

1-1-1992

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Recommended Citation

Braun, Karl M. (1992) "CONSERVATION AND NATURAL RESOURCES Waste Management: Provide for Vertical Expansion of Certain Waste Disposal Sites for Two Year Period," *Georgia State University Law Review*: Vol. 8 : Iss. 1 , Article 16.
Available at: <http://readingroom.law.gsu.edu/gsulr/vol8/iss1/16>

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CONSERVATION AND NATURAL RESOURCES

Waste Management: Provide for Vertical Expansion of Certain Waste Disposal Sites for Two Year Period

CODE SECTION: O.C.G.A. § 12-8-24 (new)
BILL NUMBER: HB 182
ACT NUMBER: 317
SUMMARY: The Act amends the Georgia Comprehensive Solid Waste Management Act and allows certain solid waste disposal facilities to vertically expand their existing facilities beyond their originally permitted capacity during a twenty-four month period. The Act requires classifications of modifications as either major or minor modifications for public notice purposes. It defines the public notice procedures required before a major modification. Written verification of compliance with local zoning or land use ordinances and solid waste reduction programs, which is required of permit applicants, is extended to those facilities that have been granted a major modification.

EFFECTIVE DATE: July 1, 1991

History

Last year's amendment of the Georgia Comprehensive Solid Waste Management Act (GCSWMA) provided Georgia with a much needed comprehensive approach to the regulation of solid waste disposal.¹ Anyone seeking to engage in the handling or disposal of solid waste in Georgia must first obtain a permit from the Director of the Board of Natural Resources (the Board).² The Board, in turn, promulgated rules under the GCSWMA, which included a section on the Director's authority

1. The Georgia Comprehensive Solid Waste Management Act - A Summary, Association County Commissioners of Georgia (Mar. 28, 1991) (available in Georgia State University College of Law Library).

2. Ga. Bd. Natl. Resources Rule, ch. 391-3-4.

to amend, suspend, modify, or revoke a permit for the operation of a waste disposal site.³ This section of the rules coincides with a section of the GCSWMA giving the director this same power.⁴ Judicial interpretation of the language in these sections led to the drafting of HB 182.⁵

In the summer of 1990, the Director of the Environmental Protection Division (EPD) approved the modification of a solid waste handling permit issued to Walton County.⁶ The modification allowed for vertical expansion⁷ of the Walton County-Roscoe Davis Road Sanitary Landfill beyond the limits originally set in the permit issued in 1986.⁸ A number of residents of Walton and adjoining counties sought administrative review of the action, seeking to have the modification reversed.⁹ Their complaint was that the Director had not adequately given notice or conducted a hearing as required for issuance of a landfill permit.¹⁰ The residents' ultimate hope was to have the landfill closed altogether.¹¹

An administrative law judge ruled that the Director's authority under the GCSWMA and the rules did not include modification of a permit to allow vertical expansion.¹² The GCSWMA provides for modification "if the holder of the permit is found to be in violation of any of the permit conditions,"¹³ and the rules further provide for modification if it is in the interest of human health and the environment.¹⁴ The Director argued that he had determined that human health and the environment would be better protected by allowing vertical expansion while Walton County searched for an alternative landfill site or an "alternative means of disposing of the waste now disposed of at the landfill."¹⁵ This argument

3. O.C.G.A. § 12-8-24(a) (Supp. 1991).

4. O.C.G.A. § 12-8-24(e) (Supp. 1991).

5. Telephone Interview with Rep. Denny Dobbs, Chairman, House Natural Resources Subcommittee on Solid Waste Management, House District No. 74 (Apr. 2, 1991) [hereinafter Dobbs Interview].

6. *In re Walton County—Roscoe Davis Road Sanitary Landfill*, No. DNR-EPD-SW-AH 6-90, 1990 WL 202452 (Ga. Bd. Nat. Resources, Oct. 18, 1990).

