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CONSERVATION AND NATURAL RESOURCES Solid Waste Management: Permit Vertical Expansion of Municipal Solid Waste Landfills, Modify Solid Waste Management Planning Requirements, Exempt Waste-to-Energy Facilities from Source Reduction Calculations, Provide for Certain Tire Disposal Fees and Provide Guidelines for Disposal of Yard Trimmings

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CONSERVATION AND NATURAL RESOURCES

Solid Waste Management: Permit Vertical Expansion of Municipal Solid Waste Landfills, Modify Solid Waste Management Planning Requirements, Exempt Waste-to-Energy Facilities from Source Reduction Calculations, Provide for Certain Tire Disposal Fees and Provide Guidelines for Disposal of Yard Trimmings

CODE SECTIONS:	O.C.G.A. §§ 12-8-21(c) (amended), 12-8-21(g), -22(17.1), -22(27.2) (new), 12-8-22(32), -22(42), -24(e), -24(g), -31.1, -39.1, -39.3, -40.1(b), -40.1(d)(2), -40.1(d)(3), -40.1(g), -40.1(h), -40.2 (amended), 12-8-27 (deleted)
BILL NUMBER:	HB 257
ACT NUMBER:	318
SUMMARY:	The Act seeks to reduce the amount of solid waste generated in the state by imposing restrictions on the disposal of tires and yard trimmings and by utilizing source reduction and planning methodologies. In addition, the Act seeks to expand Georgia's current municipal solid waste landfill space by permitting certain landfills to expand vertically, until they can meet the new landfill design requirements to expand horizontally.
EFFECTIVE DATE:	April 5, 1993

History

In the United States, solid waste disposal is regulated by the Resource Conservation and Recovery Act (RCRA).[1] In 1984, Georgia was delegated the authority to regulate solid waste disposal within its borders.[2] Currently, the State regulates solid waste disposal through the Georgia Comprehensive Solid Waste Management Act.[3]

Due to changes in the federal regulation of solid waste disposal,[4] municipal solid waste disposal facilities in Georgia must now upgrade their landfill operations in order to comply with these new requirements.[5] As of October 1992, only 10 of the 181 municipal solid

1. 42 U.S.C. §§ 6901-6992k (1988).
2. 57 Fed. Reg. 55,466 (1992).
3. O.C.G.A. §§ 12-8-20 to -40.2 (1992).
4. 40 C.F.R. § 258 (1992) (providing new criteria for the operation of municipal solid waste landfills, effective Oct. 9, 1993).
5. GA. COMP. R. & REGS. r. 391-3-4 (1993).

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waste landfills currently operating in Georgia satisfied these new requirements.[6] The Environmental Protection Division (EPD) of the Georgia Department of Natural Resources (DNR) expects that 56 of the remaining 171 municipal landfills will reach their capacity and close by October 1993.[7] The remaining 115 municipal landfills must be upgraded by October 1993 in order to continue lawful operations.[8] Hence, Georgia is in a race against time to provide for safe and adequate in-state disposal of its own municipal solid waste. The resulting pressure on Georgia to properly dispose of its own solid waste has initiated most of the substantive changes provided for in this Act.[9]

HB 257

The Act amends various code sections of the Georgia Comprehensive Solid Waste Management Act. In summary, the Act seeks to reduce the amount of solid waste generated in the state by imposing restrictions on the disposal of tires[10] and yard trimmings,[11] and by utilizing source reduction[12] and planning[13] methodologies. In addition, the Act seeks to increase Georgia's current municipal solid waste landfill space—by permitting certain landfills to expand vertically—until they can meet the new landfill design requirements to expand horizontally.[14] Lastly, the Act deletes portions of the Code referring to special solid waste.[15] Each of these topics will be addressed separately.

Solid Waste Source Reduction

In an effort to encourage an achievable reduction in the amount of solid waste generated in the state, Code section 12-8-21(c) proposes that the state reduce the generation of solid waste by twenty-five percent—a goal to be accomplished by July 1996.[16] The House Committee on

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6. Environmental Protection Division, Georgia's Municipal Solid Waste Landfills: 1992 Overview Report 4-6 (Dec. 11, 1992) [hereinafter EPD Overview Report] (available at the Solid Waste Branch of the Environmental Protection Division, Georgia Department of Natural Resources).

7. *Id.*

8. *Id.*

9. *Id.* at 14-15; *see also* David Goldberg and Rebecca McCarthy, *Special Report: Georgia's Landfill Crisis*, ATLANTA J. & CONST., Jan. 24, 1993, at A3; Telephone Interview with Rep. Denny Dobbs, House District No. 92 (May 24, 1993) [hereinafter Dobbs Interview].

