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CONSERVATION AND NATURAL RESOURCES; WASTE MANAGEMENT To Reauthorize the Hazardous Sites Remediation Act Fund and Raise Fees on Solid Waste Disposal; to Authorize the Department of Human Resources to Regulate Land Disposal Sites for Septic Waste; to Change the Criteria for Property Qualifying for a Limitation of Liability to Site Contamination; to Provide for Liability for Clean-up Actions Notwithstanding That the Identity of the Responsible Person is Unknown Prior to the Commencement of an Emergency Clean-up

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Action; to Limit the Liability of New Purchasers of Brownfields for the Remediation Subsurface Water

Laurel A. David

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CONSERVATION AND NATURAL RESOURCES; WASTE MANAGEMENT

To Reauthorize the Hazardous Sites Remediation Act Fund and Raise Fees on Solid Waste Disposal; to Authorize the Department of Human Resources to Regulate Land Disposal Sites for Septic Waste; to Change the Criteria for Property Qualifying for a Limitation of Liability to Site Contamination; to Provide for Liability for Clean-up Actions Notwithstanding That the Identity of the Responsible Person is Unknown Prior to the Commencement of an Emergency Clean-up Action; to Limit the Liability of New Purchasers of Brownfields for the Remediation Subsurface Water.

CODE SECTIONS:	O.C.G.A. §§ 12-8-39, -41, -91, -95, -95.1, -96.1, -200 to -209 (amended), 31-2-8 (amended)
BILL NUMBER:	HB 1406
ACT NUMBER:	853
GEORGIA LAWS:	2002 Ga. Laws 927
SUMMARY:	The Act amends the Hazardous Sites Remediation Act Fund and raises the fees for waste disposal from 50 cents per ton to 65 cents per ton in 2003 and again to 75 cents per ton in 2008 until 2013. The Act authorizes the Department of Human Resources to regulate land disposal sites for septic waste. The Act permits federal agencies such as the Department of Defense to pay solid waste and hazardous substance reporting fees. Additionally, the Act includes a provision returning fifty percent of the solid waste handling fees to local governments to be used for the clean-up of landfill sites. The Act increases the hazardous substance reporting fees. The Act provides for liability for clean-up actions even if the identity of the responsible person is unknown prior to

the commencement of an emergency clean-up action. The Act limits the liability of new purchasers of brownfields for the remediation of subsurface water. Finally, the Act establishes a \$3000 (three thousand) application fee for individuals seeking to redevelop a site.

EFFECTIVE DATE:

July 1, 2002, except for §4, which shall become effective July 1, 2003.

History

The Environmental Protection Division (EPD), which administers the Hazardous Waste Trust Fund,¹ issued a report in January 2001 stating that it had cleaned up 113 sites previously identified as a threat to human health because of hazardous waste contamination at a total cost of \$73.6 million.² Clean-up or investigation was underway for 422 of the remaining 532 sites.³ The EPD estimated that finishing the clean-up at these 532 sites would cost the Trust Fund an additional \$171 million.⁴ This estimate would increase to \$269 million as 274 older city and county landfills began to leak and contaminate groundwater.⁵ As a result, the Trust Fund had an estimated shortfall of almost \$244 million.⁶

State lawmakers created the Trust Fund in 1979 as part of a larger waste-management initiative, but for more than a decade civil penalties for spills and illegal dumping provided the only funding source.⁷ Former Governor Zell Miller pushed to expand the program in 1992, after residents of Basket Creek Road in Douglas County

1. *Id.* Audio Recording of House Proceedings, Mar. 8, 2002 (remarks by Rep. Tom E. Shanahan), at <http://www.ganet.org/services/leg/audio/2002archive.html>; This fund is commonly referred to as Georgia's Superfund.

2. ENVIRONMENTAL PROTECTION DIVISION, GEORGIA DEPARTMENT OF NATURAL RESOURCES, HAZARDOUS SITES RESPONSE PROGRAM, CLEANING UP GEORGIA'S HAZARDOUS SITES, Jan. 2001, available at <http://www.ganet.org/dnr/enviro> [hereinafter EPD Report]. The EPD originally identified a total of 645 sites as hazardous to human health. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* at 4; Will Pinkston, *Waste-Site Clean-up Fund Falls Short of Ga.'s Needs*, WALL ST. J., Mar. 29, 2000, at S1 [hereinafter Pinkston].

