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## CONSERVATION AND NATURAL RESOURCES Solid Waste Management: Regulate Landfills

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## CONSERVATION AND NATURAL RESOURCES

### *Solid Waste Management: Regulate Landfills*

CODE SECTIONS: O.C.G.A. §§ 12-8-22 (amended), 12-8-23 (amended), 12-8-27 (amended), 12-8-27.1 (new), 12-8-28.3 (new), 12-8-28.4 (new), 12-8-45 (new), 12-8-46 (new)

BILL NUMBER: SB 70

ACT NUMBER: 41

SUMMARY: The Act provides for additional regulations related to the management, handling, and disposal of solid waste in sanitary landfills.

EFFECTIVE DATE: March 15, 1989

### *History*

In 1972, the Georgia General Assembly passed the Solid Waste Management Act.<sup>1</sup> In 1988, the Act was amended to include a provision prohibiting the construction of a sanitary landfill<sup>2</sup> within one half mile of an adjoining county.<sup>3</sup> This prohibition affects only counties having a population of more than 350,000, based upon either the 1980 census or any future census.<sup>4</sup> Also, during the 1988 session, the General Assembly

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1. O.C.G.A. §§ 12-8-20 to -44 (1988), enacted by 1972 Ga. Laws 1002. The Code now defines "solid waste" as:

[p]utrescible and nonputrescible wastes, except water carried body waste and materials destined for recycling . . . [This definition includes] . . . garbage, rubbish (paper, cartons, boxes, wood, tree branches, yard trimmings, furniture and appliances, metal, tin cans, glass, crockery, or dunnage), ashes, street refuse, dead animals, sewage sludges, animal manures, industrial wastes (waste materials generated in industrial operations), residue from incineration, food processing wastes, demolition wastes, abandoned automobiles, dredging wastes, construction wastes, and any other waste material in a solid or semisolid state not otherwise defined in this article.

O.C.G.A. § 12-8-22(16) (Supp. 1989).

2. "Sanitary landfill" is defined as "a disposal site where putrescible solid wastes are disposed of by means of placing an earth cover thereon." O.C.G.A. § 12-8-22(15) (Supp. 1989) (the term was not defined in earlier legislation).

3. O.C.G.A. § 12-8-28.1 (1988). *See also Solid Waste Disposal: Limit Location of Waste Facilities*, 5 GA. ST. U.L. REV. 244 (1988) (explaining the political origins of the Act).

4. O.C.G.A. § 12-8-28.1(a)(1) (1988). This provision, therefore, currently applies only to Fulton and DeKalb counties.

passed a provision prohibiting solid waste disposal sites within 5,708 yards of the center of a national historic site.<sup>5</sup>

The 1989 General Assembly considered numerous House and Senate bills relating to sanitary landfills and solid waste management. Of the two bills and one Senate resolution which passed, SB 70, as passed, offers the most change to the waste management industry.<sup>6</sup> Identical bills were introduced in the House and the Senate, but the sponsor of the House bill transferred his support to the Senate bill when it reached the House.<sup>7</sup> The Senate bill was weakened considerably in the Senate due to the influence of landfill lobbyists and was subsequently killed by a vote of 6 to 0 in a House Natural Resources Subcommittee.<sup>8</sup> Members of the House later reconstructed the Senate bill and passed it through a House subcommittee by a close vote.<sup>9</sup>

The Act was important to its supporters because little regulation of the growing landfill industry had previously existed in the State of Georgia.<sup>10</sup> Legislation regarding garbage disposal is politically difficult to enact, not only because of the typical "NIMBY" (Not In My Backyard) response of voters, but because the landfill operators have inundated the Georgia capitol with lobbyists who fight to protect industry interests.<sup>11</sup>

### SB 70

The Act calls for certification of sanitary landfill operators.<sup>12</sup> Detailed rules and regulations regarding the certification process, criteria, and qualifications are to be promulgated by the Board of Natural Resources

5. O.C.G.A. § 12-8-28.2 (1988).

6. O.C.G.A. § 12-8-28.1 (Supp. 1989) (prohibits the siting of a sanitary landfill in a county with a population of 350,000 or more and within two miles of an adjoining county). The Code previously called for only a one-half mile limitation. 1988 Ga. Laws 215. SR 103 creates a Joint Study Committee on Solid Waste Management for the period of March 1989 through December 31, 1989. The purpose of the study committee is to investigate the possibilities of regional solutions to solid waste disposal, with emphasis on waste reduction, recycling, waste-to-energy, and sanitary landfilling. SR 103, as passed, 1989 Ga. Gen. Assem.

7. Telephone interview with Representative George Hooks, House District No. 116 (Mar. 30, 1989) [hereinafter Hooks Interview].

8. *Id.*

9. *Id.*

10. *Id.* For a discussion of the growth of the waste management business, see Cook, *The Garbage Game*, 136 FORBES 121 (1985).