10. O.C.G.A. §§ 12-8-22(32), -40.1(b), (d), (g)-(h) (Supp. 1993).

11. *Id.* §§ 12-8-21(g), -22(42), -40.2 (Supp. 1993).

12. *Id.* §§ 12-8-21(c), -39.1, -39.3 (Supp. 1993).

13. *Id.* §§ 12-8-22(17.1), -22(27.2), -24(g), -31.1 (Supp. 1993).

14. *Id.* § 12-8-24(e) (Supp. 1993).

15. 1990 Ga. Laws 1981 (formerly found at O.C.G.A. § 12-8-27 (1992)).

16. O.C.G.A. § 12-8-21(c) (Supp. 1993); Telephone Interview with John Taylor,

Natural Resources and Environment amended Code section 12-8-21(c) to include an exemption from this source reduction goal for facilities that convert solid waste to energy,[17] as permitted under the Georgia Comprehensive Solid Waste Management Act.[18] The exemption for the waste-to-energy facilities was inserted to allow the city of Savannah to continue to supply certain amounts of solid waste to a waste-to-energy facility. The city is bound to do so under a contract agreement with the operators of the facility, irrespective of the twenty-five percent source reduction goal.[19]

Secondly, the House Committee on Natural Resources and Environment amended Code sections 12-8-31.1 and 12-8-39.1 to be consistent with Code section 12-8-21(c), clarifying and limiting the application of these sections by excluding waste-to-energy facilities from the local government's solid waste reduction calculations.[20] In addition, semantic changes were made to the Act to focus on the amount of waste *received* at a municipal solid waste disposal facility (as opposed to the amount of waste *generated* by a city or county),[21] to correct the manner in which solid waste is measured.[22]

Lastly, Code section 12-8-39.3 was amended to provide additional enforcement tools to local governments to implement fee and tax assessments for the collection and management of solid waste, and to authorize the tax collector to enforce these taxes and fees.[23]

Tire Disposal

As passed, the Act provides for the collection of certain tire disposal fees and includes some cosmetic changes to correct previous legislation relating to tire disposal.[24] Some of the changes were encouraged by recent legislation in other states, which banned the disposal of tires in those states and resulted in the disposal of tires from those states in Georgia.[25] Other modifications were made to preserve dwindling landfill space for more traditional solid wastes such as household trash, and to improve the collection of certain fees.[26]

Chief, Land Protection Branch, Environmental Protection Division, Georgia Department of Natural Resources (Apr. 29, 1993) [hereinafter Taylor Interview].

17. O.C.G.A. § 12-8-21(c) (Supp. 1993); HB 257 (HCS), 1993 Ga. Gen. Assem.
18. *See* O.C.G.A. § 12-8-24(i) (1992).
19. Dobbs Interview, *supra* note 9; Taylor Interview, *supra* note 16.
20. *See* O.C.G.A. §§ 12-8-31.1, -39.1 (Supp. 1993); Dobbs Interview, *supra* note 9.
21. *See* O.C.G.A. §§ 12-8-31.1, -39.3 (Supp. 1993).
22. Dobbs Interview, *supra* note 9.
23. O.C.G.A. § 12-8-39.3 (Supp. 1993); Dobbs Interview, *supra* note 9.
24. O.C.G.A. §§ 12-8-22(32), -40.1 (Supp. 1993).
25. Dobbs Interview, *supra* note 9.
26. *Id.*; Taylor Interview, *supra* note 16.

To avoid duplication and confusion, the Act modified the definition of "scrap tire carrier" in Code section 12-8-22(32) by dropping the exclusions listed in the definition section since these same exclusions were already enumerated in Code section 12-8-40.1.[27] In addition, Code section 12-8-22(32) was expanded to include the lawful transportation of scrap tires to "end users"[28] to distinguish these facilities from tire haulers.[29] To be consistent, the Act also amended Code sections 12-8-40.1(d)(2) and 12-8-40.1(d)(3) to include end user provisions.[30]

Code section 12-8-40.1(d)(3) was modified to permit any company to transport its own scrap tires, regardless of that company's primary business.[31] Prior to this amendment, companies in the business of handling tires faced difficulties when they attempted to transport their own tires.[32] In addition, the Act makes cosmetic changes to correct Code section 12-8-40.1(b) to be consistent with its original legislative intent.[33]