6. EPD Report, *supra* note 2, at 4.

7. Pinkston, *supra* note 6, at S1.

discovered that they had purchased or built homes close to illegal hazardous waste dumps.⁸ The EPD collects fees from industries and government agencies that generate, manage, or dispose of hazardous waste, hazardous substances and solid wastes, along with fines collected from violators of state environmental laws. These sources finance the Hazardous Waste Trust Fund.⁹

However, hazardous waste and solid-waste disposal fees were due to expire in 2003.¹⁰ The EPD then suggested the creation of a legislative study committee to make recommendations for extending and increasing the fees in order to finance the Hazardous Waste Trust Fund through July 1, 2013.¹¹ HB 1406 resulted from the legislative study committee.¹²

In addition, the legislative study committee made a “policy decision” not to require a prospective purchaser of a contaminated site to certify compliance with risk reduction standards for groundwater.¹³ Sponsors of the bill hoped to reduce the cost of cleaning contaminated sites and encourage their redevelopment by requiring prospective purchasers to submit corrective action plans only for soil contamination.¹⁴

Further, the Army’s Regional Environmental Attorney for the Southeast requested that the legislative study committee correct an anomaly in the Hazardous Site Response Act.¹⁵ Federal agencies are subject to hazardous waste management and hazardous substance reporting fees.¹⁶ However, if a state government charges a federal agency fees which are not based on fair approximation of use or if that fee system produces revenues that exceed the total cost to the state government of benefits to be supplied, then the fee amounts to a

8. Don Melvin, *Douglas Toxic Dump No Threat, Report Says, But Findings Disputed*, May 4, 1995, ATLANTA J. CONST., at D5; Don Melvin, *EPA Waste Site Report Spurs Residents' Anger*, ATLANTA J. CONST., May 4, 1995, at D2.

9. EPD Report, *supra* note 2, at 5.

10. Audio Recording of House Proceedings, Mar. 8, 2002. (remarks by Rep. Tom E. Shanahan), at <http://www.ganet.org/services/leg/audio/2002archive.html>.

11. EPD Report, *supra* note 2, at 4.

12. Audio Recording of House Proceedings, Mar. 8, 2002 *supra* note 1 (remarks by Rep. Tom E. Shanahan), at <http://www.ganet.org/services/leg/audio/2002archive.html>.

13. Telephone Interview with Rep. Tom Shanahan, House District No. 10 (June 26, 2002) [hereinafter Shanahan Interview].

14. *Id.*

15. *Id.*; Telephone Interview with David Buxbaum, Regional Environmental Attorney for the Army, Southeast Region, (July 31, 2002)[hereinafter Buxbaum Interview].

16. 42 U.S.C. § 6992e(a)(1998).

tax and is illegal.¹⁷ The Army argued that Georgia's fees amounted to a tax because the Hazardous Waste Trust Fund could not be used to clean-up federally owned land.¹⁸ As a result, the statute was amended to include the funding of reviewing and overseeing investigations and corrective actions and pollution prevention activities by federal agencies.¹⁹

HB 1406

Representatives Tom Shanahan, Bob Hanner, Jim Stokes, Tom McCall, Bill Jackson, and Karla Drenner, of the 10th, 159th, 92nd, 90th, 112th, and 66th Districts respectively, introduced the bill on February 14, 2002.²⁰ The House referred HB 1406 to the House Committee on Natural Resources and Environment, which favorably reported the bill with a committee substitute.²¹ That bill passed the House on March 8, 2002 by a vote of 153 to 8.²² On March 18, 2002, the Senate read and referred the bill to its Natural Resources Committee.²³ The Committee amended the bill by adding the language from HB 1030 which had passed the House on February 1, 2002.²⁴ The Senate unanimously adopted HB 1406 as amended on April 10, 2002.²⁵ The House agreed to the Senate amendment on April 12, 2002.²⁶ The General Assembly forwarded the bill to Governor Roy Barnes, who signed it into law on May 14, 2002.²⁷

Consideration by the House Committee on Natural Resources and Environment

After introduction, the House assigned HB 1406 to its Committee on Natural Resources and Environment.²⁸ The Committee favorably

17. *Massachusetts v. U.S.*, 98 S.Ct. 1153, 1167 (1978).

