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CRIMES AND OFFENSES

Littering Public and Private Property: Prohibit Dumping of Waste

CODE SECTIONS:	O.C.G.A. §§ 16-7-42 (amended), 16-7-50 to -56 (new)
BILL NUMBER:	SB 275
ACT NUMBER:	354
SUMMARY:	The Act makes it unlawful to dump waste in places such as public highways, lakes or rivers, or private property. An individual who dumps waste, other than biomedical waste, hazardous waste, or hazardous substances, not in excess of 500 pounds or 100 cubic feet is guilty of a misdemeanor. If the waste exceeds these quantities, the first offense is a misdemeanor, and subsequent offenses are felonies. If the waste, no matter what the quantity, is biomedical or hazardous waste, or a hazardous substance, the offense is classified as a felony.
EFFECTIVE DATE:	July 1, 1993

History

This Act was sponsored by the Department of Natural Resources. Prior environmental law statutes were written without criminal provisions. Therefore, violators could not be prosecuted and the Department of Natural Resources could only cooperate with and work with violators.[1] Provisions were added which allowed law enforcement rangers and authorities from the Game and Fish Department to bring criminal charges against violators.[2] However, officials encountered several problems. For example, law enforcement officials might find someone burning or dumping cable. In order to obtain a conviction, officials had the insurmountable burden of proving the material that was being dumped was hazardous waste.[3] Thus, the Department of Natural Resources sought legislation that would allow law enforcement officials who witnessed a suspect dumping trash to more readily bring about a conviction.[4] SB 275 provides the Department of Natural Resources an effective weapon to combat the dumping of waste and

1. Telephone Interview with David Word, Department of Natural Resources (Apr. 16, 1993) [hereinafter Word Interview].
2. *Id.*
3. *Id.*
4. *Id.*

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litter.[5] Although the language of the Act places great emphasis on hazardous and biomedical waste, it is primarily a litter law.[6] The new legislation is known as the "Waste Control Law."[7]

Additionally, after Florida adopted its waste control law in 1988, officials of the Game and Fish Division suspected that individuals from Florida were coming into Georgia and dumping their waste.[8] All the Division could do was report the offense to the Atlanta Environmental Division. By the time the Environmental Division could investigate, the nonresidents would be long gone.[9] The Act, using Florida's law as a guideline, provides that a ranger who sees someone dumping waste can arrest him immediately before the violator can flee the state.[10]

SB 275

The Act amends Georgia Code section 16-7-42 by specifically excluding from the definition of litter materials which are not waste as defined in the newly added section 16-7-51(6).[11] Section 16-7-51 is a definitional section which provides that "commercial purpose" is defined

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5. *Id.*
6. *Id.*
7. O.C.G.A. § 16-7-50 (Supp. 1993).
8. Word Interview, *supra* note 1.
9. Telephone Interview with David Waller, Director of the Game and Fish Division of the Department of Natural Resources (Apr. 2, 1993) [hereinafter Waller Interview].
10. *Id.*
11. Former O.C.G.A. § 16-7-42 defined litter as ". . . all sand, gravel, slag, brickbats, rubbish, waste material, tin cans, refuse, garbage, trash, debris, dead animals, or discarded materials of every kind and description." 1990 Ga. Laws 8 (formerly found at O.C.G.A. § 16-7-42 (1992)). Under the new Act, the definition is the same except it provides ". . . discarded materials of every kind and description which are not waste as such term is defined in paragraph (6) of Code Section of 16-7-51." O.C.G.A. § 16-7-51 (Supp. 1993). Waste is defined in O.C.G.A. § 16-7-51(6) as:

> . . . all discarded substances and materials whatsoever exceeding 10 pounds in weight or 15 cubic feet in volume, or any such substance if any weight or volume if biomedical waste, hazardous waste, a hazardous substance, or any such substance or material dumped for commercial purposes. Such term includes, without limitation, sand; gravel; slag; brickbats; rubbish; waste material; tin cans; refuse; garbage; trash; debris; dead animals; bottles; boxes; containers; papers; tobacco products; tires; appliances; mechanical equipment or parts; building or construction materials; tools; machinery; wood; motor vehicles and motor vehicle parts; vessels; aircraft equipment; waste oil; batteries; antifreeze; sludge from a waste-water treatment facility, water supply treatment plant, or air pollution control facility; air contaminants from any source or facility; and any other discarded material or substance of every kind and description resulting from domestic, industrial, commercial, mining, or governmental operations.

