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CONSERVATION AND NATURAL RESOURCES Water Resources: Provide the Georgia Board of Natural Resources the Power to Regulate Land Application of Sewage Sludge and Provide the County in Which Sludge is Applied the Power to Assess Monitoring Fees

Michael Paul Stevens

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CONSERVATION AND NATURAL RESOURCES

Water Resources: Provide the Georgia Board of Natural Resources the Power to Regulate Land Application of Sewage Sludge and Provide the County in Which Sludge is Applied the Power to Assess Monitoring Fees

CODE SECTION: O.C.G.A. § 12-5-30.3 (new)
BILL NUMBER: HB 228
ACT NUMBER: 430
SUMMARY: The Act gives the Board of Natural Resources the power to adopt technical regulations for the land application of sewage sludge. Anyone wishing to apply sludge to land must obtain permission from the Director of the Georgia Environmental Protection Division (EPD). The local governing authority where the land application site is located may assess fees for third-party monitoring of the site and may enjoin land application if the fees are not paid. Violators of the Act are subject to civil and criminal penalties.
EFFECTIVE DATE: April 9, 1993

History

Sewage sludge is the solid, semi-solid or liquid residue generated during the treatment of wastewater in a wastewater treatment plant.¹ After being separated from the water fraction of the treated sewage, the sludge may be disposed of in a number of ways including incineration, co-disposal with other solid waste in a landfill, or land application.² Land application is the spreading or subsurface injection of sludge onto land, usually as a soil amendment to provide nutrients and trace minerals to crops or pasture grasses.³ Both the United States

1. 40 C.F.R. § 503.9(w) (1993). Until the passage of HB 228, neither Georgia's statutes nor its regulations had a specific definition for sewage sludge.

2. Sludge incineration is regulated by Environmental Protection Agency (EPA) through 40 C.F.R. Subpart 503 C (1993) and in Georgia by GA. COMP. R. & REGS. r. 391-3-1 (1992) (air quality regulations); landfilling, by 40 C.F.R. § 258 (1992) and GA. COMP. R. & REGS. r. 391-3-4 (1992) (solid waste regulations). The regulation of land application is the subject of HB 228 and this Article.

3. 58 Fed. Reg. 9391 (1993) (to be codified at 40 C.F.R. § 503.11(h)); ENVIRONMENTAL PROTECTION DIVISION, GUIDELINES FOR LAND APPLICATION OF MUNICIPAL SLUDGES (BIOSOLIDS) 1-2 (1992) [hereinafter EPD GUIDELINES]. "Biosolids" is a word recently coined to describe municipal sludges that are beneficially reused; the distinction is intended to encourage beneficial reuse. EPD GUIDELINES, at 1.

Environmental Protection Agency (EPA) and the Georgia Environmental Protection Division (EPD) encourage land application as a beneficial reuse of sludge.⁴

The EPD regulates sludge disposal through discharge permits issued to municipal wastewater treatment plants which generate the sludge.⁵ Until HB 228, neither Georgia's statutes nor its rules contained specific authority to regulate sludge disposal, but the authority had been inferred from other statutes and regulations, mainly those for wastewater treatment plants.⁶

Under existing authority, a municipality wishing to apply sludge to land must submit a Sludge Management Plan to the EPD.⁷ The plan must include a description of the site, a chemical analysis of the sludge, and a proposed program for applying the sludge and managing the site to ensure that water quality and human health are protected.⁸ After the EPD tentatively approves the plan, a public notice of the proposed plan is published, initiating a thirty-day comment period.⁹ If sufficient comment arises, a public hearing is held.¹⁰ Once the plan is approved, it becomes part of the treatment plant's operating permit.¹¹

Forty-three municipalities in Georgia currently apply sludge to land.¹² Most apply the sludge on land in the same county where the sludge is generated, in other words, where the municipality is located.¹³ Controversy arises when municipalities either obtained, or applied for approval, of plans to apply in adjoining counties.

In 1988, the EPD approved a plan for an industry, Gilman Paper, located in St. Mary's in Camden County, to apply paper mill sludge on timber land in Camden County and neighboring Charlton County.¹⁴ As

4. EPD GUIDELINES, *supra* note 3, at 1.

5. General requirements for all sludge disposers are found at Part I.A.3 of National Pollutant Discharge Elimination System permits [hereinafter NPDES Permit] issued by the state of Georgia. Part I.A.2 describes specific requirements for land application.

