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HEALTH

Radiation Control: Allocate Responsibilities Between Department of Human Resources and Department of Natural Resources

CODE SECTIONS: O.C.G.A. §§ 31-13-1 to -4(amended), 31-13-4.1(new), 31-13-5 to -15(amended), 31-13-16 to -25(new)

BILL NUMBER: HB 947

ACT NUMBER: 1189

SUMMARY: The Act designates the Department of Human Resources as the agency responsible for regulation and control of radiation generating equipment. The Act further designates the Department of Natural Resources as the agency responsible for regulation and control of radioactive materials. The Act delineates the powers and duties of each Department; provides for enforcement capabilities; and specifies procedures for administrative and judicial review.

EFFECTIVE DATE: April 14, 1990

History

The Georgia Radiation Control Act¹ established the Department of Human Resources (DHR) as the agency responsible for both the registration of radiation generating equipment and the licensing of radioactive material users.² However, the Department of Natural Resources (DNR) is the more appropriate agency to handle the licensing procedure, since the Environmental Protection Division (EPD) of the DNR is responsible for environmental laws and regulations concerning radioactivity.³

1. 1964 Ga. Laws 499 (formerly found at O.C.G.A. §§ 31-13-1 to -15 (1985 & Supp. 1989)).

2. Telephone interview with Representative Denny M. Dobbs, House District No. 74 (Mar. 20, 1990) [hereinafter Dobbs Interview].

3. Telephone interview with Gregory Peterson, Assistant Director, Office of Regulatory Services, Department of Human Resources (Mar. 21, 1990) [hereinafter Peterson Interview].

In 1989, radioactive gas leaked from a Decatur firm that used the gas to sterilize medical equipment.⁴ Both the DHR and the EPD responded to the leak, resulting in confusion as to which agency was responsible for the investigation.⁵ In response, lawmakers introduced HB 947 to more clearly define the responsibilities of the DHR and the DNR, and to specifically state the duties of each Department.⁶

HB 947

HB 947 was introduced in the 1989 Legislative Session, but was carried over to the 1990 Legislative Session.⁷ Both the DNR and the DHR agreed to the proposed changes in the law when the bill was first introduced, but each Department needed time to resolve funding and personnel issues.⁸ Once these ancillary issues were resolved, HB 947 was passed in the 1990 Legislative Session.⁹

The Act amends the Georgia Radiation Control Act by replacing it entirely with a new Chapter 13.¹⁰ The Act now clearly defines the responsibilities of the DNR and the DHR relative to radiation control.¹¹ The new Code section designates the DHR as the state agency to administer a program for controlling radiation generating equipment consistent with the environmental laws and regulations administered by the DNR.¹² Code section 13-13-4.1 was added to designate the DNR as the state agency responsible for administering a program for the control of radioactive materials.¹³

Each Department is empowered to develop comprehensive radiation control policies and programs,¹⁴ to advise and consult with other public agencies and affected industries,¹⁵ to conduct investigations and research,¹⁶ to promulgate applicable rules and regulations,¹⁷ and to issue orders prohibiting the discharge of radiation and radioactive material into the environment.¹⁸ The Act further requires submission of plans concerning protective shielding for radiation generating equipment and

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4. Dobbs Interview, *supra* note 2.
 5. *Id.*
 6. *Id.*
 7. *Id.*
 8. *Id.*
 9. *Id.*
 10. O.C.G.A. §§ 31-13-1 to -25 (Supp. 1990).
 11. *Id.*
 12. O.C.G.A. § 31-13-4 (Supp. 1990).
 13. O.C.G.A. § 31-13-4.1 (Supp. 1990).
 14. O.C.G.A. § 31-13-5(a)(1) (Supp. 1990).
 15. O.C.G.A. § 31-13-5(a)(2) (Supp. 1990).
 16. O.C.G.A. § 31-13-5(a)(3) (Supp. 1990).
 17. O.C.G.A. § 31-13-5(a)(4) (Supp. 1990).
 18. O.C.G.A. § 31-13-5(a)(5) (Supp. 1990).

