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CONSERVATION AND NATURAL RESOURCES

Waste Management: Managing Solid Waste

CODE SECTIONS:	O.C.G.A. §§ 12-8-22, -23, -23.1, -24, -25.2, -26, -27, -27.1, -30.7, -30.8, -31.1, -33, -36, -39, -39.3, -40.2, -54, -58 (amended)
BILL NUMBER:	HB 1386
ACT NUMBER:	1429
SUMMARY:	The Act makes numerous amendments to the Georgia Comprehensive Solid Waste Management Act. The Act provides additional powers to the Board of Natural Resources relating to "recovered materials"; changes provisions relating to permits for biomedical waste thermal treatment technology facilities; extends the deadline for new permit applications for vertical expansion of existing facilities; adds a requirement that all landfills have liners; clarifies public notice requirements; tightens requirements for facilities that take out-of-state waste; makes solid waste facilities subject to the provisions relating to the solid waste trust fund; clarifies unlawful activities and penalties with respect to the Act; provides a date by which comprehensive solid waste management plans must be completed; authorizes the Georgia Building Authority to establish a state wide recycling program for state agencies; requires that surcharges on private enterprises be used to offset the impact of solid waste facilities and for other purposes; provides enforcement powers for the collection of taxes, fees, and assessments; provides greater flexibility in the appointment of persons to the boards of directors of solid waste management authorities; and requires that the maximum rate of interest be included in public notices regarding the issuance of revenue bonds.
EFFECTIVE DATE:	May 8, 1992

History

The Georgia Comprehensive Solid Waste Management Act was passed in 1990.[1] Since that time, problems and ambiguities have become apparent.[2] In addition, Georgia law concerning solid waste disposal must be periodically updated to maintain primacy over the Federal Resource Conservation and Recovery Act of 1976.[3]

Among the problems which developed since the Act passed in 1990 was the need to clarify requirements for public notice about siting decisions and issuance of obligations and appointments to the boards of directors of regional solid waste management authorities.[4] In addition, enforcement powers were needed for the collection of fees and stiffer penalties were desired for violations.[5] Finally, there was a need to extend the date by which facilities must gather the information necessary to obtain permanent permits for expansion.[6] The date extension was necessary because an unanticipated additional twenty-five communities developed the need for expansion of existing facilities and did not have sufficient time to comply with the information requirements.[7] Rather than having "garbage in the parking lots,"[8] the General Assembly decided to provide a narrow window of opportunity to facilities to comply with the information requirements.[9]

HB 1386

The Act adds definitions for "affected county," "commercial solid waste," "industrial solid waste," and "regional landfill or regional solid waste disposal facility,"[10] and amends the definitions for "municipal solid waste," "municipal solid waste disposal facility," "municipal solid waste landfill," and "solid waste."[11] The definition of "yard trash" was renamed "yard trimmings."[12] These definition changes were necessary to update the Georgia law for changes in the federal law concerning solid waste disposal.[13]

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1. 1990 Ga. Laws 1981 (formerly found at O.C.G.A. §§ 12-8-20 to -40.2 (Supp. 1991)).
2. Telephone Interview with Rep. Denny M. Dobbs, House District No. 74 (Apr. 9, 1992) [hereinafter Dobbs Interview].
3. *Id.*; 42 U.S.C. §§ 6901-6987 (1988).
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. O.C.G.A. §§ 12-8-22(1), -22(4.1), -22(12.1), -22(27.1) (1992).
11. *Id.* §§ 12-8-22(18), -22(19), -22(20), -22(30) (1992).
12. *Id.* § 12-8-22(37) (1992).
13. Dobbs Interview, *supra* note 2; *see generally* 42 U.S.C. §§ 6901-6987 (1988).

