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Current through the 2025 Regular Session of the General Assembly.

[Official Code of Georgia Annotated](#) [TITLE 12 Conservation And Natural Resources \(Chs. 1 — 17\)](#) [CHAPTER 8 Waste Management \(Arts. 1 — 9\)](#) [Article 3 Hazardous Waste \(Pts. 1 — 3\)](#) [PART 1 Hazardous Waste Management \(§§ 12-8-60 — 12-8-83\)](#)

12-8-60. Short title.

This part shall be known as and may be cited as the “Georgia Hazardous Waste Management Act.”

History

Ga. L. 1979, p. 1127, § 1; Ga. L. 1992, p. 2234, § 5.

▼ **Annotations****JUDICIAL DECISIONS****Constitutionality. —**

O.C.G.A. § 50-13-10 did not authorize plaintiffs to obtain declaratory judgment as to validity of rules enacted pursuant to the Hazardous Waste Management Act, O.C.G.A. § 12-8-60 et seq., when the plaintiffs were contending that the Act and rules promulgated thereunder were unconstitutional. *George v. Department of Natural Resources*, 250 Ga. 491, 299 S.E.2d 556, 1983 Ga. LEXIS 555 (1983).

Research References & Practice Aids

Law reviews.

For annual survey on environmental law, see 70 Mercer L. Rev. 1007 (2019).

RESEARCH REFERENCES

ALR.

Right to maintain action based on violation of § 7003 of Resource Conservation and Recovery Act (42 USCS § 6973) pertaining to imminent hazards from solid or hazardous waste, 105 A.L.R. Fed. 800.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

O.C.G.A. Title 12, Ch. 8, Art. 3, Pt. 1

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12-8-61. Legislative policy.

It is declared to be the public policy of the State of Georgia, in furtherance of its responsibility to protect the public health, safety, and well-being of its citizens and to protect and enhance the quality of its environment, to institute and maintain a comprehensive state-wide program for the management of hazardous wastes through the regulation of the generation, transportation, storage, treatment, and disposal of hazardous wastes.

History

Ga. L. 1979, p. 1127, § 2; Ga. L. 1992, p. 2234, § 5.

▼ Annotations

Research References & Practice Aids

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 48. 25 Am. Jur. 2d, Drains and Drainage Districts, § 3. 61C Am. Jur. 2d, Pollution Control, §§ 975 et seq., 1052 et seq.

C.J.S.

28 C.J.S., Drains, § 3 et seq.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

O.C.G.A. Title 12, Ch. 8, Art. 3, Pt. 1

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12-8-62. Definitions.

As used in this part, the term:

- (1) “Board” means the Board of Natural Resources of the State of Georgia.
- (2) “Designated hazardous waste” means any solid waste identified as such in regulations promulgated by the board. The board may identify as “designated hazardous waste” any solid waste which the board concludes is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed, based on the factors set forth in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are codified as 40 C.F.R. Section 261.11(a)(3), in force and effect on February 1, 2010, if such solid waste contains any substance which is listed on any one or more of the following lists:
- (A) List of Hazardous Constituents, codified as 40 C.F.R. Part 261, Appendix VIII, in force and effect on February 1, 2010;
- (B) Ground-water Monitoring List, codified as 40 C.F.R. Part 264, Appendix IX, in force and effect on February 1, 2010;
- (C) List of Hazardous Substances and Reportable Quantities, codified as 40 C.F.R. Table 302.4, and all appendices thereto, in force and effect on February 1, 2010;
- (D) List of Regulated Pesticides, codified as 40 C.F.R. Part 180, in force and effect on February 1, 2010;