6. O.C.G.A. § 12-5-30 (1992); GA. COMP. R. & REGS. r. 391-3-6-.06, -.11 (1991); *see* 1972 Op. Atty Gen. U72-13. "An individual who treats sewage and disposes of same in the ground by means of a sprinkling system, and not in the waters of the state, is nevertheless subject to the provisions of the Georgia Water Quality Control Act." 1972 Op. Atty Gen. U72-13.

7. EPD GUIDELINES, *supra* note 3, at 4; NPDES Permit, *supra* note 5.

8. *See* EPD GUIDELINES, *supra* note 3, at 4-7.

9. GA. COMP. R. & REG. r. 391-3-6-.06(7)(b) (1992).

10. *Id.* at r. 391-3-6-.06(7)(c).

11. NPDES Permit, *supra* note 5.

12. EPD, List of Approved Sludge Management Plans (1993) (available in Georgia State University College of Law Library).

13. *Id.*

14. David R. Osier, *Sludge Politics: Charlton County Has Tried Just About Everything, But it Can't Stop Gilman Paper Co.'s Dump Trucks*, GEORGIA TREND, May 1992, at 30, 31. Industrial sludges may be land applied in accordance with solid

a result of citizen complaints, Charlton County sued Gilman Paper for hauling solid waste across the county line without a permit from Charlton County.¹⁵ The Gilman Paper evaded the suit by getting a bill passed by the 1990 General Assembly exempting waste disposal permitted by the EPD from the local requirement.¹⁶

In 1991, the EPD approved a plan by the city of Brunswick in Glynn County to apply its municipal sludge on two farm sites near Odum in neighboring Wayne County.¹⁷ Residents near the site soon complained about odors and potential threats to human health.¹⁸ The residents sued the city of Brunswick and the owners of the property.¹⁹

Meanwhile, the City of Macon Water Authority in Bibb County, concerned about the cost of hauling the sludge from its two wastewater treatment plants to a landfill, was developing a plan to apply the sludge to the land.²⁰ The Authority planned to purchase 4500 acres in neighboring Crawford County.²¹ Public opposition to the plan quickly arose, fueled by concern about pollution of water wells and fear of contact with heavy metals and pathogenic microorganisms.²² The complainants also raised an argument against Macon's plan that would become a recurring theme in the debate over HB 228: one county should not be allowed to dump its waste on another county unless the latter allows it.²³

waste regulations. 40 C.F.R. § 258 (1992).

15. Osier, *supra* note 14.

16. *Id.* at 30. The language was a last-minute addition to a salary bill. *Id.*; Telephone Interview with Sen. Edward Boshears, Senate District No. 6 (Mar. 18, 1993) [hereinafter Boshears Interview]; see 1990 Ga. Laws 1224 (formerly found at O.C.G.A. § 12-8-25.2 (1991)). The language was deleted in a 1992 revision to the Georgia Comprehensive Solid Waste Management Act. 1992 Ga. Laws 3287 (codified at O.C.G.A. § 12-8-25.2 (1992)).

17. Letter from Alan Hallum, Manager, Municipal Permitting Program, EPD, to Mark Mitchell, Brunswick City Manager (July 12, 1991) (tentative approval). Final approval was conveyed orally to the City on Oct. 1, 1991, following completion of public notice requirements. Telephone Interview with Jim Sommerville, Environmental Specialist, Municipal Permitting Program, EPD (Mar. 19, 1993) [hereinafter Sommerville Interview].

18. Terry Dickson, *Farmland Sludge Called Safe, But it Still Stinks*, FLA. TIMES-UNION (Jacksonville), Sept. 12, 1991, at B1.

19. *Wilson v. Clary*, Civ. Action No. 92-CV-0366 (Sup. Ct. Wayne County 1992). The plaintiffs in the ongoing suit were represented by Sen. Boshears. Boshears Interview, *supra* note 16.