radioactive material,¹⁹ requires all sources of radiation to be safely shielded and stored,²⁰ acquires and disseminates information pertaining to the control of radiation,²¹ exempts equipment and radiation users from registration or licensing requirements if no significant risks exist,²² and adopts rules and regulations which provide for the recognition of other federal and state licenses.²³ Both the DHR and the DNR are authorized to enter private and public property to determine compliance with radiation controls,²⁴ enter into agreements with other states and the federal government regarding radiation control,²⁵ and to institute personnel training programs.²⁶ Both Departments may require persons who possess or use sources of radiation to maintain and furnish records pertaining to its storage, use, and level of exposure to personnel.²⁷

The Act transfers certain responsibilities to the DNR which had previously been allocated to the DHR.²⁸ It is the DNR's responsibility to require the posting of a bond in case the licensee is unable to safely collect or dispose of radioactive material due to accident or discontinuance of operation.²⁹ If the DNR determines that an imminent danger to public health and welfare exists, it may require forfeiture of the bond.³⁰ The DNR licenses persons to "use, manufacture, produce, transport, transfer, receive, acquire, own, or possess" radioactive materials, including nuclear devices, installations, and equipment using such materials.³¹ The DNR may refuse to grant a license to nonqualified applicants; suspend, revoke, or amend a license if violations are discovered;³² and take emergency action as necessary to ensure public safety.³³ As part of the enforcement procedure, the DNR can impound radioactive materials and bring appropriate judicial actions to destroy or dispose of radioactive materials.³⁴ The EPD retains control to grant permits to store or bury radioactive waste.³⁵

19. O.C.G.A. § 31-13-5(a)(6) (Supp. 1990).

20. O.C.G.A. § 31-13-5(a)(7) (Supp. 1990).

21. O.C.G.A. § 31-13-5(a)(8) (Supp. 1990).

22. O.C.G.A. § 31-13-5(a)(9) (Supp. 1990).

23. O.C.G.A. § 31-13-5(a)(10) (Supp. 1990).

24. O.C.G.A. § 31-13-5(b) (Supp. 1990).

25. O.C.G.A. § 31-13-5(c) (Supp. 1990).

26. O.C.G.A. § 31-13-5(d) (Supp. 1990).

27. O.C.G.A. § 31-13-9 (Supp. 1990).

28. *See infra* notes 29–34 and accompanying text.

29. O.C.G.A. § 31-13-6(a) (Supp. 1990). Bonding requirements are not applicable to the State or any state agency. O.C.G.A. § 31-13-6(d) (Supp. 1990).

30. O.C.G.A. § 31-13-6(b) (Supp. 1990). Money forfeited from the bond is used to implement any actions necessary to protect the public health and safety. *Id.*

31. O.C.G.A. § 31-13-8.1 (Supp. 1990).

32. O.C.G.A. § 31-13-5(10)(a) (Supp. 1990).

33. O.C.G.A. § 31-13-10(a)–(b) (Supp. 1990).

34. O.C.G.A. § 31-13-11(c)–(d) (Supp. 1990).

35. O.C.G.A. § 31-13-7 (Supp. 1990). Prior to granting a permit to construct or

The Act does not alter the DHR's responsibility relative to the registration of radiation generating equipment.³⁶ The DHR is still authorized to regulate the "registration and periodic renewal of registration of persons to sell, distribute, assemble, use, manufacture, produce, transport, transfer, receive, acquire, own, or possess radiation generating equipment."³⁷ If necessary, it may also suspend or revoke registrations.³⁸

By executive order, the Governor has the power to transfer duties and responsibilities between the two Departments as he deems appropriate.³⁹ The Act provides that the allocation of administrative powers shall not affect any current judicial proceedings or the receipt of federal funds,⁴⁰ and that all regulations, contracts, and agreements relative to radioactive materials entered into by the DHR will be assumed by the DNR.⁴¹