- (E)** List of Extremely Hazardous Substances and Their Threshold Planning Quantities, codified as 40 C.F.R. Part 355, Appendix A, in force and effect on February 1, 2010; or
- (F)** List of Chemicals and Chemical Categories, codified as 40 C.F.R. Part 372.65 in force and effect on February 1, 2010.
- (3)** "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.
- (4)** "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.
- (5)** "Division" means the Environmental Protection Division of the Department of Natural Resources.
- (6)** "Federal act" means the federal Solid Waste Disposal Act, as amended, particularly by the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. Section 6901, et seq.), as amended, particularly by but not limited to the Used Oil Recycling Act of 1980 (Public Law 96-463), the Solid Waste Disposal Act Amendments of 1980 (Public Law 96-482), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510), the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616), and the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499), as amended.
- (7)** "Final disposition" means the location, time, and method by which hazardous waste loses its identity or enters the environment, including, but not limited to, disposal, disposal site closure and post closure, resource recovery, and treatment.
- (8)** "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to this article.
- (9)** "Hazardous constituent" means any substance listed as a hazardous constituent in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are in force and effect on February 1, 2010, codified as Appendix VIII to 40 C.F.R. Part 261-Identification and Listing of Hazardous Waste.
- (10)** "Hazardous waste" means any solid waste which has been defined as a hazardous waste in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are in force and effect on February 1, 2010, codified as 40 C.F.R. Section 261.3 and any designated hazardous waste.
- (11)** "Hazardous waste facility" means any property or facility that is intended or used for storage, treatment, or disposal of hazardous waste.
- (12)** "Hazardous waste generation" means the act or process of producing hazardous waste.
- (13)** "Hazardous waste management" means the systematic recognition and control of hazardous wastes from generation to final disposition or disposal, including, but not limited to, identification, containerization, labeling, storage, collection, source separation, transfer, transportation, processing, treatment, facility closure, post closure, perpetual care, resource recovery, and disposal.
- (14)** "Land disposal" means any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave.
- (15)** "Large quantity generator" means a hazardous waste generator who generates 2.2 pounds or more of acute hazardous waste or 2,200 pounds or more of hazardous waste in one month, as defined in the Rules for Hazardous Waste Management, Chapter 391-3-11, of the Board of Natural Resources.

(16) "Manifest" means a form or document used for identifying the quantity and composition, and the origin, routing and destination, of hazardous waste during its transportation from the point of generation, through any intermediate points, to the point of disposal, treatment, or storage.

(17) "Organization" means a legal entity, other than a government agency or authority, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(18) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, municipality, commission, or political subdivision, or any agency, board, department, or bureau of this state or of any other state or of the federal government.

(19) "Serious bodily injury" means a bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(20) "Solid waste" means solid waste as defined by regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are in force and effect on February 1, 2010, codified as 40 C.F.R. Sections 261.1, 261.2(a)-(d), and 261.4(a).

(21) "Storage" means the containment or holding of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

(22) "Transport" means the movement of hazardous waste from the point of generation to any point of final disposition, storage, or disposal, including any intermediate point.

(23) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safe for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(24) "Waste reduction" means a practice, other than dewatering, dilution, or evaporation, by an environmental waste generator, including changes in production technology, materials, processes, operations or procedures or use of in-process, in-line, or closed loop recycling according to standard engineering practices, that reduces the environmental and health hazards associated with waste without diluting or concentrating the waste before release, handling, storage, transport, treatment, or disposal of the waste. The term does not include a practice applied to environmental waste after it is generated and exits a production or commercial operation. Waste reduction shall not in any way be inferred to promote, include, or require:

(A) Waste burning in industrial furnaces, boilers, or cement kilns;

(B) Transfer of an environmental waste from one environmental medium to another environmental medium (otherwise known as waste shifting);

(C) Conversion of a potential waste into another form for use in a production process or operation without serving any substantial productive function;

(D) Off-site waste recycling; or

(E) Any other method of end-of-pipe management of environmental wastes.

History

Ga. L. 1979, p. 1127, § 4; Ga. L. 1985, p. 266, §§ 1, 2; Ga. L. 1986, p. 10, § 12; Ga. L. 1986, p. 761, §§ 1, 2; Ga. L. 1987, p. 3, § 12; Ga. L. 1988, p. 727, § 1; Ga. L. 1990, p. 1427, § 1; Ga. L. 1991, p. 456, § 1; Ga. L. 1992, p. 2234, § 5; Ga. L. 1996, p. 319, § 2; Ga. L. 2006, p. 275, § 3-3/HB 1320; Ga. L. 2010, p. 531, § 4/SB 78; Ga. L. 2010, p. 828, § 1/SB 490.