20. Larry Wilder, *Water Board OKs Hauling Some Sludge to Private Land*, MACON TEL. & NEWS, May 8, 1992, at 1B.

21. Telephone Interview with Rep. Robert Ray, House District No. 128 (Mar. 16, 1993) [hereinafter Ray Interview]. Rep. Ray represents part of Crawford County, and cosponsored HB 228. *Id.*

22. *Id.*

23. *Id.*

As a result of the opposition to the Crawford County proposal, HB 1280 was introduced late in the 1992 session of the General Assembly.²⁴ The bill would have changed state water quality and solid waste laws so that anyone intending to apply sludge to land in a county other than the one in which the sludge was generated must obtain the express permission of the receiving county.²⁵ A similar bill was introduced in the Senate in response to Brunswick's land application activities in Wayne County.²⁶ Both bills died in committee, in particular HB 1280, possibly because it was not a "high-profile" bill and lacked support among House leadership.²⁷

However, the Crawford County opponents of sludge land application gained one victory in the 1992 legislative session. A local bill was passed which allowed the Crawford County Board of Commissioners to create an ordinance forbidding land application of sludge in Crawford County without the consent of the commissioners.²⁸

The Macon Water Authority continued to pursue the Crawford County plan anyway, submitting it to the EPD for review.²⁹ This plan ultimately would be rejected by the EPD based on a negative evaluation of the site by the EPD's Geologic Survey Branch.³⁰ Meanwhile, to solve its sludge disposal problem until the review was completed, the Authority developed a temporary plan to apply sludge on several sites totalling over 3000 acres in Houston, Dooly and Macon Counties.³¹ The EPD reviewed the temporary plan and determined that despite adverse public comment, no public hearing would be necessary, and approved the plan.³²

Following that decision, Macon began applying sludge on the sites.³³ Angry citizens of the affected counties, as well as still-dissatisfied

24. *Id.* The bill was cosponsored by Rep. Ray. *Id.*; see HB 1280, 1992 Ga. Gen. Assem.

25. HB 1280, 1992 Ga. Gen. Assem. The bill specifically addressed O.C.G.A. §§ 12-5-29(a), (b), -30(a), 12-8-21, -22, -24, -31.1 (1991). *Id.*

26. SB 752, 1992 Ga. Gen. Assem.; see *supra* notes 17-19 and accompanying text.

27. Ray Interview, *supra* note 21; Boshears Interview, *supra* note 16; Telephone Interview with Jack Dozier, Executive Director, Georgia Water and Pollution Control Association (Mar. 22, 1993) [hereinafter Dozier Interview]. By 1993, the opponents of land application of sludge had evidently learned from their 1992 experience, and acquired allies that they had lacked in 1992. See *infra* note 55 and accompanying text.

28. 1992 Ga. Laws 6320.

29. *Sludge Saga Slogs Onward*, GA. POST (Roberta, Ga.), Mar. 19, 1992.

30. Letter from Harold Reheis, Director, EPD, to Gene Holcomb, Executive Director, Macon Water Authority (Mar. 24, 1993).

31. Stacy Lam, *Water Board Finds Temporary Sludge-Disposal Site*, MACON TEL. & NEWS, July 25, 1992 at 1B.

32. Letter from Harold Reheis, Director of EPD, to H.E. Holcomb, Executive Director, Macon Water Authority (Sept. 30, 1992).

33. Sommerville Interview, *supra* note 17.

Crawford County residents, contacted their legislators.³⁴ At the request of Representative Larry Walker, who represented Houston County, the EPD conducted public meetings in December 1992 and January 1993.³⁵ No consensus was reached, and in January 1993 Representative Walker and EPD representatives met to discuss a legislative solution to the dilemma.³⁶ The result of that meeting was HB 228, which was initially drafted by the EPD and introduced in the 1993 General Assembly.³⁷

HB 228

The Act adds a new Code section 12-5-30.3 to the Georgia Water Quality Control Act.³⁸ As introduced, the new section would have had six subsections.³⁹

Code section 12-5-30.3(a) defined "sludge" and "sludge land application."⁴⁰ "Sludge" was defined as "the solid or semisolid residue generated at a waste-water treatment or pretreatment plant," with the specific exception of treated effluent and septic tank waste, or "septage."⁴¹ "Sludge land application" meant "the placement of sludge on or under the ground surface for the purpose of sludge disposal, soil conditioning, or agricultural enhancement with the specific exclusion of the disposal of sludge in a permitted landfill."⁴²