18. Buxbaum interview, *supra* note 16.

19. *Id.* See O.C.G.A. § 12-8-95 (Supp. 2002).

20. State of Georgia Final Composite Status Sheet, HB 1439, Apr. 12, 2002.

21. *Id.*

22. *Id.*; Georgia House of Representatives Voting Record, HB 1439, (Mar. 8, 2002).

23. State of Georgia Final Composite Status Sheet, HB 1439, Apr. 12, 2002.

24. *Id.*

25. *Id.* Georgia Senate Voting Record, HB 1439, (Apr. 10, 2002).

26. State of Georgia Final Composite Status Sheet, HB 1439, Apr. 12, 2002.

27. *Id.*

28. *Id.*

reported the bill as substituted, on February 20, 2002.²⁹ The Committee substitute added language in Code section 12-8-209 to provide that within 30 days after a purchaser or developer applies for a limitation of liability, the EPD will estimate the cost to review the application and deliver a report to the applicant.³⁰ The substitute also corrected three Code section numbers to coincide with the new Code section numbers.³¹ The House passed the substituted bill without change on March 8, 2002.³²

Consideration by the Senate Natural Resources Committee

The bill was referred to the Senate Natural Resources Committee on March 18, 2002.³³ The Senate Natural Resources Committee amended the bill by adding Code section 12-8-41 which provides for the “regulation and permitting” of land disposal sites that receive septic tank waste from more than one septic tank pumping and haulage business.³⁴ Rep. Alan Powell, of the 23rd District, originally introduced this Code section in HB 1030, it passed on February 1, 2002.³⁵ HB 1030 was incorporated verbatim into a Section 1A and 6A of HB 1436 in order to expedite the adoption of the two bills by the Assembly.³⁶ The Senate Committee favorably reported the bill on April 1, 2002.³⁷ The Senate adopted the Committee’s version of the bill and passed HB 1406 on April 10, 2002.³⁸ The House agreed to the Senate version of the bill on April 12, 2002.³⁹

29. *Id.*

30. *Compare* HB 1436, as introduced, 2002 Ga. Gen. Assem., *with* HB 1436 (HCS), 2002 Ga. Gen. Assem.

31. *Id.*

32. Georgia Senate Voting Record, HB 1436 (Mar. 8, 2002); State of Georgia Final Composite Status Sheet, HB 1436, April 12, 2002.

33. State of Georgia Final Composite Status Sheet, HB 1439, Apr. 12, 2002.

34. *Compare* HB 1436 (HCS), 2002 Ga. Gen. Assem., *with* HB 1436 (SCS), 2002 Ga. Gen. Assem.

35. Audio Recording of House Proceedings, Mar. 8 2002 (remarks by Rep. Tom E. Shanahan) *at*; <http://www.ganet.org/services/leg/audio/2002archive/html>. State of Georgia Final Composite Status Sheet, HB 1436, Apr. 12, 2002.

36. *Compare* HB 1436 (HCS), 2002 Ga. Gen. Assem., *with* HB 1436 (SCS), 2002 Ga. Gen. Assem.; Shanahan Interview, *supra* note 14.

37. State of Georgia Final Composite Status Sheet, HB 1436, Apr. 12, 2002.

38. Georgia Senate Voting Record, HB 1406, (Apr. 10, 2002).

39. State of Georgia Final Composite Status Sheet, HB 1436, Apr. 12, 2002; Georgia House of Representatives Voting Record, HB 1406, (Apr. 12, 2002).