▼ Annotations

Notes

Editor's notes.

Ga. L. 2006, p. 275, § 1-1/HB 1320, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Comprehensive Litter Prevention and Abatement Act of 2006.'"

Ga. L. 2006, p. 275, § 5-1/HB 1320, not codified by the General Assembly, provides that the Act shall become effective April 21, 2006, for purposes of adopting local ordinances to become effective on or after July 1, 2006.

Research References & Practice Aids

U.S. Code.

The federal Solid Waste Disposal Act, referred to in paragraph (6) of this Code section, was formerly codified at 42 U.S.C. § 3251 et seq. The federal Solid Waste Disposal Act was amended, reorganized, and expanded by the federal Resource Conservation and Recovery Act of 1976, referred to and cited in paragraph (6) of this Code section.

RESEARCH REFERENCES

ALR.

What constitutes "hazardous waste" subject to regulation under Resource Conservation and Recovery Act (42 USCS § 6901, et seq.), 135 A.L.R. Fed 197.

RESEARCH REFERENCES

ALR.

What Settlement Agreements May Give Rise to Action for Contribution Under CERCLA § 113(f)(3)(B), 42 U.S.C.A. § 9613(f)(3)(B), 86 A.L.R. Fed. 3d Art. 1.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

O.C.G.A. Title 12, Ch. 8, Art. 3, Pt. 1

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12-8-63. Administration of article by division; enforcement of article by director.

The division shall be the state agency to administer this article. The director shall be the official charged with the primary responsibility for the enforcement of this article. In exercising any authority or power granted by this article and in fulfilling his duties under this article, the director shall conform to and implement the policies outlined in this article.

History

Ga. L. 1979, p. 1127, § 2; Ga. L. 1992, p. 2234, § 5.

▼ Annotations

Research References & Practice Aids

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 48. 25 Am. Jur. 2d, Drains and Drainage Districts, § 3. 61C Am. Jur. 2d, Pollution Control, §§ 975 et seq., 1052 et seq.

C.J.S.

73 C.J.S., Public Administrative Law and Procedure, §§ 17 et seq., 73, 147, 226.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

O.C.G.A. Title 12, Ch. 8, Art. 3, Pt. 1

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12-8-64. Powers and duties of board as to hazardous waste.

In the performance of its duties, the board shall have and may exercise the power to:

(1) Adopt, promulgate, modify, amend, and repeal rules and regulations to implement and enforce the provisions of this article as the board may deem necessary to provide for the control and management of hazardous waste to protect the environment and the health of humans. Such rules and regulations may be applicable to the state as a whole or may vary from area to area, as may be appropriate to facilitate the accomplishment of the provisions, purposes, and policies of this article. The rules and regulations shall include, but shall not be limited to, the following:

(A) Rules and regulations governing and controlling standards applicable to hazardous waste generators, hazardous waste transporters, and owners or operators of hazardous waste treatment, storage, or disposal facilities. These rules and regulations may include measures to ensure that hazardous waste management practices are regulated, governed, and controlled in the public interest. Such measures may include, but shall not be limited to:

(i) The establishment of record-keeping procedures;

(ii) Requirements calling for the submission of reports to the director; and

(iii) The establishment of monitoring practices;

(B) Rules and regulations governing and controlling the treatment, storage, and disposal of hazardous waste;

- (C) Rules and regulations specifying the terms, provisions, and conditions under which the director shall issue, modify, amend, revoke, or deny permits pursuant to this article;
- (D) Rules and regulations governing and controlling hazardous waste management;
- (E) Rules and regulations establishing procedures and requirements for the reporting of the generation of hazardous wastes and governing and controlling the activities of hazardous waste generators;
- (F) Rules and regulations establishing standards and procedures for the operation and maintenance of hazardous waste facilities;
- (G) Rules and regulations establishing the use of a manifest during the generation and handling of hazardous wastes;
- (H) Rules and regulations establishing procedures to ensure public access to records and to ensure protection of trade secrets and confidential information, the disclosure of which to the director is required by this article or the rules and regulations adopted under this article;
- (I) Rules and regulations establishing procedures and requirements for the use and disposition of hazardous waste or hazardous constituents;
- (J) Rules and regulations deleting certain solid wastes from the definition of hazardous waste;
- (K) Rules and regulations exempting from some or all regulation certain small quantities of hazardous waste;
- (L) Rules and regulations exempting from some or all regulation certain hazardous wastes that are recyclable; and
- (M) Rules and regulations designating certain solid wastes as designated hazardous wastes; and
- (2) Take all necessary steps to ensure the effective enforcement of this article.