11. Hooks Interview, *supra* note 7. Representative Hooks estimates that, while the banking industry has approximately seven paid lobbyists and the insurance industry has approximately six, the waste management industry at times pays approximately seventeen lobbyists to help protect its position in the lucrative and growing field of garbage disposal. *Id.*

12. O.C.G.A. § 12-8-23(1)(J) (Supp. 1989).

of the State of Georgia.<sup>13</sup> Certifications must be renewed every five years.<sup>14</sup> If an applicant is certified in a state other than Georgia, he or she may forego the required examination of knowledge and ability, provided the certification requirements in the other state do not conflict with, and are not lower than, the standards set by Georgia.<sup>15</sup> Certification will be conducted through a "college or university of the University System of Georgia or other organization approved by the director" of the Environmental Protection Division of the Georgia Department of Natural Resources.<sup>16</sup>

The section of the Act which gives the State the greatest influence over the standards of landfill owners and operators grants the Director the power to deny a landfill permit to any applicant who has been convicted of a felony involving moral turpitude;<sup>17</sup> convicted of environmental law violations "punishable as a felony in any state or federal court . . .";<sup>18</sup> or judged "in contempt of any court order enforcing any federal environmental laws or any environmental laws of the State of Georgia . . ."<sup>19</sup> Applicants who have consistently violated prohibited acts outlined in the Solid Waste Management Act may also be denied a landfill permit.<sup>20</sup>

When a permit to construct or operate a sanitary landfill is granted by the Director of the Environmental Protection Division, a public hearing must be held prior to the permit's issuance.<sup>21</sup> This provision of the Act was not in the Senate version of the bill. Rather, it was offered in the House substitute in response to constituents' concerns about landfills being placed in their neighborhoods.<sup>22</sup> The hearing must be held "not less than two weeks prior to the issuance of any permit . . .," and notice of the hearing must be posted and published "at least 30 days prior to [the] hearing."<sup>23</sup>

13. O.C.G.A. § 12-8-23(1)(J)-(K) (Supp. 1989).

14. O.C.G.A. § 12-8-27.1(a) (Supp. 1989).

15. O.C.G.A. § 12-8-27.1(c) (Supp. 1989).

16. O.C.G.A. § 12-8-22(2) (Supp. 1989).

17. O.C.G.A. § 12-8-23.1(a)(3)(B)(iii) (Supp. 1989). The conviction "by final judgment," after all appeals are exhausted, must have occurred within three years preceding the permit application. *Id.*

18. O.C.G.A. § 12-8-23.1(a)(3)(B)(iv) (Supp. 1989). These convictions must have been within five years prior to the permit application in order to preclude granting of a landfill permit. *Id.*

19. O.C.G.A. § 12-8-23.1(a)(3)(B)(vi) (Supp. 1989). The contempt ruling must have occurred within five years prior to the permit application in order for the Director to deny a landfill permit on this basis. *Id.*

20. O.C.G.A. § 12-8-23.1(a)(3)(B)(v) (Supp. 1989) (no time limits are included in this provision).

21. O.C.G.A. § 12-8-27(c) (Supp. 1989).

22. Hooks Interview, *supra* note 7.

23. O.C.G.A. § 12-8-27(c) (Supp. 1989).

Notice to the public of meetings in which landfill siting decisions may be made is also required under new provisions of the Act.<sup>24</sup> This notice requirement applies only to county or municipality decisions regarding the siting of garbage disposal locations.<sup>25</sup>

The Act enhances environmental protection by requiring that any proposed sanitary landfill sited within two miles of a "ground-water recharge area" must include "a liner and [a] leachate collection system . . . ."<sup>26</sup>

Finally, the Act requires privately owned or operated solid waste facilities to demonstrate sufficient financial resources to meet the "specific environmental protection needs" of such facilities.<sup>27</sup> These specific needs include the proper care of the landfill during operation, closure, and after-closure periods.<sup>28</sup> The financial responsibility requirement does not apply to municipal or county operated landfills, unless and until federal regulations so require.<sup>29</sup>

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24. O.C.G.A. § 12-8-28.3 (Supp. 1989).

25. *Id.* Notice must be published in a general circulation newspaper in the pertinent municipality or county "at least once a week for two weeks immediately preceding the date of [the] meeting." *Id.*

26. O.C.G.A. § 12-8-28.4 (Supp. 1989). The Director of the Georgia EPD is to designate "significant ground-water recharge area[s]." The Act explains neither what constitutes such an area nor the criteria the Director will use to determine if the area is "significant." The Act also establishes that the Director may set other requirements besides a liner and leachate collection system based upon "other geological considerations." The Board of Natural Resources of the State of Georgia, in establishing its rules and regulations for sanitary landfills, may also set operational requirements to protect ground-water recharge areas. *Id.*

27. O.C.G.A. § 12-8-45(a) (Supp. 1989).

28. O.C.G.A. § 12-8-45(b) (Supp. 1989).

29. O.C.G.A. § 12-8-45(c) (Supp. 1989).