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CONSERVATION AND NATURAL RESOURCES Waste Management: Change Certain Hazardous Substance Reporting Fees; Limit Liability of Subsequent Purchasers of Certain Property; Exempt Certain Persons from Third-Party Liability; Provide Corrective Action Plan for Certain Property

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CONSERVATION AND NATURAL RESOURCES

Waste Management: Change Certain Hazardous Substance Reporting Fees; Limit Liability of Subsequent Purchasers of Certain Property; Exempt Certain Persons from Third-Party Liability; Provide Corrective Action Plan for Certain Property

CODE SECTIONS:	O.C.G.A. §§ 12-8-92, -95.1 (amended), -96.3, -200 to -207 (new)
BILL NUMBER:	HB 1227
ACT NUMBER:	921
GEORGIA LAWS:	1996 Ga. Laws 993
SUMMARY:	The Act alters the reporting fees and liability of owners of property that falls under Georgia's Hazardous Waste Management laws. The Act exempts certain persons from liability for clean-up costs and punitive damages by changing the definition of "a person who has contributed or who is contributing to a release." It changes the fee schedule to one based on the size of a reported release of hazardous substances. The Act exempts a "bona fide purchaser" from liability for third-party claims for contribution or damages and further allows certain buyers of particular property to exempt themselves from liability for clean-up costs and punitive damages.
EFFECTIVE DATE:	July 1, 1996

History

Congress passed the Comprehensive Environmental Response, Compensation and Liability Act[1] (CERCLA) in 1980 to address the release of hazardous waste.[2] Clean-up of hazardous waste for sites on the National Priorities List (NPL) is funded by the "Superfund," a trust fund consisting of federal money.[3] Because only thirteen of over 800 sites in Georgia are listed on the NPL, in 1992 Georgia created its own superfund legislation, known as the Georgia Hazardous Site Response

1. 42 U.S.C. §§ 9601-9675 (1994).
2. *See generally Legislative Review*, 9 GA. ST. U. L. REV. 190 (1992) (discussing the Georgia Hazardous Site Response Act and its relationship to CERCLA).
3. *Id.; see also* 42 U.S.C. § 9611 (1994).

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Act (GHSRA), to clean up sites not reached by the federal program.[4] The GHSRA charges fees for solid and hazardous waste disposal, and the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources (DNR) collects and deposits these fees into the fund.[5] Fund monies are used for the administration of the GHSRA, pollution prevention activities, investigation, detoxification, removal, and disposal activities.[6] Additionally, when money collected under the GHSRA does not cover clean-up costs, the GHSRA identifies entities who may be held liable for the costs of clean-up.[7]

Enforcement of the GHSRA caused concern for the agricultural community and small retail establishments.[8] There was concern about the law's broad application.[9] Under the GHSRA, businesses required to report releases under sections 312 and 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986[10] (Title III) were required to pay certain fees to the state based on the number of reported releases for a certain calendar year.[11] The fee schedule did not distinguish between different quanties of releases.[12] Furthermore, section 312 of Title III was merely an inventory of releases.[13] Gary Black of the Georgia Agribusiness Council stated that he and his colleagues believed "it was absurd to make anyone pay a fee simply because they had to report under section 312 to the federal government."[14] The practical effect of the state reporting fees was that small businesses were falling victim to the same fees that applied to big corporations, regardless of the quantity of their reported release.[15]

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4. 1992 Ga. Laws 2234, § 5, at 2271-92 (formerly found at O.C.G.A. §§ 12-8-90 to -97 (1992)).

5. *Id.* at 2278-80 (codified at O.C.G.A. § 12-8-95 (1996)).

6. *Id.* at 2278 (codifed at O.C.G.A. § 12-8-95(b)(1) (1996)).

7. *Id.* at 2284-87 (codified at O.C.G.A. § 12-8-96.1 (1996)). *See generally Legislative Review*, 9 GA. ST. U. L. REV. 190 (1992).

8. Telephone Interview with Rep. Denny Dobbs, House District No. 92 (June 5, 1996) [hereinafter Dobbs Interview].

9. Telephone Interview with Gary Black, President, Georgia Agribusiness Council (May 31, 1996) [hereinafter Black Interview]. Representative Bob Hanner, a sponsor of the bill, suggested the author speak with Mr. Black, who conducted research for the drafting of this bill. Telephone Interview with Rep. Bob Hanner, House District No. 159 (May 8, 1996) [hereinafter Hanner Interview].

10. 42 U.S.C. §§ 9601-75 (1994).

11. 1994 Ga. Laws 483, § 5, at 485-90 (formerly found at O.C.G.A. § 12-8-95.1 (Supp. 1995)).