The Act empowers the Board of Natural Resources to issue rules and regulations about "recovered materials."[14] The Board requires authority in this area because of the increased importance of recycling.[15]

The Act amends and moves subsection (c) of Code section 12-8-23.1 to subsection (b) of section 12-8-24 for the purpose of making grammatical corrections to, and consolidating into an appropriate section, provisions relating to permits for biomedical waste thermal treatment technology facilities.[16]

The time available for existing solid waste disposal facilities to obtain the information necessary to comply with the siting and design standards applicable to new permit applications for major modification (vertical expansion) is extended.[17] Before the change, all facilities that had made application by December 31, 1990 for vertical expansion had twenty-four months from commencement of the vertical expansion.[18] The latest possible date for compliance was July 1, 1993.[19] The Act amends the law to allow a facility with less than twenty-four months of remaining capacity on July 1, 1991 to have twenty-four months to comply from the date of issuance of the vertical expansion permit.[20] The latest date for compliance is July 1, 1995.[21] The date changes were necessary because many facilities had not submitted information for new permit applications and it was clear that numerous facilities in Georgia would not make the July 1, 1993 deadline.[22] In addition, approximately twenty-five communities unexpectedly developed the need for vertical expansion and could not make the July 1, 1993 deadline.[23]

The Act amends Code section 12-8-25.2, relating to landfills within two miles of certain recharge areas, to bring Georgia law into conformity with the federal law concerning solid waste disposal requiring liners for all landfills.[24] The previous law required liners for some, but not all, landfills.[25]

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14. O.C.G.A. § 12-8-23(1)(J) (1992).
15. Dobbs Interview, *supra* note 2.
16. *Id. Compare* O.C.G.A. § 12-8-24(b) (1992) *with* 1990 Ga. Laws 1222 (formerly found at O.C.G.A. § 12-8-23.1 (Supp. 1991)).
17. O.C.G.A. § 12-8-24(e)(3) (1992).
18. 1991 Ga. Laws 462 (formerly found at O.C.G.A. § 12-8-24(e)(3) (Supp. 1991)).
19. *Id.*
20. O.C.G.A. § 12-8-24(e)(3) (1992).
21. *Id.*
22. Dobbs Interview, *supra* note 2.
23. *Id.*
24. *Id.; see* O.C.G.A. § 12-8-25.2 (1992). *See generally* 42 U.S.C. §§ 6901-6987 (1988).
25. 1990 Ga. Laws 1981 (formerly found at O.C.G.A. § 12-8-25.2 (Supp. 1991)).

The Act clarifies the public notice requirements by specifying that public notice is required for actions concerning both publicly and privately owned municipal solid waste disposal facilities.[26] In addition, a siting decision must include information about the final property selection and related contracts.[27]

The Act requires that facilities that take out-of-state waste provide certification that the jurisdiction generating the waste has a strategy and is actively involved in meeting planning and waste reduction goals equivalent to those required in Georgia.[28] The Act amends Code section 12-8-27.1, relating to the solid waste trust fund, to clarify that all solid waste handling facilities are included.[29]

A technical change was made to clarify that it is unlawful for any person to engage in solid waste handling except in a manner that complies with both the law and all applicable rules, regulations, and orders established under the law.[30]

The Act significantly amends the Code provisions relating to penalties. Prior to the Act, a violation of the waste management provisions of the Code was a misdemeanor.[31] The new law provides that certain persons who knowingly violate the law will be subject to a fine of up to $50,000 each day, or imprisonment, or both.[32] A person who 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,"[33] "processes, stores, treats, transports, disposes of, or otherwise handles any solid waste . . . and . . . 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,"[34] or "transports [or causes to be transported] without a manifest any solid waste which is required to be accompanied by a manifest"[35] will be subject to a fine or imprisonment of between one and two years.[36] In the case of a person who knowingly transports solid waste to a facility without a permit or knowingly treats, processes, stores, or disposes of solid waste without a permit, the

26. O.C.G.A. § 12-8-26(b) (1992).
27. *Id.*
28. O.C.G.A. § 12-8-27(f) (1992); Dobbs Interview, *supra* note 2.
29. O.C.G.A. § 12-8-27.1(b) (1992).
30. *Id.* § 12-8-30.7 (1992).
31. 1990 Ga. Laws 1981 (formerly found at O.C.G.A. § 12-8-30.8 (Supp. 1991)).
32. O.C.G.A. § 12-8-30.8(a) (1992).
33. *Id.* § 12-8-30.8(a)(3) (1992).
34. *Id.* § 12-8-30.8(a)(4) (1992).
35. *Id.* § 12-8-30.8(a)(5) (1992).
36. *Id.* § 12-8-30.8(a) (1992).

