

10-1-1992

## CONSERVATION AND NATURAL RESOURCES Prevention and Control of Air Pollution: Establish a New Georgia Air Quality Act

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### Recommended Citation

Lewis Perling, *CONSERVATION AND NATURAL RESOURCES Prevention and Control of Air Pollution: Establish a New Georgia Air Quality Act*, 9 GA. ST. U. L. REV. (1992).

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## CONSERVATION AND NATURAL RESOURCES

### *Prevention and Control of Air Pollution: Establish a New Georgia Air Quality Act*

CODE SECTIONS: O.C.G.A. §§ 12-9-1 to -24 (amended), 12-9-25 .  
(new)  
BILL NUMBER: HB 1439  
ACT NUMBER: 1389  
SUMMARY: The Act strikes the Georgia Air Quality Act of 1978 in its entirety and replaces it with the new Georgia Air Quality Act, which substantially revises a number of provisions and adds one new section. The Act includes: new provisions regarding the powers and duties of both the Board of Natural Resources and the Director of the Environmental Protection Division; new provisions for hearings; new provisions for applications and procedures applicable to permits; new penalties for non-compliance; and the implementation of a small business stationary source technical and environmental compliance program.  
EFFECTIVE DATE: July 1, 1992

### *History*

In 1970, the United States Congress enacted the Clean Air Act with the stated purpose of "protect[ing] and enhanc[ing] the quality of the Nation's air resources."<sup>1</sup> As comprehensive legislation, the Clean Air Act requires that states design their own "implementation plan" in order to meet national ambient air standards.<sup>2</sup> Under this requirement, the General Assembly enacted the Georgia Air Quality Act of 1978.<sup>3</sup>

In passing the 1990 amendments to the Clean Air Act, however, Congress amended large portions of the Act. Included were provisions that introduced a new permit program,<sup>4</sup> introduced efforts to control acid rain,<sup>5</sup> and strengthened enforcement proceedings and civil

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1. 42 U.S.C. § 7401b(1) (1988).
  2. 42 U.S.C. § 7410 (1988).
  3. 1978 Ga. Laws 275 (formerly found at O.C.G.A. § 12-9-1 (1988)).
  4. 42 U.S.C. § 7661 (Supp. II 1992).
  5. *Id.* § 7651 (Supp. II 1992).

penalties.<sup>6</sup> It was thus necessary for the General Assembly to amend the Georgia Air Quality Act of 1978 in order to comply with the new federal act.<sup>7</sup>

### *HB 1439*

The Act amends the Georgia Air Quality Act of 1978<sup>8</sup> by striking chapter 9 of title 12 in its entirety and inserting in lieu thereof a new chapter 9.<sup>9</sup> The Act revises numerous sections, deletes others, and introduces one new section. The most notable changes in the law are in the powers and duties of the Board of Natural Resources,<sup>10</sup> the powers and duties of the Director of the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources (DNR),<sup>11</sup> new provisions for Title V permits,<sup>12</sup> the creation of a right to a review hearing of executive decisions,<sup>13</sup> new penalties for violators,<sup>14</sup> and the implementation of a small business stationary source technical and environmental compliance program.<sup>15</sup> Most of the other sections of the old Chapter 9 remained substantially the same or were deleted.<sup>16</sup>

6. *Id.* § 7413 (Supp. II 1992).

7. Telephone Interview with Rep. Robert L. Patten, House District No. 149 (Apr. 3, 1992). Rep. Patten is the Chairman of the House Natural Resources Committee and co-sponsored HB 1439. Rep. Patten introduced this bill at the request of the Environmental Protection Division (EPD) of the Department of Natural Resources (DNR) of the State of Georgia. The language of the bill was provided in large part by Bob Collom, Chief of the Air Protection Branch of the EPD and Kevin Wangerin, Assistant Attorney General of the Environmental Section. Rep. Patten deferred to Mr. Collom's expertise on most matters concerning this bill. *Id.*

8. 1991 Ga. Laws 1735 (formerly found at O.C.G.A. §§ 12-9-9, -24 (Supp 1991)); 1982 Ga. Laws 3 (formerly found at O.C.G.A. §§ 12-9-5 to -6, -10, -23 (1988)); 1978 Ga. Laws 275 (formerly found at O.C.G.A. §§ 12-9-1 to -24 (1988 & Supp. 1991)).

9. O.C.G.A. §§ 12-9-1 to -25 (1992).

10. *Id.* § 12-9-5 (1992).

11. *Id.* § 12-9-6 (1992).

12. *Id.* §§ 12-9-7 to -9 (1992).