12. *See id.*

13. Black Interview, *supra* note 9. *See generally* 42 U.S.C. §§ 9601-9675 (1994).

14. Black Interview, *supra* note 9.

15. *Id.* Gary Black, President of the Georgia Agribusiness Council noted, "It didn't matter if it was Mom & Pop's, XYZ Corporation, or Lockheed. You paid $500. . . if you filed a 312. And when [the Superfund] hits $20 million, they're going to spend it on the big guys. . . ." *Id.*

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Similar problems existed for recycling businesses.[16] Small recycling businesses usually collect recyclables and send them to another facility for reprocessing.[17] The reprocessing facilities generate and release hazardous wastes.[18] In administering the recycling process, and consequently releasing hazardous waste, some recyclers had contributed to a release and were subject to clean-up costs and punitive damages under the GHSRA.[19] The expense incurred for clean-up costs and damages began to effectively eliminate small recycling businesses.[20]

The GHSRA was leading to a potential economic crisis in Georgia.[21] Under the previous law, clean-up liability attached to the land.[22] As a result, affected property was left abandoned or unrepaired.[23] Those persons interested in buying and rehabilitating land were deterred by the clean-up liability that attached.[24] If someone had released hazardous wastes on the land before the purchase, the subsequent purchaser would be liable.[25] Additionally, even the purchaser who rehabilitated the land could be held civilly or criminally liable by the State.[26] Although Georgia had not experienced the same economic detriment as that experienced by states in the "rust-belt," legislators wanted to prevent a similar crisis.[27]

To address all of these related problems, HB 1227 and HB 1157 were introduced.[28] Eventually both bills were consolidated into HB 1227.[29]

HB 1227

Definitions

To address the issues raised by small recycling businesses, the Act amends Code section 12-8-92 to redefine a "person who has contributed or who is contributing to a release."[30] Any person who has contributed

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16. Hanner Interview, *supra* note 9.
17. Dobbs Interview, *supra* note 8.
18. *Id.*
19. *See* 1992 Ga. Laws 2234, § 5, at 2274-75 (formerly found at O.C.G.A. § 12-8-92 (1992)); *Id.* at 2284-87 (codified at O.C.G.A. § 12-8-96.1 (1996)).
20. Dobbs Interview, *supra* note 8.
21. *Id.*
22. *Id.; see* 1992 Ga. Laws 2234, § 5, at 2274-75 (formerly found at O.C.G.A. § 12-8-92 (1992)); *Id.* at 2284-87 (codified at O.C.G.A. § 12-8-96.1 (1996)).
23. Dobbs Interview, *supra* note 8.
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.; see* HB 1227, as introduced, 1996 Ga. Gen. Assem.; HB 1157, as introduced, 1996 Ga. Gen. Assem.
29. Dobbs Interview, *supra* note 8.
30. O.C.G.A. § 12-8-92(9) (1996). This provision of the Act is the result of a House

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or who is contributing to a release of hazardous waste is liable for clean-up costs and punitive damages under Code section 12-8-96.1.[31] The Act exempts from liability persons "who arranged for the recycling of recovered materials."[32] These recovered materials include: "scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber other than whole tires, scrap metal or spent lead-acid, nickel-acid, nickel-cadmium, and other batteries," provided that the materials do not consist of any residue from a pollution control device.[33] Those persons who arrange for recycling of the materials falling within this definition will not be liable for clean-up costs or punitive damages.[34]

Hazardous Waste Management Fees and Hazardous Substance Reporting Fees

Before the Act, the GHSRA designated reporting fees based on the year in which the report of a release was made.[35] Those persons required to report under sections 312 and 313 of Title III[36] paid a certain fee under subsections (4) and (5) of Code section 12-8-95.1(a).[37] As introduced, HB 1227 would have entirely exempted those persons from reporting fees.[38] However, the House Committee on Natural Resources and the Environment amended, rather than eliminated, the reporting fees, and this amendment was incorporated into the Act.[39] First, those persons required to report under section 312 of Title III are no longer required to pay fees under this subsection.[40] Second, those persons required to report under section 313 of Title III are required to pay fees according to a schedule based upon the size of the reported

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floor substitute offered by Representative Bob Hanner, House District No. 159, and Representative Denny Dobbs, House District No. 92. HB 1227 (HFS), 1996 Ga. Gen. Assem.

31. 1992 Ga. Laws 2234, § 5, at 2284-87 (codified at O.C.G.A. § 12-8-96.1 (1996)).

32. O.C.G.A. § 12-8-92(9)(C) (1996).

33. *Id.*

34. *Id.*

35. 1992 Ga. Laws 2234, § 5, at 2280-83 (formerly found at O.C.G.A. § 12-8-95.1 (1992)).

36. 42 U.S.C. §§ 9601-9675 (1994).

37. 1992 Ga. Laws 2234, § 5, at 2280-83 (formerly found at O.C.G.A. § 12-8-95.1(a)(4) (1992)).