To make tire recycling economically feasible, Code section 12-8-40.1(g) increases the number of scrap tires that can be stored by a tire retailer from 500 to 3000.[34] In addition, limits on the number of scrap tires stored by a scrap tire processor will now be at the discretion of the EPD.[35]

As introduced, the Act provided that a one dollar fee collected on the retail sale of all new replacement tires would be imposed upon the Georgia tire distributor or retailer who first imported the tire into Georgia.[36] However, in an effort to place the burden closer to the Georgia tire source, the House Committee on Natural Resources and Environment amended the bill to provide that the one dollar fee be collected by the retail dealer of the tires.[37] Where the retail dealer does not have a valid scrap tire generator identification number, it is the responsibility of the Georgia tire distributor to collect the appropriate fees.[38] Reports of fees collected must be filed with the EPD,

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27. Taylor Interview, *supra* note 16.
28. O.C.G.A. § 12-8-22(32) (Supp. 1993).
29. Dobbs Interview, *supra* note 9.
30. O.C.G.A. § 12-8-40.1(d)(2)-(3) (Supp. 1993).
31. *Id.* § 12-8-40.1(d)(3) (Supp. 1993).
32. Dobbs Interview, *supra* note 9.
33. *See* O.C.G.A. § 12-8-40.1(b) (Supp. 1993); Taylor Interview, *supra* note 16.
34. O.C.G.A. § 12-8-40.1(g) (Supp. 1993); Dobbs Interview, *supra* note 9.
35. O.C.G.A. § 12-8-40.1(g) (Supp. 1993).
36. HB 257, as introduced, 1993 Ga. Gen. Assem.
37. O.C.G.A. § 12-8-40.1(h) (Supp. 1993); Dobbs Interview, *supra* note 9.
38. O.C.G.A. § 12-8-40.1(h) (Supp. 1993). Interviews with Messrs. Dobbs and Taylor indicated that this amendment was also an effort to ensure that the tire fees were collected by closing a loophole that permitted the distributor to bypass the fees if he was located out of state. Dobbs Interview, *supra* note 9; Taylor Interview, *supra* note

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and the amendment gives the Department of Revenue the power to collect these fees.[39] As introduced, the Act provided for a refund or credit to those who paid the one dollar fee on tires that were not ultimately sold to Georgians.[40] However, the House Committee on Natural Resources and Environment dropped this provision,[41] but left intact the deductions set forth in Code section 12-8-40.1(h)(2).[42]

Yard Trimmings Disposal

The Senate Committee on Natural Resources amended the Act to include certain provisions which govern the disposal of yard trimmings.[43] Again, the thrust of these amendments was to conserve valuable municipal solid waste landfill space.[44] Code section 12-8-21(g) was added to provide a hierarchy for the disposal of yard trimmings, which includes composting, chipping and certain mowing methods.[45] Further, the definition of "yard trimmings" in Code section 12-8-22(42) was modified to include leaves, brush, grass clippings, and shrubs, and to exclude matter resulting from land clearing operations.[46] By including more materials in the definition of "yard trimmings" and prohibiting such wastes from land disposal, Georgia will be able to preserve more of its dwindling landfill space.[47]

Code section 12-8-40.2 was amended by the Senate Committee on Natural Resources to mandate that cities and municipalities ban the disposal of yard trimmings in municipal solid waste landfills which

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16.

39. O.C.G.A. § 12-8-40.1(h) (Supp. 1993). Permitting the Department of Revenue to collect fees will make fee collection easier for the distributors, since they already communicate with the Department on issues relating to tax collection. Taylor Interview, *supra* note 16.

40. HB 257, as introduced, 1993 Ga. Gen. Assem.

41. The constitutionality of the provision was questionable since it would have imposed fees on people outside of the state. Hence, the provision was dropped. Dobbs Interview, *supra* note 9.

42. O.C.G.A. § 12-8-40.1(h)(2) (Supp. 1993). Most changes regarding fee collection were aimed at improving the fee collection system. Taylor Interview, *supra* note 16.

43. HB 257 (SCA), 1993 Ga. Gen. Assem.

44. Dobbs Interview, *supra* note 9. EPD's original position considered these provisions to be local (city or county) in nature; hence, it was inappropriate for a state agency such as the EPD to mandate them. *Id.* However, lobbying efforts by numerous environmentally conscious interest groups led to the introduction of these provisions and eventually to EPD's support of the compromising language that was passed by the Georgia General Assembly. Taylor Interview, *supra* note 16.