13. *Id.* § 12-9-15 (1992).

14. *Id.* § 12-9-24 (1992).

15. *Id.* § 12-9-25 (1992).

16. New Code section 12-9-1 changes the short title of the chapter from the Georgia Air Quality Act of 1978 to simply the "Georgia Air Quality Act." O.C.G.A. § 12-9-1 (1992). New Code sections 12-9-2, -4, -16 to -19, and -21 to -23 do not substantively change the previous Code sections of the same number. O.C.G.A. §§ 12-9-2, -4, -16 to -19, -21 to -23 (1992). New Code section 12-9-10 adds to the list of fees contained in old section 12-9-9 which owners and operators of stationary sources must pay the cost of employing and training personnel to implement the permitting program and the costs of equipment required to implement the permitting program. O.C.G.A. § 12-9-10(a)(3)-(4) (1992). New Code section 12-9-12 is the same as old Code section 12-9-11 ("Application by director for injunctive relief"). O.C.G.A. § 12-9-12 (1992) (formerly found at O.C.G.A. § 12-9-11 (1988)).

The prohibition that no further fee shall be collected for emissions which exceed 4000 tons per year "of any individual regulated pollutant emitted by any source or group of sources located within a contiguous area and under common control" is retained in new Code section 12-9-10.<sup>17</sup> The original version of HB 1439 included a provision giving the Board of Natural Resources the power, "by regulation, [to] exempt from the per-ton fee collection any portion of the allowable emissions of an individual regulated pollutant emitted by services or facilities, . . . in excess of 4000 tons per year."<sup>18</sup> In the version of the bill that passed, this discretionary power was denied and the language "no fee shall be collected" was inserted.<sup>19</sup> This change is largely due to the industry lobby's opposition to the change.<sup>20</sup>

The Act adds the definitions of "ambient air," "compliance plan," "control measure," "emission offset," "facility," "manager," "small business advisory panel," "small business stationary source or facility," "stationary source," and "title V permit."<sup>21</sup> The Act also deletes definitions of "delayed compliance order," "major stationary source," and "major emitting facility."<sup>22</sup> Also added is the provision that "[c]ollection of fees pursuant to this Code section will . . . only apply to emissions occurring after January 1, 1991."<sup>23</sup> This provision was not in the original version of the bill,<sup>24</sup> but was added in the substitute passed by the House Committee on Natural Resources and the Environment.<sup>25</sup> The substitute was passed largely due to the influence of the industry lobby which was concerned over being assessed fees for emissions prior to 1991.<sup>26</sup>

New Code section 12-9-11 is substantially the same as the prior Code section 12-9-10 entitled "Inspections and Investigations." Language was added, however, stating that this section does not limit the authority of a person provided for in the federal Clean Air Act from inspecting any source or facility.<sup>27</sup> This language is necessary to comply with the federal act and any authority it provides for inspections.<sup>28</sup>

17. O.C.G.A. § 12-9-10(b) (1992).

18. HB 1439, as introduced, 1992 Ga. Gen. Assem.

19. O.C.G.A. § 12-9-10(b) (1992).

20. Telephone Interview with Bob Collom, Chief of the Air Protection Branch of the EPD, DNR of the State of Georgia (Apr. 9, 1992) [hereinafter Collom Interview].

21. O.C.G.A. § 12-9-3 (1992).

22. HB 1439 (HCS), 1992 Ga. Gen. Assem.; see 1978 Ga. Laws 275, 278-79 (formerly found at O.C.G.A. § 12-9-3 (1978)).

23. O.C.G.A. § 12-9-10(g) (1992).

24. See HB 1439, as introduced, 1992 Ga. Gen. Assem.

25. HB 1439 (HCS), 1992 Ga. Gen. Assem.

26. Collom Interview, *supra* note 20.

27. O.C.G.A. § 12-9-11 (1992).

28. Collom Interview, *supra* note 20.

The Act provides that all rules and regulations issued by the DNR prior to July 1, 1991 that are consistent with the provisions of the Act shall be given full force and effect.<sup>29</sup>

The prior Code section 12-9-12<sup>30</sup> entitled "Delayed Compliance Orders" was deleted as a general housekeeping measure.<sup>31</sup> Since a similar provision regarding delayed compliance orders was deleted from the federal act, it followed that the provision should be removed from the Georgia Clean Air Act.<sup>32</sup>

The Act increases the powers and duties of the Board of Natural Resources to include prevention and control of air pollution generally.<sup>33</sup> However, the Act includes new authority and amends existing powers of the Board specifically in order to satisfy the 1990 amendments to the Clean Air Act.<sup>34</sup> The Board now has the power not only to establish ambient air quality standards for the state,<sup>35</sup> but also to establish the following:

- 1) schedules and timetables for the state to achieve the air quality standards;<sup>36</sup>
- 2) alternative methods and control measures to be implemented if the state fails to attain an air quality standard;<sup>37</sup>
- 3) emission reduction measures;<sup>38</sup>
- 4) standards for mobile sources of air pollution;<sup>39</sup>
- 5) "different limitations for areas of the state which significantly contribute to nonattainment of an air standard";<sup>40</sup>
- 6) a program for the prevention and mitigation of accidental releases of hazardous contaminants into the air;<sup>41</sup>
- 7) training and educational programs for emission control equipment, alternatives, and dissemination of air quality information;<sup>42</sup>

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29. O.C.G.A. § 12-9-20 (1992).

30. 1978 Ga. Laws 275 (formerly found at O.C.G.A. § 12-9-12 (1988)).

31. Collom Interview, *supra* note 20.

32. *Id.*

33. O.C.G.A. § 12-9-5(b) (1992).

34. *Id.*

35. *Id.* § 12-9-5(b)(2) (1992).

36. *Id.*

37. *Id.* § 12-9-5(b)(4) (1992).

38. *Id.* § 12-9-5(b)(5) (1992).

39. *Id.* § 12-9-5(b)(9) (1992).

40. *Id.* § 12-9-5(b)(10) (1992).

41. *Id.* § 12-9-5(b)(12) (1992).

42. *Id.* § 12-9-5(b)(13) (1992).

- 8) standards for the construction of new stationary sources or facilities;<sup>43</sup>
- 9) requirements for preconstruction or premodification procedures for any new stationary source;<sup>44</sup> and
- 10) a program to reduce acid rain.<sup>45</sup>

Deleted from the prior Code is a provision giving the Board the power to "allow new major stationary sources or modifications in areas where the national ambient air standards are not met."<sup>46</sup>

These amendments and new provisions stem from the 1990 amendments to the Clean Air Act.<sup>47</sup> Similarly, the Act includes new authority and amends old powers of the director of the EDP in order to satisfy the 1990 amendments to the Clean Air Act.<sup>48</sup> Along with the director's powers established in the prior Code section to develop a comprehensive plan to comply with the Clean Air Act,<sup>49</sup> this new authority includes the following powers:

- 1) establish, implement, revise, and amend permit application criteria, forms, procedures, and requirements;<sup>50</sup>
- 2) establish procedures to respond to requests from small business stationary sources for changes in work practices;<sup>51</sup>
- 3) advise, consult, cooperate, and contract on air quality matters;<sup>52</sup>
- 4) collect fees, assessments, penalties, and other payments;<sup>53</sup> and
- 5) receive, accept, hold, use, and administer, on behalf of the State, gifts, grants, donations, devises, and bequests of real, personal, and mixed property.<sup>54</sup>

Another major change in the Georgia Air Quality Act corresponds with the requirements of Title V of the 1990 amendments to the Clean Air Act for a permit system to be implemented.<sup>55</sup> Under the Act, "no person shall construct, install, modify, own, or operate" a facility that

43. *Id.* § 12-9-5(b)(14) (1992).

44. *Id.* § 12-9-5(b)(15) (1992).

45. *Id.* § 12-9-5(b)(16) (1992).

46. HB 1439 (HCS), Ga. Gen. Assem.; see 1982 Ga. Laws 3 (formerly found at O.C.G.A. § 12-9-5(7) (1988)).

47. Collom Interview, *supra* note 20.

48. *Id.*

49. 1982 Ga. Laws 3 (formerly found at O.C.G.A. § 12-9-6 (1988)).

50. O.C.G.A. § 12-9-6(b)(4) (1992).

51. *Id.* § 12-9-6(b)(5) (1992).

52. *Id.* § 12-9-6(b)(6) (1992).

53. *Id.* § 12-9-6(b)(9) (1992).

54. *Id.* § 12-9-6(b)(15) (1992).