Subsections (b) and (c) as introduced would have given the EPD regulatory powers over sewage sludge.⁴³ Subsection (b) would have spelled out the requirement that the Director of EPD approve any land application system before the system began operation.⁴⁴ Such a system would be permitted under the same authority used to permit wastewater treatment plants.⁴⁵ Subsection (c) gave the Georgia Board of Natural Resources the power to adopt rules and regulations for

34. Telephone Interview with Rep. Larry Walker, House District 141 (Mar. 31, 1993) [hereinafter Walker Interview]. Rep. Walker, who cosponsored HB 228, is also House Majority Leader. *Id.*

35. *Id.*; Telephone Interview with David Word, Assistant Director, EPD (Mar. 11, 1993) [hereinafter Word Interview].

36. Walker Interview, *supra* note 34.

37. Word Interview, *supra* note 35.

38. O.C.G.A. §§ 12-5-20 to -53 (1992).

39. *Id.*

40. HB 228, as introduced, 1993 Ga. Gen. Assem.

41. *Id.*

42. *Id.* Landfilling is separately regulated by the EPD. *See* GA. COMP. R. & REGS. r. 391-3-4 (1992) (solid waste regulations); O.C.G.A. § 12-8-22(23) (1992) (solid waste definition includes sludge).

43. HB 228, as introduced, 1993 Ga. Gen. Assem.

44. *Id.*

45. *Id.*; *see supra* notes 4-5 and accompanying text.

sludge land application, including public notice and public hearing requirements.⁴⁶

In subsection (d), the bill, as introduced, began to address the controversy that launched it in the first place: the right of one county to regulate sludge being brought in from another county.⁴⁷ Under this paragraph, the local governing authority could assess both the generator of the sludge and the owner of the site "reasonable" fees for environmental monitoring of the site by a third party appointed by the local authority.⁴⁸ If such fees were not paid, the local authority could seek to enjoin the land application.⁴⁹ Proposed subsection (e) would also subject a violator of the section or of any rule or permit issued under it to civil and criminal penalties under the Code.⁵⁰

The final substantive paragraph of HB 228, as introduced, was (f), the "veto power" language that was the crux of the bill.⁵¹ Under this paragraph, a sludge application permit could only be issued if one of two conditions were satisfied: either the local governing authority provided, after opportunity for public comment, written approval for the permit, or it failed to provide written objection within ninety days of EPD notification.⁵²

HB 228 was assigned to the Water Resources Subcommittee of the House Natural Resources Committee where extensive concerns were voiced about the "veto power" language, reflecting a variety of concerns. One concern was that the provision would discourage land application, which was considered by many to be a beneficial environmental

46. HB 228, as introduced, 1993 Ga. Gen. Assem. The specific authority to make rules is necessary to receive delegation of authority from EPA of any federal program under the Clean Water Act. See 40 C.F.R. § 123.25 (1992). Georgia's existing environmental regulations have public notice and public hearing requirements, in accordance with federal law. See, e.g., GA. COMP. R. & REGS. r. 391-3-6-.06(7); 40 C.F.R. § 124.10 (1992). The specific inclusion of these requirements in this statute was probably a reiteration that the affected public, i.e., the host county, must make an informed decision. Walker Interview, *supra* note 34.

47. HB 228, as introduced, 1993 Ga. Gen. Assem.

48. *Id.* One concern about land application of sludge was adequacy of monitoring. *Id.* According to Rep. Ray, under EPD regulations each sludge disposer would do most of the monitoring itself, something he likened to "a person doing his own tax audit." Ray Interview, *supra* note 21.

49. HB 228, as introduced, 1993 Ga. Gen. Assem.

50. *Id.*; see O.C.G.A. §§ 12-5-52 (civil penalty provisions of Georgia Water Quality Control Act), -53 (criminal penalty provisions) (Supp. 1993).

51. HB 228, as introduced, 1993 Ga. Gen. Assem. "Veto power" was the universal unofficial designation for this portion of the bill. Walker Interview, *supra* note 34; Word Interview, *supra* note 35.

