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BUILDINGS AND HOUSING

Landfills: Require Identification and Record Keeping

CODE SECTIONS:	O.C.G.A. §§ 8-6-1 to -4 (new), 44-5-48 (amended)
BILL NUMBER:	HB 435
ACT NUMBER:	1266
SUMMARY:	The Act requires that all property on which a landfill is or has been located be properly identified. It also requires the Environmental Protection Division of the Department of Natural Resources to maintain certain landfill records. The Act mandates that deeds conveying an interest in land previously used as a commercial landfill include proper notice and other pertinent information related to the operation of the landfill. The Act imposes liability on the seller of real property if he willfully violates the Code provisions. Further, the Act creates a civil remedy for a purchaser of such land if the purchaser suffers damage or loss as a result of the sale.
EFFECTIVE DATE:	July 1, 1988

History

Prior to 1980, most of Georgia's hazardous waste was dumped into solid waste landfills.¹ Later construction on these abandoned landfills may have caused the escape of hazardous gasses,² which became trapped inside newly constructed buildings.³ Many Georgians have unknowingly purchased homes built on abandoned landfill sites only later to learn of the problem of escaping gasses. For example, residents of Savannah Place, located on a former landfill site in Augusta, purchased such homes.⁴

1. Georgia Environmental Project, Fact Sheet Pertaining to Construction Activity on Landfills (undated flyer on file at *Georgia State University Law Review* office).

2. *Id.*

3. *Id.*

4. Governor's Savannah Place Task Force, Summary Report (1986) [hereinafter Summary Report]. Savannah Place was built on approximately 10½ acres of land for-

For many years, residents of Savannah Place experienced damage to their homes caused by land settling and methane gas seeping into their homes.⁵ In January 1986, Georgia Natural Gas Company and Georgia Power Company terminated utility services to Savannah Place.⁶ The utility companies justified terminating services on the basis of "explosive levels" of methane gas detected in the soil beneath homes in the subdivision.⁷ In response to this action by the utility companies, the Richmond County Board of Commissioners urged Governor Joe Frank Harris to declare the Savannah Place subdivision a disaster area to qualify it for state funds.⁸ Residents of Savannah Place also appealed to their state legislators for assistance.⁹

HB 435

The tragic story of Savannah Place prompted introduction of legislation to address problems associated with the construction of subdivisions on land which previously had been used as a landfill.¹⁰ Both houses introduced identical bills, HB 435 and SB 175, on the same day during the 1987 legislative session.¹¹ Identical bills were introduced in the hope that one would survive the legislative process.¹² On February 26, 1988, the House passed HB 435. The Senate sent HB 435 to the Governmental Operations Committee expecting it to remain in committee.¹³ Meanwhile, SB 175 was withdrawn from the Senate Committee on Governmental Operations and recommitted to the Senate Committee on Industry and Labor. The bill was never reported out of that committee.¹⁴

Both bills were strongly opposed by the Georgia Homebuilders Association, which insisted that abandoned landfills were ideal sites for building low income housing.¹⁵ The Department of Natural Resources (DNR) opposed SB 175, which would have limited the use of former landfills to

merly used as a landfill in Richmond County. The land was purchased by a private developer who built single-family homes for low-income families. *Id.*

5. Letter from Robert C. Daniel, Richmond County Attorney, to Senator Thomas F. Allgood, Senate District No. 22 (Jan. 22, 1986).

6. Summary Report, *supra* note 4.

7. *Id.*

8. Letter from the Richmond County Board of Commissioners to Governor Joe Frank Harris (Jan. 16, 1986).

9. Pavey, *From Dreams to Nightmares*, Augusta Chron. & Herald, Jan. 19, 1986, at E1, col. 1.

10. Interview with Terrence Shannon, aide to Senator Thomas Allgood, Senate District No. 22 (Apr. 6, 1988) [hereinafter Shannon Interview].

11. *Id.*

12. *Id.*; compare HB 435, as introduced, with SB 175, as introduced, 1987 Ga. Gen. Assem.

13. Shannon Interview, *supra* note 10.

14. Final Composite Status Sheet, Mar. 7, 1988.

15. Shannon Interview, *supra* note 10.

parking lots and industrial structures.¹⁶ The DNR favored converting abandoned landfills into recreational areas.¹⁷ Also, the DNR disapproved various terms and definitions contained in both bills as being too vague and confusing.¹⁸ Additionally, the Superior Court Clerks' Association of Georgia opposed both bills, complaining of the extensive record keeping and docketing requirements.¹⁹ The clerks also feared these record keeping provisions might subject them to personal liability.²⁰

The Act amends Title 8 of the Code by adding a new chapter 6.²¹ Code section 8-6-2 defines "construction activity," "landfill," and "solid waste."²² Code section 8-6-3 requires the DNR to keep records on present and future landfills including an accurate legal description of the land and the dates of the landfill's operation.²³ Code section 8-6-4 requires a permit for the construction of any enclosed structure on any landfill of record.²⁴ However, such a permit is not required for any construction by public service corporations or for the construction of roads, highways, or bridges.²⁵

The Act adds a new Code section that requires that all deeds conveying an interest in real property which has been used as a commercial landfill must include notice of the landfill operation and certain other information pertaining to the landfill.²⁶ This section applies only to parties who have knowledge of the landfill operations.²⁷ Finally, any seller of real property who willfully violates this Code section will be liable to the purchaser for treble damages for losses sustained as a result of the sale.²⁸

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16. Kirchner, *Environmental Group Seeks Support for Landfill Bill*, Augusta Chron. & Herald, Sept. 18, 1987, at B2, col. 1.

17. *Id.*

18. Letter from J. Leonard Ledbetter, Commissioner, Georgia Department of Natural Resources, to Representative Jack Connell, House District No. 87 (Feb. 10, 1987).

19. Letter from F. Barry Wilkes, Liberty County Superior Court Clerk, to Senator Culver Kidd, Senate District No. 25 (Jan. 24, 1988).

20. *Id.*

21. O.C.G.A. §§ 8-6-1 to -4 (Supp. 1988).

22. O.C.G.A. § 8-6-2 (Supp. 1988).

23. O.C.G.A. § 8-6-3 (Supp. 1988).

24. O.C.G.A. § 8-6-4 (Supp. 1988).

25. *Id.*

26. O.C.G.A. § 44-5-48(a) (Supp. 1988).

27. O.C.G.A. § 44-5-48(b) (Supp. 1988).

28. O.C.G.A. § 44-5-48(c) (Supp. 1988).