History

Ga. L. 1979, p. 1127, § 5; Ga. L. 1985, p. 266, § 3; Ga. L. 1988, p. 727, § 2; Ga. L. 1992, p. 2234, § 5.

▼ Annotations

Research References & Practice Aids

Administrative rules and regulations.

Hazardous waste management, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-11.

RESEARCH REFERENCES

C.J.S.

73 C.J.S., Public Administrative Law and Procedure, §§ 207, 212 et seq.

ALR.

Vendor's obligation to disclose to purchaser of land presence of contamination from hazardous substances or wastes, 12 A.L.R.5th 630.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

O.C.G.A. Title 12, Ch. 8, Art. 3, Pt. 1

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12-8-65.1. Hazardous waste reduction plans; specific performance goals; biennial progress reports; rules and regulations.

(a) By not later than March 1, 1992, large quantity hazardous waste generators shall develop hazardous waste reduction plans and submit such plans to the director. At a minimum, the plans shall include:

- (1) A written policy articulating upper management and corporate support for the generator's hazardous waste reduction plan and a commitment to implement plan goals;
- (2) The scope and objectives of the plan, including the evaluation of technologies, procedures, and personnel training programs to ensure unnecessary hazardous waste is not generated and specific goals for hazardous waste reduction, based on what is technically and economically practical;
- (3) Internal analysis of hazardous waste streams, with periodic hazardous waste reduction assessments, to review individual processes or facilities and other activities where hazardous waste may be generated and identify opportunities to reduce or eliminate hazardous waste generation. Such assessments shall evaluate data on the types, amount, and hazardous constituents of hazardous waste generated, where and why that hazardous waste was generated within the production process or other operations, and potential hazardous waste reduction and recycling techniques applicable to those hazardous wastes;

- (4)** Hazardous waste accounting systems that identify hazardous waste management costs and factor in liability, compliance, and oversight costs to the extent technically and economically practical;
 - (5)** Employee awareness and training programs to involve employees in hazardous waste reduction planning and implementation to the maximum extent feasible;
 - (6)** Institutionalization of the plan to ensure an ongoing effort as demonstrated by incorporation of the plan into management practice and procedures; and
 - (7)** Implementation of technically and economically practical hazardous waste reduction options, including a plan for implementation.
- (b)** As part of each hazardous waste reduction plan developed under subsection (a) of this Code section, each large quantity hazardous waste generator shall establish specific performance goals for the reduction of hazardous waste. Wherever technically and economically practical, the specific performance goals established under this subsection shall be expressed in numeric terms. If the establishment of numeric performance goals is not practical, the performance goals shall include a clearly stated list of objectives designed to lead to the establishment of numeric goals as soon as practical. Each large quantity hazardous waste generator shall explain the rationale for each performance goal. The rationale for a particular performance goal shall address any impediments to hazardous waste reduction, including but not limited to the following:
- (1)** The availability of technically practical hazardous waste reduction methods, including any anticipated changes in the future;
 - (2)** Previously implemented reductions of hazardous waste; and
 - (3)** The economic practicability of available hazardous waste reduction methods, including any anticipated changes in the future.
- (c)** Examples of situations where hazardous waste reduction may not be economically practical as provided for in paragraph (3) of subsection (b) of this Code section include but are not limited to:
- (1)** For valid reasons of priority, a particular company may choose first to address other more serious hazardous waste reduction concerns;
 - (2)** Necessary steps to reduce hazardous waste are likely to have significant adverse impacts on product quality; or
 - (3)** Legal or existing contractual obligations interfere with the necessary steps that would lead to hazardous waste reduction.
- (d)** All large quantity hazardous waste generators shall complete biennially a hazardous waste reduction progress report. A biennial progress report shall:
- (1)** Analyze and quantify progress made, if any, in hazardous waste reduction, relative to each performance goal established under subsection (b) of this Code section; and
 - (2)** Set forth amendments to the hazardous waste reduction plan and explain the need for the amendments.
- (e)** The board may adopt and promulgate such rules and regulations as may be necessary to further define and implement the provisions of this Code section and Code Section 12-8-65.2, provided such rules and regulations are supplemental to and not in conflict with this Code section and Code Section 12-8-65.2.