52. HB 228, as introduced, 1993 Ga. Gen. Assem. Neither of the 1992 bills allowed for the option of absence of disapproval. HB 1280 required express approval of the governing authority. HB 1280, 1992 Ga. Gen. Assem. SB 752 required written approval. SB 752, 1992 Ga. Gen. Assem.

practice.⁵³ Further, it was felt that allowing local veto power on this matter would create a precedent, such that any controversial land use activity could be subject to the possibility of local veto.⁵⁴ Additionally, another concern was that the language might be an unconstitutional violation of interstate commerce.⁵⁵ Finally, some felt that given the failure of the 1992 bills, any legislation with the veto power language was simply unpassable.⁵⁶ The Subcommittee recommended, and the full Committee voted, to remove the veto power language, paragraph (f), from the bill.⁵⁷

Other changes were made to the bill while it was in committee. The definition of sludge was narrowed further to exclude "sludge treated to further reduce pathogens by such processes as composting, heat drying or heat treating."⁵⁸

The Committee considered amending proposed Code section 12-5-30.3(d), which required third-party monitoring at the generator's expense, to let the EPD set the "reasonable" fee.⁵⁹ The Committee left the original language intact, agreeing that local governments should have at least some control over out-of-county sludge.⁶⁰ However, the Committee amended that subsection to exempt industrial sludges from

53. Dozier Interview, *supra* note 27. Telephone Interview with Bill Thornton, Governmental Affairs Liaison, Georgia Municipal Association (Mar. 23, 1993) [hereinafter Thornton Interview] (concern that beneficial reuse as an option for sludge generators would be eliminated).

54. Thornton Interview, *supra* note 53. A coalition of Georgia Municipal Association and Georgia Water and Pollution Control Association jointly lobbied against this portion of the bill. Dozier Interview, *supra* note 27.

55. *See, e.g.*, Fort Gratiot Sanitary Landfill, Inc. v. Mich. Dep't of Natural Resources, 112 S. Ct. 2019 (1992) (statute prohibiting landfill operators from accepting solid waste originating outside county in which facilities located violates Commerce Clause). Most observers, including the EPD and at least one of the sponsors of the bill, agreed that this was a possible problem. Word Interview, *supra* note 35; Walker Interview, *supra* note 34. Another sponsor, Rep. Ray, disagreed, noting that Georgia laws setting minimum distances for landfills from county lines and national parks have not had their constitutionality challenged. Ray Interview, *supra* note 21; *see* O.C.G.A. §§ 12-8-25 (landfills), -25.1 (national parks) (1992).

56. Walker Interview, *supra* note 34. Rep. Walker very much wanted some legislation regulating sludge. Word Interview, *supra* note 35; *see* Nancy Badertscher, *Weakened Version of Bill to Restrict Sludge Dumping Approved by House Panel*, MACON TEL. & NEWS, Mar. 6, 1993, at 2B (quoting Rep. Robert Patten, Chairman, House Natural Resources Committee: "[The veto language] is the part that held up the bill for two years.>").

57. *See* O.C.G.A. § 12-5-30.3 (Supp. 1993).

58. *Id.* The Clayton County Water Authority urged this change, the wording of which was drafted by the EPD. Word Interview, *supra* note 35. The sponsors of the bill concurred. Ray Interview, *supra* note 21. The difference between the two substances is consistent with federal regulations, although both fall under the definition of "sludge." 40 C.F.R. § 503.9(w) (1993).

59. Walker Interview, *supra* note 34.

60. *Id.*

the fee requirement, based on the perception that only municipal sludges were a concern.⁶¹

Other minor changes were made to the bill. Proposed subsection (c) was changed to require, rather than authorize, the Board of Natural Resources to adopt sludge regulations.⁶² A sentence was added to proposed subsection (d) requiring that monitoring fees be paid before application could begin.⁶³

The House Natural Resources Committee voted to recommend the substitute bill for passage and HB 228 passed through the House and the Senate without further change.⁶⁴ A proposed Senate floor amendment to reinstate the veto power language failed by three votes.⁶⁵