45. O.C.G.A. § 12-8-21(g) (Supp. 1993).

46. *Id.* § 12-8-22(42) (Supp. 1993). Tree stumps and other types of construction debris were specifically excluded since these materials are more economically and readily managed at the point of generation. *Id.* In addition, these changes made the definition consistent with the composition of yard trimmings. *Id.*

47. Dobbs Interview, *supra* note 9.

have been designed to meet the new criteria under Subtitle D of RCRA starting in September 1996.[48] Instead of landfilling these materials, yard trimmings are to be chipped, composted, or reused in some other economically feasible manner.[49] Prior to the mandatory deadline of September 1996, local governments are encouraged to voluntarily implement these restrictions, and the Georgia DNR is authorized to develop guidelines regarding the chipping, composting and reuse of yard trimmings.[50]

Special Solid Waste Issues

On the heels of *Chemical Waste Management, Inc. v. Hunt*,[51] in which the U.S. Supreme Court struck down Alabama's efforts to restrict in-state disposal of out-of-state waste by charging higher fees on the out-of-state waste, Georgia's own prohibition on the in-state disposal of out-of-state waste was brought into question.[52] The Georgia provisions were declared unconstitutional, as they discriminated against the in-state disposal of out-of-state waste, thus interfering with interstate commerce.[53] As a result, the Georgia EPD recommended that Code section 12-8-27 be stricken in its entirety.[54]

Vertical Expansion Issues

As of October 1993, any new municipal solid waste landfill unit or any horizontal expansion of an existing municipal solid waste landfill unit must install a synthetic liner and a leachate collection system before an operating permit will be issued.[55] These new design requirements are costly and may force some landfills to close.[56] However, if a landfill could continue its vertical expansion, these design requirements would not be triggered until some time after October 1993.[57]

In 1990, the Georgia General Assembly amended the Georgia Comprehensive Solid Waste Management Act to allow certain landfills

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48. O.C.G.A. § 12-8-40.2 (Supp. 1993); HB 257 (SCA), 1993 Ga. Gen. Assem.
49. O.C.G.A. § 12-8-40.2 (Supp. 1993).
50. *Id.*
51. 112 S. Ct. 2009 (1992).
52. Southern States Landfill, Inc. v. Ga. DNR, 801 F. Supp. 725 (M.D. Ga. 1992).
53. *Id.* at 736.
54. HB 257 (HCS), 1993 Ga. Gen. Assem.; Taylor Interview, *supra* note 16.
55. 40 C.F.R. §§ 258.40-61 (1992); GA. COMP. R. & REGS. r. 391-3-4.07 (1993).
56. EPD Overview Report, *supra* note 6, at 2, 5.
57. *See* 40 C.F.R. § 258.40 (1992) (ground water monitoring requirements apply immediately to new landfill units and horizontal expansions, but existing landfills can buy time if permitted by the state program); GA. COMP. R. & REGS. r. 391-3-4.14 (1993) (permits existing landfills to operate without a ground water monitoring program if other conditions are met).

to expand vertically and informed landfill operators to prepare for upcoming changes in landfill requirements.[58] However, many landfills did not heed warnings from the state that new design requirements were imminent.[59] As a result, most Georgia landfills will not be able to meet the new landfill design requirements which become effective October 9, 1993.[60] For this reason, the EPD recommended additional legislation to permit certain landfills to continue to expand vertically—while those landfills rush to implement these new landfill regulations—so long as appropriate landfill monitoring methods are in place.[61] Hence, Code section 12-8-24(e) provides for a variance from the new landfill design standards,[62] once a facility can demonstrate that it has installed a surface and ground water monitoring system, installed a methane gas monitoring system and prepared approved closure and post-closure plans.[63] If a facility is in violation of the surface water, ground water or methane gas standards, a variance may still be granted provided that the facility can demonstrate that it can return the site conditions to the compliance standards within six months of the Georgia EPD Director's approval of the facility's corrective action plan to achieve compliance.[64] This variance gives breathing room for landfills without liners and leachate collection systems by allowing them up until July 1998 to complete their upgrades.[65] However, any municipal solid waste landfill without a liner and leachate collection system in place that cannot demonstrate compliance with EPD's new design standards will be forced to implement remedial activities and to initiate the facility's closure plan.[66] As a result of these landfill closings, local city and county governments will be pressured into consolidating landfills and sharing landfill capacity amongst themselves.[67]

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58. 1990 Ga. Laws 1981 (formerly found at O.C.G.A. § 12-8-24(e)(3) (1992)); Taylor Interview, *supra* note 16; Dobbs Interview, *supra* note 9.