7. Vertical expansion of a landfill consists of continued placement of solid waste upon already existing waste in an upward fashion. *In re Walton County—Roscoe Davis Road Sanitary Landfill*, No. DNR-EPD-SW-AH 6-90, 1990 WL 174957 (Ga. Bd. Nat. Resources, Sept. 26, 1990). A landfill usually resorts to this alternative when it has exhausted its horizontal boundaries. *Id.* Horizontal expansion involves the continued use of additional property. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. Telephone Interview with Ross King, Director of Policy Development, Association County Commissioners (Apr. 1, 1991) [hereinafter King Interview].

12. *In re Walton County*, 1990 WL 202452.

13. O.C.G.A. § 12-8-24(e) (Supp. 1991).

14. Ga. Bd. Nat. Resources Rule, ch. 39-3-4-.02(3).

15. *In re Walton County*, 1990 WL 202452.

ultimately became the basis for HB 182.¹⁶ The administrative law judge ruled that the Director had misinterpreted the language of the GCSWMA,¹⁷ and held that modification or amendment of a permit only encompassed “corrections to existing facilities in the limiting sense.”¹⁸ In other words, any expansion of an existing site would require issuing a new permit since expansion would constitute a previously prohibited or unpermitted activity.¹⁹ The Director could modify to restrict but not to enlarge, as would be the case with vertical expansion.²⁰

This restrictive interpretation of permit modification and amendment under the GCSWMA had a crippling effect on twenty-five counties in the State whose solid waste disposal sites were nearing or had reached full capacity.²¹ Before this decision, modifications not only for expansion but also to accommodate already existing expansion were not uncommon.²² Many of these counties had already filed for modifications to expand, and HB 182 was designed to give a twenty-four month “window of opportunity” to explore alternative sites and methodologies to those that had filed.²³ Since the Walton County landfill was already at capacity for horizontal use, the decision effectively shut it down.²⁴ Two avenues for overturning the administrative law judge’s decision quickly developed, the drafting of HB 182 and an appeal by the State Attorney General’s office.²⁵ Therefore, HB 182 became important from two standpoints: first, to create a provision for modification that would allow for vertical expansion of deserving sites, and, second, to provide for specific limitations on those modifications so that undeserving sites would not benefit from a successful appeal.²⁶

HB 182

The Act removes the Director’s power to amend permits.²⁷ The House Natural Resources Committee added this provision because an administrative law judge interpreted this power as not requiring a

16. Dobbs Interview, *supra* note 5.

17. *In re Walton County*, 1990 WL 202452.

18. *Id.*

19. *Id.*

20. *Id.*

21. King Interview, *supra* note 11.

22. *In re Walton County*, 1990 WL 202452.

23. King Interview, *supra* note 11. A private landfill in Barrow County agreed to take Walton County’s solid waste, and since Barrow was a contiguous county, this solution was practical because travel would not be a problem. *Id.* Most of the other 25 counties, however, were not fortunate enough to have so convenient an option. *Id.*

24. *Id.*

25. *Id.*

26. Dobbs Interview, *supra* note 5.

27. O.C.G.A. § 12-8-24(e) (Supp. 1991).

formal review process; this interpretation was not within the intention of the Act, especially in the case of a major modification.²⁸ In fact, the Act as amended specifically provides for a public hearing before granting of a major modification.²⁹ This section was included to encourage environmentalists who had also supported last year's amendment to the GCSWMA.³⁰

The Director's power to modify permits is allowed in accordance with the rules of the Board.³¹ The Board, in turn, must classify all modifications as either major or minor.³² By requiring such classification, the Act curtails the necessity of having a public hearing every time a landfill changes the position of an eight inch overflow pipe or moves a gate.³³ Major modifications of existing permits that require public notice and a hearing will include only the vertical or horizontal expansion of existing disposal facilities.³⁴