The Act

The Act amends Title 12 of the Code by striking subsection (e) and (g) of Code section 12-8-39, relating to cost reimbursement fees and surcharges and inserting new subsections.⁴⁰ The amended subsection (e) raises the surcharge for solid waste disposed at solid waste disposal facilities from fifty-cents per ton to sixty-five cents per ton from July 1, 2003 through June 2008.⁴¹ Thereafter, the surcharge shall be seventy-five cents per ton.⁴² The subsection also allows solid waste disposal facilities to withhold two percent of these surcharges to offset the costs associated with collecting them.⁴³ Subsection (g) changes the expiration date of this fee structure from July 1, 2003 to July 1, 2013.⁴⁴

The Act amends Chapter 8 of Title 12 by adding a new Code section 12-8-41.⁴⁵ This section authorizes the Department of Natural Resources (DNR) to regulate and permit land disposal sites that receive septic tank waste from more than one septic tank pumping and hauling business.⁴⁶ It also provides that no permit shall be issued except on the written approval of the county in which the site is wholly or partially located.⁴⁷ Sites created after January 1, 2002 shall not receive septic tank waste on or after July 1, 2002 unless a permit has been issued.⁴⁸

Section 6A of the Act inserts a new Code section, 31-2-8, that require the Department of Human Resources to regulate and permit land disposal sites that receive septic tank waste from only one septic tank pumping or haulage business.⁴⁹

The Act also replaces subsection (b) of Code section 12-8-91 with a new subsection (b) which states that the EPD may use fees from hazardous waste management activities and hazardous substance

40. Compare 1992 Ga. Laws 2234, § 4, at 2237 (formerly found at O.C.G.A. § 12-8-39(e), (g) (2001)), with O.C.G.A. § 12-8-39 (Supp. 2002).

41. O.C.G.A. § 12-8-39(e) (Supp. 2002).

42. *Id.*

43. *Id.*

44. *Id.* § 12-8-39(g).

45. O.C.G.A. § 12-8-41 (Supp. 2002).

46. *Id.*

47. *Id.*

48. *Id.*

49. O.C.G.A. § 31-2-8 (Supp. 2002).

reporting collected by operators of solid waste disposal facilities to review and oversee investigations or corrective actions by federal agencies and to support the reduction of hazardous waste and pollution prevention activities by federal agencies.⁵⁰ The Act also replaces subparagraph (3) of section 12-8-95 with a new subsection authorizing the EPD to use funds from the Hazardous Waste Trust Fund for the same purpose.⁵¹ The Act replaces subparagraph (4) with a new paragraph requiring the director of the DNR to appropriate annually, beginning July 1, 2003, at least one-half of the surcharges collected for solid waste disposed at solid waste disposal facilities.⁵² DNR shall use the funds to finance state and local costs of remediation and post closure maintenance of sites placed on either the federal or state hazardous site inventory lists.⁵³

The Act replaces Code section 12-8-95.1 in its entirety in order to increase the hazardous substance reporting fees.⁵⁴ The Act raises fees by fifteen percent for the disposal, treatment, or storage of hazardous waste by generators of large quantities of such waste.⁵⁵ The Act also raises fees for hazardous waste treated, stored, or disposed of on-site by fifteen percent.⁵⁶ It also amends the section by abolishing the reporting fee for hazardous waste reused or recycled on site.⁵⁷ The Act also adds a new subsection (j) that requires federal agencies to pay hazardous waste management fees beginning July 1, 2003.⁵⁸

The Act amends Code section 12-8-96.1 by replacing subsection (a) with a new section.⁵⁹ This new subsection holds persons who

50. Compare 1992 Ga. Laws 2234, § 5, at 2271-72 (formerly found at O.C.G.A. § 12-8-91(b) (2001)) with O.C.G.A. § 12-8-91 (Supp. 2002).

51. Compare 1992 Ga. Laws 2234, § 5, at 2278 (formerly found at O.C.G.A. § 12-8-95(b)(3) (2001)) with O.C.G.A. § 12-8-95 (Supp. 2002).

52. Compare 1992 Ga. Laws 2234, § 5, at 2278 (formerly found at O.C.G.A. § 12-8-95(b)(4) (2001)) with O.C.G.A. § 12-8-95(4) (Supp. 2002).

53. Compare 1992 Ga. Laws 2234, § 5, at 2278 (formerly found at O.C.G.A. § 12-8-95(b)(4) (2001)) with O.C.G.A. § 12-8-95 (Supp. 2002).

54. Compare 1996 Ga. Laws 993, § 2, at 994-97 (formerly found at O.C.G.A. § 12-8-95.1(a) (2001)) and 1994 Ga. Laws 483, § 5, at 485-90 (formerly found at O.C.G.A. § 12-8-95.1(b)-(h) (2001)) with O.C.G.A. § 12-8-95.1 (Supp. 2002).

