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CONSERVATION AND NATURAL RESOURCES

Water Resources: Revise Restrictions on Phosphorus Detergents

CODE SECTION: O.C.G.A. § 12-5-27.1 (amended)
BILL NUMBER: SB 696
ACT NUMBER: 1273
SUMMARY: The Act revises the provisions relating to low phosphorus household laundry detergents; prohibits, under certain conditions, the retail sale or use of cleaning agents containing phosphorus; and makes compliance with the phosphorus reduction program mandatory.
EFFECTIVE DATE: July 1, 1990

History

During the 1989 Legislative Session, a bill was introduced in the House which would have mandated the sale of low phosphorus household laundry detergents.¹ Although the bill passed the House, soap manufacturers lobbied heavily against its passage once it reached the Senate.² As a result, the bill was modified from a mandatory, statewide phosphorus reduction program to a voluntary program which could be instituted by local governments.³ This watered-down version of the bill was subsequently passed by both the House and the Senate.⁴

To regulate the amount of phosphorus in wastewater discharged into the lakes and waterways of the state, the 1989 law allowed each local governmental entity to regulate the retail sale of phosphorus laundry detergents.⁵ Local compliance with the law was mandatory only if the

1. Telephone interview with Senator A. Quillian Baldwin, Jr., Senate District No. 29 (Mar. 20, 1990) [hereinafter Baldwin Interview].

2. *Id.*

3. *Id.*; telephone interview with Allen Henderson, Executive Director, Georgians for Clean Water, A Nonprofit Organization (Apr. 13, 1990) [hereinafter Henderson Interview].

4. 1989 Ga. Laws 319 (formerly found at O.C.G.A. § 12-5-27.1 (Supp. 1989)). A discussion of this bill, HB 719, is contained in Legislative Review, *Georgia Water Quality Control Act: Authorize Mandated Sale of Low Phosphorus Detergents*, 6 GA. ST.U.L. REV. 160 (1989).

5. 1989 Ga. Laws 319 (formerly found at O.C.G.A. § 12-5-27.1 (Supp. 1989)).

Environmental Protection Division of the Department of Natural Resources detected an existing problem with phosphorus levels.⁶

The amount of phosphorus in the State's waterways and lakes continued to be a serious problem.⁷ While phosphorus, a nutrient, is beneficial to lakes and fish when present in limited quantities,⁸ excessive phosphorus discharged through the sewage system into rivers and lakes causes an overgrowth of algae, which fouls the drinking water and depletes the water of oxygen, thereby killing the fish.⁹

There is such an abundance of phosphorus at the bottom of West Point Lake, a 26,000 acre lake near LaGrange, that some fear a large storm could cause the phosphorus to mix with the algae, leading to disastrous results.¹⁰ The resulting algae overgrowth could deplete the lake of oxygen, cause the fish to die, and ruin the local bass fishing industry.¹¹ Without stricter water quality controls, the potential disaster at West Point Lake could also occur at virtually every lake in the State.¹²

Some experts believe that a reduction in the amount of phosphorus in household laundry detergents and commercial and household dishwashing agents will significantly reduce the amount of algae overgrowth, and thus allow more oxygen for fish life.¹³ If such a "ban on phosphates" results in improved water quality, the State could potentially save millions of dollars, since sewage treatment plants needing to reduce the amount of phosphorus in their effluent would require a smaller quantity of chemicals to treat the effluent.¹⁴ It was for these reasons that SB 696 was introduced.¹⁵

SB 696

The Act amends Code section 12-5-27.1 by making restrictions on the retail sale of phosphorus household laundry detergents a statewide mandate instead of a discretionary act by local governments.¹⁶ The

6. *Id.*; Henderson Interview, *supra* note 3. Since compliance with the 1989 law was mandatory only after an existing problem with phosphorus levels was detected, it did little to prevent such problems. *Id.*

7. Seabrook, *Water Bills Pit City, Neighbors Downriver*, Atlanta J. & Const., Feb. 10, 1990, at D6, col. 3 [hereinafter Seabrook].

8. Baldwin Interview, *supra* note 1.

9. Seabrook, *supra* note 7.

10. Telephone interview with Senator A. Quillian Baldwin, Jr., Senate District No. 29 (Oct. 5, 1990).

11. *Id.*

12. Baldwin Interview, *supra* note 1.

13. *Id.*

14. Henderson Interview, *supra* note 3.

15. *Id.*

16. O.C.G.A. § 12-5-27.1 (Supp. 1990).

purpose of the Act is to set standards which limit the amount of nutrients contained in various household cleaning agents.¹⁷ The Act defines "nutrient" as a substance which, in sufficient quantity, promotes the overgrowth of aquatic vegetation.¹⁸ Excess vegetation interferes with the use of water by humans, animals, fish, and plant life. The Act also defines nutrients as a substance which diminishes the quality of the water to a harmful degree.¹⁹ "Cleaning agent" is defined as a "laundry detergent, dishwashing compound, household cleaner, metal cleaner or polish, industrial cleaner, or other substance that is used or intended for use for cleaning purposes."²⁰