Id. § 16-7-51(6) (Supp. 1993).

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in Georgia Code section 12-8-62 paragraph 1.1.[12] Hazardous substance is defined in Georgia Code section 12-8-92,[13] and hazardous waste is defined in Georgia Code section 12-8-62.[14]

The Act provides that waste shall encompass all discarded substances and materials over ten pounds in weight or fifteen cubic feet in volume.[15] This differs from the original bill which defined waste as materials over fifteen pounds and twenty-seven cubic feet.[16] This provision was changed by a substitute offered by the House Committee on Natural Resources and Environment.[17] Weight restrictions were imposed to exclude accidental or incidental waste spillage from criminal sanctions.[18] The change in the weight was a compromise based on differing ideas of what the limit should be.[19] For example, if pulp plants left small branches lying about, or if small particles or objects were accidentally blown from trucks, criminal sanctions of a fine or prison sentence would not apply.[20]

The Act further provides that it is unlawful to dump waste, unless authorized by law or a permit, on such places as public roads, fresh-water lakes, rivers, or on private property.[21] Although dumping waste on private property is prohibited, it is allowed if the owner gives prior consent, such dumping will not adversely affect the public health, and it does not violate any other state law, rule, or regulation.[22]

The Act makes it a misdemeanor of a high and aggravated nature to dump waste in an amount not exceeding 500 pounds in weight or 100 cubic feet in volume if such waste is not biomedical waste, hazardous waste, or a hazardous substance and is not for commercial purposes.[23] This last clause was added by a House Committee substitute[24] and differs from the original bill which had no such provision.[25] This was changed because dumping any amount of such waste is a felony.[26]

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12. *Id.* § 16-7-51(2) (Supp. 1993).
13. *Id.* § 16-7-51(4) (Supp. 1993).
14. *Id.* § 16-7-51(5) (Supp. 1993).
15. *See supra* note 11.
16. SB 275, as introduced, 1993 Ga. Gen. Assem.
17. SB 275 (HCS), 1993 Ga. Gen. Assem.
18. Word Interview, *supra* note 1.
19. Waller Interview, *supra* note 9.
20. *Id.*
21. O.C.G.A. § 16-7-52 (Supp. 1993).
22. *Id.* § 16-7-52(a)(3) (Supp. 1993).
23. *Id.* § 16-7-53(a) (Supp. 1993).
24. SB 275 (HCS), 1993 Ga. Gen. Assem.
25. SB 275 originally provided "[a]ny person who dumps waste in violation of subsection (a) of this Code section in an amount not exceeding 500 pounds in weight or 100 cubic feet in volume and not for commercial purposes shall be guilty of a misdemeanor of a high and aggravated nature." SB 275, as introduced, 1993 Ga. Gen. Assem.
26. Waller Interview, *supra* note 9.

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The Act further provides that an individual who dumps waste in an amount over 500 pounds in weight or 100 cubic feet in volume shall be guilty of a misdemeanor of a high and aggravated nature on the first offense, and subsequent offenses shall be felonious.[27] This was changed from the bill as originally introduced which provided that such a violation would be an immediate felony.[28] This was changed so that first-time offenders would not have a felony record immediately upon violating the law.[29]

Additionally the Act provides that a person who dumps biomedical waste, hazardous waste, or a hazardous substance, regardless of the amount, or for a commercial purpose, shall be guilty of a felony, and fined $25,000 for each violation or imprisoned no more than two years, or both.[30]

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27. O.C.G.A. § 16-7-53(b) (Supp. 1993).
28. SB 275, as introduced, 1993 Ga. Gen. Assem.
29. Waller Interview, *supra* note 9. For example, consider a teenager working on a truck and removing engine greater than 500 pounds. *Id.* If his father instructed him to take it to a landfill fifteen miles away and instead the teenager dumped it on the side of the road, he would not have a felony record for the first offense. *Id.*
30. O.C.G.A. § 16-7-53(c) (Supp. 1993).

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