55. *Id.*

56. *Id.*

57. O.C.G.A. § 12-8-95.1 (Supp. 2002).

58. Compare 1996 Ga. Laws 992, § 2, at 994-97 (formerly found at O.C.G.A. § 12-8-95.1 (2001)) with O.C.G.A. § 12-8-95.1 (Supp. 2002).

59. Compare 1993 Ga. Laws 500, § 7, at 505-06 (formerly found at O.C.G.A. § 12-8-96.1 (2001)) with O.C.G.A. § 12-8-96.1 (Supp. 2002).

contributed to the release of a hazardous substance liable for clean-up costs and punitive damages even if DNR orders an emergency clean-up before identifying the responsible party.⁶⁰ The Act also provides that the director of DNR may order an emergency clean-up without identifying the responsible party if any delay could endanger human health and the environment.⁶¹

Section 6 of the Act amends the Georgia Hazardous Site Reuse and Redevelopment Act, Code sections 12-8-200 to -207, by removing references to sites on the hazardous site inventory list in order to broaden the application of the Act to include all sites with a pre-existing release.⁶² The Act adds Code section 12-8-201 which provides that it is the public policy of Georgia to encourage the reuse and redevelopment of properties where there has been a release of hazardous waste.⁶³ New Code section 12-8-201 further states that the General Assembly intends to fund the execution of this policy through application review fees.⁶⁴ The Act amends Code section 12-8-203 by giving the director of DNR the power to collect those fees.⁶⁵ The Act also adds Code section 12-8-209 which requires a \$3000 non-refundable application review fee and gives the director of the DNR authority to invoice applicants for additional costs in reviewing their application.⁶⁶

The Act further amends Code section 12-8-205 by adding the requirement that the prospective purchaser not contribute to a release of hazardous waste at the subject property to qualify for a limitation of liability.⁶⁷ The Act also amends Code section 12-8-206 by adding that once the DNR has approved a prospective purchaser's corrective action plan, the prospective purchaser will not be required to certify compliance with risk reduction standards for groundwater, perform corrective action, or otherwise be liable for any pre-existing releases

60. O.C.G.A. § 12-8-96.1 (Supp. 2002).

61. *Compare* Ga. Laws 1993, § 7, at 505 (formerly found at O.C.G.A. § 12-8-96.1 (2001)) with O.C.G.A. § 12-8-96.1 (Supp. 2002).

62. *Compare* 1998 Ga. Laws 1667, § 2, at 1669-75 (formerly found at O.C.G.A. § 12-8-201 to -207 (2001)) with O.C.G.A. § 12-8-200 to -207 (Supp. 2002).

63. O.C.G.A. § 12-8-201 (Supp. 2002).

64. *Id.*

65. *Compare* 1998 Ga. Laws 1667, § 2, at 1669-70 (formerly found at O.C.G.A. § 12-8-203 (2001)) with O.C.G.A. § 12-8-203 (Supp. 2002).

66. O.C.G.A. § 12-8-209 (Supp. 2002).

67. *Compare* 1998 Ga. Laws 1667, § 2, at 1669-75 (formerly found at O.C.G.A. § 12-8-205 (2001)) with O.C.G.A. § 12-8-205 (Supp. 2002).

into groundwater.⁶⁸ The Act further amends Code section 12-8-206 by limiting the application of compliance and risk reduction standards to any source material or soil found on qualifying properties as opposed to requiring the entire qualifying property to meet those standards.⁶⁹ Finally the Act amends Code section 12-8-202 by adding the definition of “groundwater” and “soil.”⁷⁰ It also amends the definition of “source material” to any hazardous waste or substance.⁷¹

Laurel A. David

68. Compare 1998 Ga. Laws 1667, § 2, at 1672-74 (formerly found at O.C.G.A. § 12-8-206 (2001)) with O.C.G.A. § 12-8-206 (Supp. 2002).

69. *Id.*

70. Compare 1998 Ga. Laws 1667, § 2, at 1669 (formerly found at O.C.G.A. § 12-8-202 (2001)) with O.C.G.A. § 12-8-202 (Supp. 2002).

71. *Id.*