Although the impact of HB 228 was lessened by the removal of the veto language from the bill, the new law will significantly affect sludge disposal in Georgia.⁶⁶ The EPD now has specific statutory authority to regulate sludge, clearing the way for the state, rather than the EPA, to directly enforce federal sludge regulations.⁶⁷

Allowing local governments some control over out-of-county sludge may turn out to be a good compromise. Despite the proven benefits of land application, the possible veto might have forced municipalities with limited available land in their own counties to move away from land application toward a more wasteful disposal option such as landfilling or incineration.⁶⁸ On the other hand, the potential dangers

61. Thornton Interview, *supra* note 53; see O.C.G.A. § 12-5-30.3(d) (Supp. 1993). Industry lobbying undoubtedly was a factor as well. Thornton Interview, *supra* note 53.

62. O.C.G.A. § 12-5-30.3(c) (Supp. 1993).

63. *Id.*

64. Compare HB 228 (HCS), 1993 Ga. Gen. Assem. with O.C.G.A. § 12-5-30.3 (Supp. 1993).

65. Georgia Senate Roll Call of HB 228, Adoption of 3d Amendment (Mar. 4, 1993) (to be published in 1993 Georgia Senate Journal). A sludge bill was introduced in the Senate independently of HB 228. SB 276 was sponsored by Sen. Edward Boshears, who was also the attorney for the parties opposing the Brunswick land application project in Wayne County. See *supra* notes 17-19 and accompanying text. The bill was essentially identical to the 1992 SB 752, except that the 1993 bill exempted industrial sludge. Compare SB 276, 1993 Ga. Gen. Assem. with SB 752, 1992 Ga. Gen. Assem.

66. Opinions on the merits of the bill vary. Rep. Ray, who supported the veto power language, said the bill was "a little bit better than nothing." Ray Interview, *supra* note 21. Rep. Walker called it "a significant piece of legislation . . . a first step." Walker Interview, *supra* note 34. Jack Dozier said the bill was a "workable solution" and "good compromise." Dozier Interview, *supra* note 27. Bill Thornton hailed the bill as a good example of consensus-building, which he said was essential in environmental legislation. Thornton Interview, *supra* note 53.

67. 40 C.F.R. § 123.25 (1993). The EPD is currently in the process of applying for delegation. Word Interview, *supra* note 35.

68. Thornton Interview, *supra* note 53. The veto power language would have, in

of unrestricted land application and the limited resources available to the EPD for overview support the idea of at least some local control.⁶⁹ It is still possible that opponents of land application might take a liberal view of "reasonable" monitoring fees, with a possible court fight resulting over the meaning of "reasonable."⁷⁰

Land application of municipal sludge is widely practiced in Georgia and is growing in popularity with the encouragement of both Georgia and federal environmental regulators.⁷¹ Effective regulation of this practice is needed. The immediate controversies that fueled HB 228 are not settled: Brunswick and Macon still apply sludge at approved sites in other counties.⁷²

Long-term sludge issues were of concern to the 1993 General Assembly, which also adopted HR 66.⁷³ This resolution creates the Joint Committee on Sludge, consisting of representatives from the House and Senate, which would study alternative technologies and environmental issues relating to sludge disposal.⁷⁴ A report on the Committee's findings, recommendations and suggestions for legislation will be due December 1, 1993.⁷⁵ It is conceivable that more restrictive legislation, including the veto language, could reappear in the General Assembly in the near future.

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the opinion of many, resulted in no land application of sludge from one county in another, as no county government would support such a project if there was even minimum opposition. *Id.*

69. Word Interview, *supra* note 35; Thornton Interview, *supra* note 53.

70. Walker Interview, *supra* note 34.

71. *See supra* notes 3-4 and accompanying text. About twenty-two percent of the sewage sludge generated in Georgia is land applied, and the proportion is expected to grow. EPD, Statistical Data on Sludge Application (1993) (unpublished data available at EPD offices, 4244 International Parkway, Suite 110, Atlanta, Georgia 30354). Of thirty-three municipalities with approved sludge management plans, ten attained approval in 1991-1993. *Id.*

72. Sommerville Interview, *supra* note 17.

73. HR 66, as adopted, 1993 Ga. Gen. Assem.

74. *Id.*

75. *Id.*