as to whether a release exceeding a reportable quantity has occurred. This amendment would allow the Director to suspend an HSI-listing determination temporarily in order to allow the property owner to conduct more definitive sampling or to perform remedial measures to clean up the release. Property owners would be required to submit an amended notification upon completion of these activities. This amendment will reduce unnecessary listings and create incentives for prompt, voluntary cleanup of releases. The amended Rule would remain protective, because any immediate threat to human health would be addressed during the deferral period using interim measures.

Rule 391-3-19-.05 “Reporting of Releases Exceeding Reportable Quantities and Listing of Sites on the Hazardous Site Inventory. Amended.”

Passage of the Uniform Environmental Covenants Act (UECA) in 2008 created a stronger institutional control mechanism. The proposed amendment would allow de-listing of Type 5 sites provided that an environmental covenant (EC) is placed on the property. Unlike a deed restriction, the EC is a perpetual institutional control that runs with the land and can’t be terminated without consent from EPD. Execution of an EC also requires notice to all adjacent landowners, which an HSI listing does not. UECA also empowers EPD to maintain a central registry of all properties where such covenants are in place. EPD’s website now hosts this registry, where the public can access the full text of all executed ECs.

Rule 391-3-19-.06 “Corrective Action.”

Proposed amendments would revise the delineation standards for releases to soil and groundwater. The amendment would require delineation to health-based standards promulgated under the Rules for Hazardous Site Response. Under the amended Rule, releases to soil would be delineated to residential Type 1 or Type 2 RRS, and releases to groundwater would be delineated to the media target concentrations found in Table 1 of Appendix III of these Rules. Delineating to the residential standards or the health-based media target level instead of background will shorten the time required to reach cleanup decisions and will allow more of the finite resources available to be shifted to the actual cleanup.

The public participation requirements are also being revised. A single public notice will now be required upon submittal of a compliance status report. The notice must be placed in the legal organ of the local government in whose jurisdiction the site is located. The amendment removes the requirement to publish a second notice in a major local newspaper of general circulation. The amendment is intended to reduce the cost of compliance, but it also reflects changes in the degree to which the public relies on newspaper for information in the digital age.

Rule 391-3-19-.08 “Property Notices.”

Proposed amendments include the addition of provisions allowing the use of ECs for properties certifying to Type 3 and Type 4 RRS, and allowing for termination of an EC upon a subsequent certification to Type 1 or Type 2 RRS. Another proposed amendment would allow for the installation and maintenance of a single permanent marker at Type 5 properties. At the request of stakeholders, EPD proposes to amend the wording of two property notices required for listed sites. The amendments streamline the language of both notices and improve conformity with definitions and procedures set out in the Rules.