Act authorizes imprisonment for three years and a fine.[37] For second or later offenses the maximum punishment is doubled.[38] Finally, an organization may be convicted for acts of its agent where the agent's action has been authorized, requested, commanded, or recklessly tolerated by the organization's board of directors or management.[39]

The law previously mandated that each city and county in Georgia develop or be included in a comprehensive solid waste management plan.[40] Because only three approvable plans had been submitted, the Act specifies that these plans must be completed by July 1, 1993.[41]

The Senate Committee on Natural Resources and the Environment amended the bill to authorize the Georgia Building Authority (GBA) to establish and coordinate a state wide recycling program for State agencies.[42] Any individual state agency is permitted to establish its own independent recycling program.[43] Under prior law, the General Assembly and each state agency located in a state owned building was required to establish a recycling program.[44] The GBA was authorized to coordinate these programs and establish procedures.[45] The GBA could also contract for recycling of yard waste from state office buildings.[46] The amended law gives the GBA authorization to establish procedures for collection and storage and to enter into contractual arrangements for the transportation and disposition of recovered materials as part of a new state wide recycling program for state agencies.[47]

The Act deletes the previous law's requirement that a cost reimbursement fee on each ton of municipal solid waste received at a municipal solid waste disposal facility be imposed equally on all users.[48] The new law requires that when a municipal solid waste disposal facility is operated by a private enterprise, the mandatory surcharge of one dollar per ton imposed by the host local government must be used to offset the impact of the facility, for public education efforts, for the cost of solid waste management, and for the

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37. *Id.*
38. *Id.*
39. *Id.* § 12-8-30.8(b) (1992).
40. 1990 Ga. Laws 1981 (formerly found at O.C.G.A. § 12-8-31.1 (1988 Supp. 1991)).
41. O.C.G.A. § 12-8-31.1 (1992); Dobbs Interview, *supra* note 2.
42. HB 1386 (SCS), 1992 Ga. Gen. Assem.; O.C.G.A. § 12-8-36 (1992).
43. O.C.G.A. § 12-8-36 (1992).
44. 1990 Ga. Laws 1981 (formerly found at O.C.G.A. § 12-8-36 (Supp. 1991)).
45. *Id.*
46. *Id.*
47. O.C.G.A. § 12-8-36(a)-(b) (1992).
48. *Id.* § 12-8-39(a) (1992). This amendment was added in the substitute offered by the Senate and passed as the final version of the Act. *See id.;* HB 1386 (SCS), 1992 Ga. Gen. Assem.

administration of the solid waste management plan.[49] Use of the surcharge funds for these purposes was not mandatory but only permissive under the former law.[50] The Act provides that if any funds remain, they may be used for other governmental expenses.[51]

The Act adds a section giving cities, counties, and other authorities enforcement powers for the collection of monies.[52] The Act includes an amendment to the provisions relating to appointment of members to the boards of directors of regional solid waste management authorities to provide flexibility and avoid unwieldy boards.[53] Finally, the Act amends prior law to require that the maximum annual rate of interest be specified in any public notice regarding revenue bonds to be issued by an authority.[54] The law previously required the minimum rate to be specified.[55]

Donna S. Shapiro

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49. O.C.G.A. § 12-8-39(d) (1992). This amendment was added in the substitute offered by the Senate and passed as the final version of the Act. HB 1386 (SCS), 1992 Ga. Gen. Assem.

50. 1990 Ga. Laws 1981 (formerly found at O.C.G.A. § 12-8-39(d) (Supp. 1991)).

51. O.C.G.A. § 12-8-39(d) (1992).

52. *Id.* § 12-8-39.3 (1992).

53. *Id.* § 12-8-54 (1992); Dobbs Interview, *supra* note 2. This amendment was added in the substitute offered by the Senate and passed as the final version of the Act. HB 1386 (SCS), 1992 Ga. Gen. Assem.; O.C.G.A § 12-8-54 (1992).

54. O.C.G.A. § 12-8-58(g)(3) (1992). This amendment was added in the substitute offered by the Senate and passed as the final version of the Act. HB 1386 (SCS), 1992 Ga. Gen. Assem.

55. 1990 Ga. Laws 412, 468 (formerly found at O.C.G.A. § 12-8-58(g)(3) (Supp. 1991)).