The House Committee on Health and Ecology amended the bill by increasing the maximum civil penalty which either the DNR or the DHR could impose for violation of a licensing or registration regulation from \$1000 to \$10,000.⁴² Violations encountered by the DNR regarding radioactive spills and nuclear accidents, however, are generally of a greater magnitude than those encountered by the DHR relative to the regulation of radioactive equipment.⁴³

The House committee substitute differentiated between the procedures used by the DNR and the DHR to impose penalties.⁴⁴ Considering the potentially disastrous consequences of violations which cause radioactive discharge, the DNR requires more immediate enforcement procedures.⁴⁵ The procedures for the DHR did not change.⁴⁶ The person charged with a violation is notified in writing and is given the opportunity to contest the penalty pursuant to Chapter 13 of Title 50, the Georgia

operate a radioactive waste storage or disposal site, the EPD may require the submission of specifications, plans, and other relevant information. *Id.* A permit holder may also be required to maintain appropriate records and monitoring devices. *Id.* All permits are subject to periodic review and may be revoked or modified. *Id.*

36. *See infra* notes 37–38 and accompanying text.

37. O.C.G.A. § 31-13-8.2 (Supp. 1990) (formerly found at O.C.G.A. § 31-13-8.3 (Supp. 1989)).

38. *Id.*

39. O.C.G.A. § 31-13-23 (Supp. 1990). By adding this provision, the Act will not have to be legislatively amended if additional allocations between the DHR and the DNR become necessary. Peterson Interview, *supra* note 3.

40. O.C.G.A. § 31-13-24 (Supp. 1990).

41. O.C.G.A. § 31-13-25 (Supp. 1990).

42. O.C.G.A. § 31-13-13(b)(1) (Supp. 1990) (formerly found at O.C.G.A. § 31-13-15(b)(1) (1985)).

43. Peterson Interview, *supra* note 3.

44. O.C.G.A. §§ 31-13-13(b)(2), 31-13-14 to -22 (Supp. 1990).

45. Peterson Interview, *supra* note 3.

46. *See infra* notes 47–48 and accompanying text.

Administrative Procedure Act.⁴⁷ If necessary, the Attorney General can institute a civil action to collect the penalty.⁴⁸

For the DNR, the House committee substitute added the investigative and enforcement procedures currently in use by the DNR.⁴⁹ The Director of the EPD can enter public or private property to investigate apparent Code violations and conditions relative to the handling of radioactive materials and, if necessary, institute legal proceedings to enforce existing regulations.⁵⁰ If a conference with the person charged with the violation fails to remedy the situation, the Director can issue an order directing the person to take the necessary corrective action.⁵¹ Any person adversely affected by the order has thirty days to petition for a hearing.⁵² After exhausting all administrative procedures, a person may request a judicial review in superior court.⁵³

In an emergency situation, the Director, with the concurrence of the Governor, may order immediate compliance with an order.⁵⁴ Upon request, the person charged with the violation will be granted a hearing within forty-eight hours.⁵⁵ To ensure public safety, the Director may obtain a restraining order or a temporary or permanent injunction to restrain or enjoin a person from violating the Act, without the requisite showing of a lack of an adequate remedy at law.⁵⁶

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47. O.C.G.A. § 31-13-13(b)(2) (Supp. 1990) (formerly found at O.C.G.A. § 31-13-15(b)(2) (1985)).

48. O.C.G.A. § 31-13-13(b)(3) (Supp. 1990) (formerly found at O.C.G.A. § 31-13-15(b)(3) (1985)).

49. Peterson Interview, *supra* note 3.

50. O.C.G.A. §§ 31-13-14 to -15 (Supp. 1990).

51. O.C.G.A. § 31-13-16 (Supp. 1990).

52. O.C.G.A. § 31-13-18 (Supp. 1990).

53. O.C.G.A. §§ 31-13-19 to -20 (Supp. 1990).

54. O.C.G.A. § 31-13-17 (Supp. 1990).

55. *Id.*

56. O.C.G.A. § 31-13-21 (Supp. 1990). The Attorney General will represent the Director in all judicial proceedings. O.C.G.A. § 31-13-22 (Supp. 1990).