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## CONSERVATION AND NATURAL RESOURCES Hazardous Materials: Provide for Limited Immunity in Mitigation of Effects of Discharge

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## CONSERVATION AND NATURAL RESOURCES

### *Hazardous Materials: Provide for Limited Immunity in Mitigation of Effects of Discharge*

CODE SECTIONS:	O.C.G.A. §§ 12-8-140—12-8-142 (new)
BILL NUMBER:	SB 136
ACT NUMBER:	640
SUMMARY:	The Act provides for a limited exemption from civil liability for persons who give assistance or advice in attempting to mitigate effects of an actual or threatened discharge of hazardous materials.
EFFECTIVE DATE:	April 3, 1987

#### *History*

Increases in population, industrialization, and use of hazardous materials have combined to create a situation in which officials of any community in Georgia could be required to respond to a spill of hazardous materials. Such a spill could threaten the health of the citizens in the surrounding area and the quality of the environment.<sup>1</sup> Several small communities have been faced with such spills and have been unable to respond adequately because these communities possess neither the expertise nor the personnel to handle these situations.<sup>2</sup> Because the handling of hazardous materials requires a high level of technical skill,<sup>3</sup> local fire departments are reluctant to respond to spill emergencies without expert advice concerning the best way to deal with the particular materials involved. Many local officials fear they will make a bad situation worse.<sup>4</sup>

If advice is solicited from experts, whether it is a hazardous waste cleanup company or a chemical manufacturer, these experts are reluctant to lend assistance because of the fear of incurring liability. Because prior Georgia law provided no protection for the "Good Samaritan" in this type of situation, experts declined to offer assistance.<sup>5</sup> This was especially true if the company involved was a large corporation. Officials of such a com-

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1. Telephone interview with Representative Denny Dobbs, House District No. 74 (Apr. 8, 1987) [hereinafter Dobbs Interview].

2. Telephone interview with Senator Harrill Dawkins, Senate District No. 45 (Apr. 7, 1987).

3. *Id.*

4. Dobbs Interview, *supra* note 1.

5. *Id.*

pany feared being singled out for a lawsuit because of their extensive resources.<sup>6</sup> As a result, experts, sometimes even those experts located in the community experiencing the hazardous spill emergency, were reluctant to help and their valuable resources were unavailable to the local government.<sup>7</sup>

### *SB 136*

In its original form, SB 136 provided broad immunity to persons who offered assistance or advice in an effort to mitigate the effects of a hazardous waste spill. This version provided that "no person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous materials or in preventing, cleaning up, or disposing of such a discharge or in attempting to prevent, cleanup, or dispose of such a discharge shall be subject to civil liabilities or penalties of any type."<sup>8</sup>

The Senate Natural Resources Committee offered a substitute to SB 136, which became the final version passed by both houses. This version significantly limited the grant of immunity, following concerns expressed by members of the committee that the immunity, as defined in the original version, would extend to persons who were actually at fault.<sup>9</sup> The grant of immunity was restricted to persons who "upon request" provide assistance or advice.<sup>10</sup> The language providing immunity in regard to "cleaning up," or "disposing of" hazardous materials also was eliminated by the amendment. The immunity extends only to the activities of "preventing" or "attempting to prevent" a discharge.<sup>11</sup>

Two significant subsections were added to the bill by the Senate committee substitute.<sup>12</sup> One of these sections provides that "[n]othing in subsection (a) of this Code section shall be construed to limit or otherwise affect the liability of any person for civil or criminal liabilities or penalties pursuant to Article 3 of this chapter or the legal responsibility of any person to comply with Article 3 of this chapter."<sup>13</sup> Article 3 is the Georgia Hazardous Waste Management Act.<sup>14</sup> This chapter gives the Department of Natural Resources power to promulgate rules and regulations governing "hazardous waste generators, hazardous waste transporters, and owners and operators of hazardous waste treatment, storage, or disposal

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6. *Id.*

7. *Id.*

8. SB 136 § 1, as introduced, 1987 Ga. Gen. Assem.

9. Interview with Terrence Shannon, aide to Senator Thomas Allgood, Senate District No. 22, in Atlanta (April 9, 1987) [hereinafter Shannon Interview].