59. Taylor Interview, *supra* note 16; Dobbs Interview, *supra* note 9.

60. EPD Overview Report, *supra* note 6, at 8-9; Taylor Interview, *supra* note 16; Dobbs Interview, *supra* note 9.

61. EPD Overview Report, *supra* note 6, at 14; Dobbs Interview, *supra* note 9; Taylor Interview, *supra* note 16.

62. O.C.G.A. § 12-8-24(e)(3) (Supp. 1993).

63. *Id.* § 12-8-24(e)(4) (Supp. 1993).

64. *Id.* § 12-8-24(e)(4)(E) (Supp. 1993).

65. *Id.* § 12-4-24(e)(5) (Supp. 1993); Dobbs Interview, *supra* note 9; Taylor Interview, *supra* note 16.

66. O.C.G.A. § 12-8-24(e)(6) (Supp. 1993).

67. Taylor Interview, *supra* note 16.

Solid Waste Management Planning

Attempting to alleviate the battles within Georgia relating to in-county disposal of out-of-county waste, Code section 12-8-24(g) was amended to require that any jurisdiction that utilizes a landfill outside of its own jurisdiction provide documentation to the outside landfill's jurisdiction that its own jurisdiction is actively involved in waste reduction and solid waste management planning.[68] The original legislation also imposed a similar standard on in-state disposal of out-of-state waste, requiring the out-of-state jurisdiction to document its solid waste management planning and reduction efforts.[69] However, in the shadows of *Chemical Waste Management* and *Southern States*, the House Committee on Natural Resources and Environment further amended the bill to require only that these out-of-state jurisdictions have solid waste management plans that were "substantially similar" to Georgia's plan. The amendment was an effort to avoid constitutional issues before they arose.[70]

To assist many local governments to meet the solid waste planning requirements, Code sections 12-8-24(g) and 12-8-31.1 clarify that, in addition to local and regional plans, multijurisdictional solid waste management plans are a viable means to meet the solid waste management planning requirements.[71] The House Committee on Natural Resources and Environment defined "multijurisdictional solid waste management plan"[72] and "regional solid waste management plan"[73] in Code section 12-8-22. Both of these revisions provide more flexibility to those local governments who do not have the resources or capabilities to formulate their own solid waste management plans.[74] Local governments can now join together on a local, regional, or multijurisdictional level to develop comprehensive solid waste management plans.[75]

Lastly, Code section 12-8-31.1(f)(2) was amended to provide some relief to private solid waste management facilities who are at the mercy of those jurisdictions who have yet to create a solid waste management plan.[76] Until now, these private facilities could not expand or open a new municipal solid waste landfill because they could not demonstrate compliance with the local (nonexistent) solid waste management plan.[77] The Act provides that as of September 1, 1994, privately owned

68. O.C.G.A. § 12-8-24(g) (Supp. 1993); Dobbs Interview, *supra* note 9.
69. HB 257, as introduced, 1993 Ga. Gen. Assem.
70. *See* O.C.G.A. § 12-8-24(g) (Supp. 1993); Dobbs Interview, *supra* note 9.
71. O.C.G.A. §§ 12-8-24(g), -31.1 (Supp. 1993); Dobbs Interview, *supra* note 9.
72. O.C.G.A. § 12-8-22(17.1) (Supp. 1993).
73. *Id.* § 12-8-22(27.2) (Supp. 1993).
74. Dobbs Interview, *supra* note 9.
75. *Id.*
76. O.C.G.A. § 12-8-31.1(f)(2) (Supp. 1993); Dobbs Interview, *supra* note 9.
77. O.C.G.A. § 12-8-31.1(e) (1992); Dobbs Interview, *supra* note 9. As of October

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solid waste management facilities expanding or opening a new landfill unit located in jurisdictions that are not part of a solid waste management plan will be exempt from the requirement that the facility demonstrate consistency with the local solid waste management plan.[78]

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1992, only 74 of the approximately 700 local governments had approved solid waste management plans. EPD Overview Report, *supra* note 6, at 1.

78. O.C.G.A. § 12-8-31.1(f)(2) (Supp. 1993). Note that the deadline was changed from its original date of September 1, 1993 to September 1, 1995 by the Senate Committee before the Senate floor amended the bill to read September 1, 1994. *Compare* HB 257 (HCS), 1993 Ga. Gen. Assem. *with* HB 257 (SCA), 1993 Ga. Gen. Assem. *and* HB 257 (SFA), 1993 Ga. Gen. Assem. The 1995 deadline was prompted by concerns of smaller local governments who lacked zoning rules to govern when, where and how private solid waste management facilities would operate in their communities. Dobbs Interview, *supra* note 9.

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