History

Code 1981, § 12-8-65.1, enacted by Ga. L. 1990, p. 1427, § 2; Ga. L. 1992, p. 2234, § 5.

▼ Annotations

Notes

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1990, “. Such” was substituted for “; such” in the middle of paragraph (a)(3) and a comma was deleted following “programs” in paragraph (a)(5).

Research References & Practice Aids

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

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12-8-65.2. Updating plans and reports; technical assistance; information available to public.

(a) All large quantity hazardous waste generators shall complete and submit to the director a hazardous waste reduction plan on or before March 1, 1992. The plans shall be updated and progress reported on a biennial basis thereafter. The first updated biennial report shall be due in 1994 and shall be submitted to the director as prescribed in rules or regulations adopted by the board.

(b) Subject to available funding, the Georgia Institute of Technology shall provide technical assistance, if requested, to hazardous waste generators in reducing the amount and toxicity of hazardous waste generated, in preparing hazardous waste reduction plans, and in preparing biennial progress reports.

(c) The director shall maintain a copy of each hazardous waste reduction plan and biennial progress report received. This information shall be available to the public at the director's or the division's office.

History

Code 1981, § 12-8-65.2, enacted by Ga. L. 1990, p. 1427, § 2; Ga. L. 1992, p. 2234, § 5.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

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12-8-65.3. Plans and reports by out-of-state generators storing, treating, or disposing of hazardous waste in state.

- (a)** For the purposes of this Code section, “out-of-state generator” means any large quantity hazardous waste generator generating hazardous waste at a location outside the State of Georgia.
- (b)** As a condition of allowing any out-of-state generator to store, treat, or dispose of hazardous waste at a hazardous waste disposal facility located within the State of Georgia, such out-of-state generator shall prepare and submit to the director upon his request a hazardous waste reduction plan and biennial hazardous waste reduction progress reports in substantial compliance with the requirements of Code Sections 12-8-65.1 and 12-8-65.2.
- (c)** No hazardous waste disposal facility shall accept hazardous waste from an out-of-state generator unless the out-of-state generator presents to the owner or operator of the hazardous waste facility certification that the out-of-state generator is in compliance with the provisions of subsection (b) of this Code section. Such certification shall be made under oath or affirmation of the person making such certification that the contents of such certification are true and shall be made by a corporate officer, partner, or owner of such generator. It shall be unlawful to make a false statement on such certification and the making of a false statement shall be punishable as an act of false swearing under Code Section 16-10-71.
- (d)** The requirements of Code Sections 12-8-65.1 and 12-8-65.2 and of subsections (a), (b), and (c) of this Code section shall not apply to any hazardous waste generator which is a

generator as a consequence of any remediation or cleanup programs conducted either voluntarily or through legal actions under either the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. Section 6901, et seq.), as amended, or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510), as amended, and shall not apply to a commercial hazardous waste treatment, storage, or disposal facility upon certification to the director that because of the nature of its business operation or process such facility cannot meet the waste reduction requirement prescribed under Code Sections 12-8-65.1 and 12-8-65.2 and subsections (a), (b), and (c) of this Code section. Such certification shall be made under oath or affirmation of the person making such certification that the contents of such certification are true and shall be made by a corporate officer, partner, or owner of such facility. It shall be unlawful to make a false statement on such certification and the making of such false statement shall be punishable as an act of false swearing under Code Section 16-10-71.

History

Code 1981, § 12-8-65.3, enacted by Ga. L. 1990, p. 1427, § 2; Ga. L. 1992, p. 2234, § 5.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

O.C.G.A. Title 12, Ch. 8, Art. 3, Pt. 1

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12-8-65.4. Duplication of prior reporting requirements not required.