The General Assembly was aware that, although nutrients increase the overall effectiveness of cleaning agents, they also overstimulate plant growth and kill fish by depriving them of oxygen.²¹ To protect water-related businesses and to enhance the quality of human, animal, fish, and plant life, the Act sets standards to control nutrient levels in the State's water resources.²²

In setting standards, the General Assembly considered the availability of nonpolluting substitutes and the varying needs of household, commercial, and industrial users of cleaning agents.²³ The Act is intended to effect a ban on phosphorus mainly in household agents, as some experts believe that such a reduction will adequately alleviate the growth overstimulation problem.²⁴ Therefore, Code section 12-5-27.1 does not apply to the cleaning agents used in almost all commercial and industrial settings.²⁵ For example, the Act does not cover cleaning agents used in agricultural and dairy production, in health care and veterinary facilities, and in medical and engineering laboratories.²⁶ Nor does the Act apply to cleaning agents used in industrial processes for metal cleaning, or in commercial laundries, or any other commercial entity.²⁷ Agents used to clean hard surfaces such as windows and floors are also excluded,²⁸ as are natural and commercial fertilizers.²⁹ The Act specifically does not apply to cleaning agents which are "manufactured,

17. O.C.G.A. § 12-5-27.1(a) (Supp. 1990).

18. O.C.G.A. § 12-5-27.1(b)(2) (Supp. 1990).

19. O.C.G.A. § 12-5-27.1(b)(2)(B) (Supp. 1990).

20. O.C.G.A. § 12-5-27.1(b)(1) (Supp. 1990).

21. O.C.G.A. § 12-5-27.1(a) (Supp. 1990). The General Assembly recognized that reduction of fish life would subsequently result in undesirable personal and business environments for the citizens of the State. *Id.*

22. *Id.*

23. O.C.G.A. § 12-5-27.1(a)(1)-(2) (Supp. 1990).

24. Baldwin Interview, *supra* note 1.

25. O.C.G.A. § 12-5-27.1(d) (Supp. 1990).

26. O.C.G.A. § 12-5-27.1(d)(1), (5), (8) (Supp. 1990).

27. O.C.G.A. § 12-5-27.1(d)(4), (6) (Supp. 1990).

28. O.C.G.A. § 12-5-27.1(d)(10), (Supp. 1990).

29. O.C.G.A. § 12-5-27.1(f) (Supp. 1990).

stored, sold, or distributed for uses other than household laundry detergents or household or commercial dishwashing agents.”³⁰

The Act establishes acceptable phosphorus limits in cleaning agents: 0.5 percent by weight, if the phosphorus is incidental to manufacturing, or 8.7 percent by weight if the cleaning agent is intended for use in a commercial or household dishwashing machine.³¹ These limits are a revision to the former Code section, which previously placed a limit of only 0.5 percent phosphorus by weight on household laundry detergents.³²

SB 696, as introduced, prohibited the manufacture, storage, sale, use, or distribution for sale or use of certain cleaning agents containing phosphorus.³³ The House Committee on Game, Fish and Parks amended SB 696 to prohibit only the “sale at retail or use in this state” of the specified cleaning agents.³⁴ The Committee made this amendment in recognition of the fact that manufacturers might manufacture, store, and sell phosphorus cleaning agents in Georgia for use in other states.³⁵ The Act is intended to apply only to the sale and use of phosphorus cleaning agents in Georgia.³⁶ The prohibition takes effect on January 1, 1991.³⁷ Any person who violates the prohibition is guilty of a misdemeanor.³⁸ Local governmental entities are responsible for enforcing the provisions of the Act.³⁹

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30. O.C.G.A. § 12-5-27.1(e)(1) (Supp. 1990).

31. O.C.G.A. § 12-5-27.1(e)(2)–(3) (Supp. 1990).

32. 1989 Ga. Laws 319 (formerly found at O.C.G.A. § 12-5-27.1 (Supp. 1989)).

33. SB 696, as introduced, 1990 Ga. Gen. Assem.

34. O.C.G.A. § 12-5-27.1(c) (Supp. 1990).

35. Baldwin Interview, *supra* note 1.

36. *Id.*

37. O.C.G.A. § 12-5-27.1(c) (Supp. 1990). Delaying the effective date of the prohibition gives manufacturers sufficient time to comply with the provisions of the Act. Baldwin Interview, *supra* note 1.

38. O.C.G.A. § 12-5-27.1(h) (Supp. 1990).

39. O.C.G.A. § 12-5-27.1(g) (Supp. 1990).