38. HB 1227, as introduced, 1996 Ga. Gen. Assem.

39. O.C.G.A. § 12-8-95.1(a)(4) (1996); *see* HB 1227 (HCS), 1996 Ga. Gen. Assem.

40. *Compare* 1994 Ga. Laws 483, § 5, at 487 (formerly found at O.C.G.A. § 12-8-95.1(a)(4) (Supp. 1995)) *with* O.C.G.A. § 12-8-95.1(a)(4) (1996). According to Gary Black of the Georgia Agribusiness Council, "Just because the federal government requires it doesn't make it appropriate for the state." Black Interview, *supra* note 9.

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release.[41] This fee schedule offers some protection for small retail businesses and agricultural companies.[42]

Exemptions for Liability Against Third-Party Claims

In an effort to encourage potential buyers of property to purchase and rehabilitate contaminated land, the Act limits third-party liability.[43] Section 96 of chapter 8 deals with corrective action upon the release of hazardous wastes, hazardous constituents, or hazardous substances.[44] Previously under the GHSRA, a subsequent purchaser of affected property could be sued by a third party.[45] This law deterred many people from purchasing land and even prevented banks from foreclosing on land.[46] To address this problem, the Act adds Code section 12-8-96.3, which limits liability for certain buyers of property.[47] If a buyer meets the eligibility requirements of new Code section 12-8-96.3, he or she is exempt from third-party claims for contribution or third-party claims for damages arising from a release of the hazardous waste, hazardous substance, or hazardous constituent.[48] In order to qualify for this exemption, the purchaser is required to submit a plan detailing the actions he or she will take to bring the property into compliance standards.[49] These actions and the resulting clean-up must be completed within one year.[50] Some supporters of the Act, such as Representative Denny Dobbs, would like to see this immunity expanded so that a subsequent purchaser is never liable for the "sins" of the previous owner.[51] However, because many environmental groups consider the ability to sue to be their only weapon, legislators compromised by limiting the exemption to landowners who can complete the clean up within twelve months.[52]

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41. O.C.G.A. § 12-8-95.1(a)(4) (1996). The fees are as follows: $500 for releases less than 1000 pounds in a year, $1000 for releases between 1000 and 10,000 pounds in a year, and $1500 for releases of 10,000 pounds or more in a year. *Id.*
42. Black Interview, *supra* note 9.
43. *See* Dobbs Interview, *supra* note 8; O.C.G.A. § 12-8-96.3 (Supp. 1996).
44. 1992 Ga. Laws 2234, § 5, at 2287-88 (codified at O.C.G.A. § 12-8-96.2 (1996)).
45. *Id.*
46. Dobbs Interview, *supra* note 8.
47. O.C.G.A. § 12-8-96.3 (1996).
48. *Id.* § 12-8-96.3(c).
49. *Id.* § 12-8-96.3(b).
50. *Id.* In special circumstances, the completion period may be extended past the one-year limit. *Id.*
51. Dobbs Interview, *supra* note 8. Representative Dobbs noted, "Somewhere down the line, we have to separate the liability from the property. If someone agrees to clean up the land, they shouldn't automatically be held liable. It's a win-win situation—the purchaser is immune from liability and the state gets the land cleaned up." *Id.*
52. *Id.*

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Hazardous Site Reuse and Redevelopment

In the continued effort to encourage potential buyers to purchase and rehabilitate affected property, the Act adds a new article and new Code sections to chapter 8 of title 12.[53] The Act provides prospective purchasers a limitation from the criminal and civil liability that can be imposed by the State upon the owner of contaminated property pursuant to article III, part 2 of chapter 8.[54] Additionally, the Act empowers the Board of Natural Resources to establish certain rules and regulations necessary to implement and enforce the Act.[55]

Under article 9, certain criteria must be met in order for the land and the purchaser to qualify for limited liability.[56] For example, property must be in a state of disuse or abandoned by the owner.[57] Prospective purchasers must not have contributed to a release at the property and cannot be related in any way to the previous owner.[58] This limitation is intended to ensure that landowners responsible for a release at a subject property do not transfer that property simply to circumvent liability.[59]

Upon qualifying for the exemption, the prospective purchaser must submit a corrective action plan describing the purchaser's plan to bring the property into compliance.[60] The plan must be approved by the Director of the EPD and must be completed within the time specified in the plan in order for the immunity to attach.[61] Legislators hope that this limitation of liability will be another incentive for persons to buy and rehabilitate land that is now abandoned or unrepaired.[62]

Shannan L. Freeman

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53. *See* O.C.G.A. §§ 12-8-200 to -207 (1996). The new article and Code sections originated as a floor substitute and were incorporated into the Act without changes. *See id.*; HB 1227 (HFS), 1996 Ga. Gen. Assem.
54. O.C.G.A. §§ 12-8-200 to -207 (1996).
55. *Id.* §§ 12-8-202 to -203.
56. *Id.* §§ 12-8-204 to -205.
57. *Id.* § 12-8-204(A).
58. *Id.* § 12-8-205(a)(1), (2).
59. Dobbs Interview, *supra* note 8.
60. O.C.G.A. § 12-8-206 (1996).
61. *Id.* § 12-8-206(c)(3).
62. Dobbs Interview, *supra* note 8.

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