10. O.C.G.A. § 12-8-141(a) (Supp. 1987).

11. *Id.*

12. O.C.G.A. § 12-8-141(d), (e) (Supp. 1987).

13. O.C.G.A. § 12-8-141(d) (Supp. 1987).

14. O.C.G.A. §§ 12-8-60 to -83 (1982 & Supp. 1987).

facilities."<sup>15</sup> This section was added to the original bill in order to provide that the grant of immunity would not extend to activities specifically covered by the Hazardous Waste Management Act and would extend immunity into areas where the Act provides that handlers of hazardous waste have a duty of care.<sup>16</sup>

A second new subsection in the Senate committee substitute provides that if a person giving advice about the spill receives "pecuniary benefit, directly or indirectly, from any source, other than reimbursement of out-of-pocket expenses," that person's liability shall not be limited or affected by this Code section.<sup>17</sup> This new section is designed to limit the immunity to those persons who really are "Good Samaritans." It is not to cover those people who offer assistance in hope of monetary reward, either through payment or through hope of future business.<sup>18</sup>

These two new subsections are designed to limit the grant of immunity. The person who negligently makes the spill worse or who agrees to dispose of the hazardous materials, but instead dumps it in an area and creates a health hazard, should not be covered by this immunity. Because of the extreme hazard created by these materials, the grant of immunity is designed to be narrow, and it is not designed to cover those individuals who might use it as an excuse for not exercising due care.<sup>19</sup> The Act is meant to protect those people who are trying to lend good faith, uncompensated assistance. The purpose is to provide some of the same protection that the Code provides in medical emergency situations.<sup>20</sup>

This grant of immunity could be important to the quality of the environment in Georgia. The person who has expertise in the handling of hazardous materials and is willing to help in an emergency situation without expectation of compensation should be able to lend that assistance without fear of incurring liability.<sup>21</sup>

Another section of the Act provides that anyone who provides assistance under this Code section must provide a report to the director of the Environmental Protection Division of the Department of Natural Resources.<sup>22</sup> In the original version of the bill, this report was to be filed

15. O.C.G.A. § 12-8-64(1)(A) (Supp. 1987).

16. Shannon Interview, *supra* note 9.

17. O.C.G.A. § 12-8-141(e) (Supp. 1987).

18. Shannon Interview, *supra* note 9.

19. *Id.* See also HB 153, 1986 Ga. Gen. Assem., introduced by Representative Tom Ramsey, House District No. 3, which contained language almost identical to the Senate committee substitute of SB 136. Previous attempts to get an immunity bill through both houses had failed. Each time the bill reached the Senate, it was defeated. Telephone interview with David Baird, Administrative Coordinator, Georgia Department of Natural Resources (Apr. 7, 1987).

20. Dobbs Interview, *supra* note 1.

21. Interview with G. Robert Kerr, Executive Director, Georgia Conservancy, in Atlanta (Apr. 6, 1986).

22. O.C.G.A. § 12-8-142 (Supp. 1987).

only "upon request of the director."<sup>23</sup> The final version makes the report mandatory. This change was made in response to concerns that such a report should not have to be requested, but instead should be part of the responsibility of anyone who is involved in a hazardous materials emergency.<sup>24</sup>

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23. SB 136, § 1, 1987 Ga. Gen. Assem.

24. See *supra* note 19. HB 153 introduced in the 1986 session contains the identical language as the Senate committee substitute of SB 136 in regard to the reporting requirement. See also 1986 amendments to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), codified at 42 U.S.C.A. §§ 9601—9675 (West 1983 & Supp. 1987). Section 119 of the amendments provides that response action contractors will not be liable except for their own negligence. Response action contractors are contractors who clean up hazardous waste sites under the Superfund. See Act of Oct. 17, 1986, Pub. L. No. 99-499, 1986 U.S. CODE CONG. & ADMIN. NEWS (100 Stat.) 1613, 1662.