All major modifications must meet the siting and design standards applicable to new permits.³⁵ These standards are those of subtitle D of the Resource and Conservation Recovery Act of 1976,³⁶ which Georgia has adopted by reference.³⁷ An exception to this provision is for "all applications for vertical expansion of existing solid waste disposal facilities received by the Director on or before December 31, 1990."³⁸ This "window of opportunity" was given to those twenty-five counties that were caught by the administrative law judge's decision and left with little or no time to seek new sites or develop alternative methodologies before their landfills reached capacity.³⁹

If during this "window of opportunity" period a site can demonstrate compliance with the applicable siting and design standards as vertically expanded, it can remain in use beyond the two year window.⁴⁰ This

28. Dobbs Interview, *supra* note 5. The intention of the Act was to provide specifically that a formal review process was necessary in the case of a *major* modification, while dispensing with this requirement for *minor* modifications. *Id.* See HB 182 (HCS), 1991 Ga. Gen. Assem.

29. O.C.G.A. § 12-8-24(e)(2) (Supp. 1991).

30. Dobbs Interview, *supra* note 5.

31. O.C.G.A. § 12-8-24(e)(1) (Supp. 1991).

32. *Id.*

33. Dobbs Interview, *supra* note 5.

34. O.C.G.A. § 12-8-24(e)(2) (Supp. 1991).

35. King Interview, *supra* note 11.

36. 42 U.S.C. § 6941 (1982). Subtitle D covers all solid waste management on the state and local level. *Id.* It mandates that each site must be equipped with appropriate environmental safeguards. *Id.* These generally include geosynthetic liners with a clay, sand, or rock base, and leachate systems that keep the water that accumulates beneath the solid waste from contaminating existing groundwater. *Id.*

37. O.C.G.A. § 12-8-24(e)(3) (Supp. 1991).

38. *Id.*

39. King Interview, *supra* note 11.

40. O.C.G.A. § 12-8-24(e)(3) (Supp. 1991).

twenty-four month grace period only applies to those sites with two years or less capacity measured from July 21, 1991, which had filed before December 31, 1990.⁴¹ The purpose of the arbitrary deadline was to avoid opening a floodgate and inviting a barrage of applications from both qualified and unqualified sites.⁴² Most of the twenty-five counties affected by the administrative law judge's decision had filed before the deadline, and were making good faith efforts to establish suitable disposal alternatives.⁴³

It is important to note that the Act is not without environmental safeguards that apply during the two year period.⁴⁴ If during this time data become available to the Director indicating that a site is inadequate (for example, groundwater contamination occurs, or the soil cannot support the weight of the solid waste), that site will be shut down.⁴⁵ This objective is enforceable because all facilities are required to have groundwater monitoring systems in place by June 29, 1991, and geotechnical data is collected on a regular basis.⁴⁶ In addition, this compliance is not static: if federal standards change during the grace period, the sites must still continue to comply.⁴⁷

The House Committee on Natural Resources also added that any major modification had to be accompanied by the same written verification required of new permit applicants.⁴⁸ This includes verification of compliance with local zoning and land use ordinances along with a statement that the facility is consistent with the local or regional waste management plan required by the Act to be in place as of July 1, 1992.⁴⁹

HB 182 is another example of cooperation between state and local government and environmentalists in working toward a practical waste management goal.⁵⁰ The Act saved twenty-five counties from the waste disposal nightmare of having to close their landfills before having sufficient time to implement new methodologies or find new sites.⁵¹ At the same time, the Act addressed environmental concerns by not only providing for public notice and hearings, but also establishing that sites have to maintain compliance with state and federal standards.⁵²

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41. *Id.*

42. Dobbs Interview, *supra* note 5.

43. *Id.*

44. O.C.G.A. § 12-8-24(e)(3) (Supp. 1991).

45. Dobbs Interview, *supra* note 5.

46. King Interview, *supra* note 11.

47. Dobbs Interview, *supra* note 5.

48. O.C.G.A. § 12-8-24(g) (Supp. 1991). *See* HB 182 (HCS).

49. *Id.*

50. Dobbs Interview, *supra* note 5.

51. *Id.*

52. *Id.*