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CONSERVATION AND NATURAL RESOURCES

Solid Waste Disposal: Limit Location of Waste Facilities

CODE SECTION:	O.C.G.A. § 12-8-28.1 (new)
BILL NUMBER:	HB 862
ACT NUMBER:	906
SUMMARY:	The Act implements a "good neighbor" policy by requiring that a county obtain approval from a neighboring county before constructing a solid waste disposal site within one-half mile of the county line. Initially, the Act will apply only to counties with a population of at least 350,000, but in 1990 it will apply to all Georgia counties.
EFFECTIVE DATE:	July 1, 1988

History

Georgia's Solid Waste Management Act makes the Director of the Environmental Protection Division of the Department of Natural Resources (Director) responsible for instituting and maintaining a comprehensive system of waste management throughout the state.¹ The new Act is intended to protect the health and safety of the citizenry as well as to provide for the protection of the environment.²

Previously, only authorization of the Director was required to obtain a permit to construct or operate a solid waste facility.³ As a result, occasionally, a politically expedient decision was made to put sites near county lines, thereby affecting fewer county voters.⁴ The Act addresses that practice and the associated health concerns of the neighboring county.⁵ The neighboring county is given a limited voice in the decision

1. O.C.G.A. § 12-8-21(a), (b) (1988).

2. *Id.*

3. 1973 Ga. Laws 1269 (formerly found at O.C.G.A. § 12-8-27(a)). A person may dispose of solid waste on his own land without approval of the Director as long as the solid waste both originated on that land and does not adversely affect the public health. O.C.G.A. § 12-8-40 (1988).

4. Telephone interview with Representative Luther Colbert, House District No. 23 (Apr. 4, 1988) [hereinafter Colbert Interview].

5. For example, Representative Colbert noted that if Fulton County were to build a facility on the Forsyth County line, problems may arise for many Forsyth County residents who must rely on well water. *Id.*

when the proposed facility is to be put within one-half mile of its line.⁶

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The Act presently only applies to counties with a population of at least 350,000.⁷ However, on April 1, 1990, the Act will apply to all counties.⁸ This provision was the result of compromise between the House⁹ and the Senate.¹⁰ Therefore, only Fulton and DeKalb Counties presently fall within the Act's provisions.¹¹

The Act requires express approval by the governing authority of the adjoining county when the proposed site for the waste facility is to be within one-half mile of that county.¹² However, even without consent, the Director may approve the site "if the requesting county provides evidence that no alternative sites or methods are available."¹³ This exception, initially introduced by the House Committee on Natural Resources,¹⁴ broadened the original exception introduced by the House.¹⁵ The House version required "conclusive" evidence that no other site was available.¹⁶

Similarly, the original House version provided an exception that permitted the site choice without the consent of the adjoining county when existing alternatives were "beyond the financial capability of the county."¹⁷ The subsequent removal of this language at the insistence of the Department of Natural Resources supports the proposition that financial inability is not sufficient evidence to persuade the Director to bypass the consent provision of the Act.¹⁸

Additionally, consent is not required when the Director approves the expansion of an existing site or when ownership of the site is transferred.¹⁹ However, if the permit was granted after March 1, 1988, any expansion encroaching within the one-half mile limitation will require approval.²⁰

Finally, the Act applies to all permit applications made or pending in

6. O.C.G.A. § 12-8-28.1 (1988).

7. *Id.*

8. *Id.*

9. HB 862 (HCS), 1988 Ga. Gen. Assem. The House preferred to apply the law to all counties. *Id.*

10. HB 862 (SCSFA), 1988 Ga. Gen. Assem. The Senate preferred that only the larger counties be subject to the law. *Id.*

11. Colbert Interview, *supra* note 4.

12. O.C.G.A. § 12-8-28.1(a)(1) (1988).

13. *Id.*

14. HB 862 (HCS), 1988 Ga. Gen. Assem.

15. HB 862, as introduced, 1987 Ga. Gen. Assem.

16. *Id.*

17. *Id.*

18. Colbert Interview, *supra* note 4.

19. O.C.G.A. § 12-8-28.1(b)(1) (1988).

20. O.C.G.A. § 12-8-28.1(b)(2) (1988).

either DeKalb or Fulton County as of July 1, 1988, as well as to permits issued in those counties prior to May 1, 1988, which are on appeal or under judicial review.²¹ The Act applies to applications in all counties made after or still pending on April 1, 1990.²² Permits issued prior to this effective date must meet the requirements of the Act if such permits are being appealed or judicially reviewed as of April 1, 1990.²³

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21. O.C.G.A. § 12-8-28.1(a)(1) (1988).

22. O.C.G.A. § 12-8-28.1(a)(2) (1988).

23. *Id.*