55. *Id.*; see 42 U.S.C.A. § 7661 (Supp. II 1992).

causes or contributes air pollution without a permit by the director.<sup>56</sup> The Act also contains the requirements of what a permit must contain, the amount of fees, and the procedures related to Title V permits.<sup>57</sup> The purpose of these provisions is to comply with subchapter V of the 1990 amendments to the Clean Air Act.<sup>58</sup>

The Act specifies procedures for renewals of permits<sup>59</sup> and requires the director of the EPD, upon receipt of an application for a Title V permit, to give the public an opportunity to request a public hearing, to transmit to the administrator a copy of the application, to notify all states whose air quality may be affected, and allow such states to submit written recommendations to the Director of the EDP.<sup>60</sup> Again, the purpose of these provisions is to comply with Title V of the 1990 amendments to the Clean Air Act.<sup>61</sup>

The Act creates a new section which establishes procedures for a grievance hearing for anyone adversely affected by an order or action of the director.<sup>62</sup> The Act also provides procedures for appeals from an administrative law judge's final determination.<sup>63</sup> Moreover, the Act defines possible plaintiffs as those who have experienced injury in fact or injury to an interest "within the zone of interests protected or regulated by the director," or someone who participated in the public hearing if the matter was decided contrary to that person's interest.<sup>64</sup>

The Act changes the penalties for violations of the provisions of Chapter 9.<sup>65</sup> Prior to the Act, any violation was a misdemeanor offense.<sup>66</sup> New Code section 12-9-24, however, provides that any person who violates a provision of Chapter 9 which may "reasonably" be anticipated to cause personal injury or property damage will be guilty of a felony and shall be fined no more than \$25,000 per day of violation, imprisoned not more than two years, or both.<sup>67</sup> For a second offender, the fine increases to \$50,000 per day of violation, with imprisonment of no more than five years.<sup>68</sup> These stricter penalties are inserted for the purpose of complying with the 1990 amendments to the Clean Air

56. O.C.G.A. § 12-9-7(a) (1992).

57. *Id.* § 12-9-7 (1992).

58. Collom Interview, *supra* note 20; see 42 U.S.C.A. § 7661 (Supp. II 1990).

59. O.C.G.A. § 12-9-8 (1992).

60. *Id.* § 12-9-9(a) (1992).

61. Collom Interview, *supra* note 20; see 42 U.S.C.A. § 7661 (Supp. II 1992).

62. O.C.G.A. § 12-9-15 (1992).

63. *Id.* § 12-9-15(a) (1992).

64. *Id.* § 12-9-15(b) (1992).

65. *Id.* § 12-9-24 (1992).

66. 1991 Ga. Laws 1753 (formerly found at O.C.G.A. § 12-9-24 (Supp. 1991)).

67. O.C.G.A. § 12-9-24(a) (1992).

68. *Id.*

Act.<sup>69</sup> Those amendments mandated that criminal penalties be introduced for violations which might reasonably be anticipated.<sup>70</sup>

The Act also applies the penalties discussed above to any person who knowingly makes a false representation on any application, record, report, plan, or document which is filed or required by the Code.<sup>71</sup> The Act further provides that any person who knowingly violates any provision of the Act and thereby places another person in imminent danger of death or serious bodily harm shall be guilty of a felony and punished by a fine of not more than \$250,000, fifteen years in prison, or both.<sup>72</sup> In the case of an organization, the fine is increased to \$1,000,000.<sup>73</sup> The Act establishes an affirmative defense of compliance with applicable federal, state, and local requirements.<sup>74</sup>

Finally, the Act establishes a "small business stationary source technical and environmental compliance program."<sup>75</sup> Under this provision the Board has the authority to establish rules, regulations, standards, policies, and procedures for small business compliance.<sup>76</sup> The section delegates responsibility to a manager to disseminate information to small businesses,<sup>77</sup> to provide assistance to small businesses in understanding how to comply,<sup>78</sup> and to notify small businesses of their rights and obligations.<sup>79</sup> The section also establishes a small business compliance office<sup>80</sup> and a small business advisory panel to implement the small business compliance program.<sup>81</sup> The purpose for each of these provisions is to meet the requirements of the 1990 amendments to the Clean Air Act.<sup>82</sup>

*Lewis Perling*

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69. Collom Interview, *supra* note 20.

70. *Id.*; see 42 U.S.C. § 7413 (Supp. II 1992).

71. O.C.G.A. § 12-9-24(b) (1992).

72. *Id.* § 12-9-24(c) (1992).

73. *Id.*

74. *Id.* § 12-9-24(d) (1992).

75. *Id.* § 12-9-25 (1992).

76. *Id.* § 12-9-25(a) (1992).

77. *Id.* § 12-9-24(a)(1) (1992).

78. *Id.* § 12-9-25(a)(2) (1992).

79. *Id.* § 12-9-25(a)(4) (1992).

80. *Id.* § 12-9-25(b) (1992).

81. *Id.* § 12-9-25(d) (1992).

82. Collom Interview, *supra* note 20.