Nothing contained in Code Sections 12-8-65.1 through 12-8-65.3 or Code Section 12-8-66 shall require a duplication of reporting requirements under this article as it existed prior to July 1, 1990.

History

Code 1981, § 12-8-65.4, enacted by Ga. L. 1990, p. 1427, § 2; Ga. L. 1992, p. 2234, § 5.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

O.C.G.A. Title 12, Ch. 8, Art. 3, Pt. 1

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12-8-65. Powers and duties of director as to hazardous waste.

(a) The director shall have and may exercise the following powers and duties:

- (1)** To exercise general supervision over the administration and enforcement of this article and all rules and regulations, orders, or permits promulgated or issued under this article;
- (2)** To encourage, participate in, or conduct studies, reviews, investigations, research, and demonstrations relating to hazardous waste management practices in this state as he deems advisable and necessary;
- (3)** To issue all permits contemplated by this article, stipulating in each permit the conditions or limitations under which such permit is issued, and to deny, revoke, modify, or amend such permits;
- (4)** To make investigations, analyses, and inspections to determine and ensure compliance with this article, the rules and regulations promulgated under this article, and any permits or orders which the director may issue;
- (5)** To enter into such contracts as may be required or necessary to effectuate this article or the rules and regulations promulgated under this article;
- (6)** To prepare, develop, amend, modify, submit, and enforce any comprehensive plan or program sufficient to comply with this article or the federal act, or both, for the control, regulation, and monitoring of hazardous waste management practices in this state;
- (7)** To develop and implement plans to achieve goals and objectives set by any comprehensive plan or program;

- (8)** To conduct such public hearings as are required by this article or as he deems necessary for the proper administration of this article and to control and manage the conduct and procedure for such public hearings;
- (9)** To advise, consult, cooperate, and contract on hazardous waste management matters with other agencies of this state, political subdivisions thereof, and other designated organizations or entities, and, with the approval of the Governor, to negotiate and enter into agreements with the governments of other states and the United States and their several agencies, subdivisions, or designated organizations or entities, provided that nothing in this article shall authorize the division to own or operate a hazardous waste storage, treatment, or disposal facility;
- (10)** To collect and disseminate information and to provide for public notification in matters relating to hazardous waste management;
- (11)** To issue, amend, modify, or revoke orders as may be necessary to ensure and enforce compliance with this article and all rules or regulations promulgated under this article;
- (12)** To institute, in the name of the division, proceedings of mandamus, injunction, or other proper administrative, civil, or criminal proceedings to enforce this article, the rules and regulations promulgated under this article, or any orders or permits issued under this article;
- (13)** To accept, receive, administer, or disburse grants from public or private sources for the purpose of the proper administration of this article or for the purpose of carrying out any of the duties, powers, or responsibilities under this article;
- (14)** To grant variances in accordance with this article and the rules and regulations promulgated under this article, provided that such variances are not inconsistent with the federal act and rules or regulations promulgated thereunder;
- (15)** To encourage voluntary cooperation by persons and affected groups to achieve the purposes of this article;
- (16)** To assure that the State of Georgia complies with the federal act and retains maximum control thereunder and receives all desired federal grants, aid, and other benefits;
- (17)** To require any person who is generating, transporting, treating, storing, or disposing of hazardous waste to notify the division in writing, within a reasonable number of days which the director shall specify, of the location and general description of such activity and identifying the hazardous waste handled, and any other information which may be deemed relevant, under such conditions as the director may prescribe;
- (18)** To maintain an inventory of hazardous wastes within the state, including such information as location, identity, quantity, method of storage, rate of accumulation, disposal practices, and any other information which the director may deem necessary to administer and enforce this article;
- (19)** To exclude from regulation under this article the solid waste at any particular generating facility if it is determined that such solid waste does not pose a danger to human health or the environment;
- (20)** To establish hazardous waste management standards for the state, provided that they are in all cases not less stringent than those standards provided by the federal act;
- (21)** To take all necessary steps to ensure that the administration of this article is consistent with and equivalent to the provisions of the federal act and any standards, rules, or regulations promulgated thereunder toward the end that the State of Georgia shall have maximum control over hazardous waste management practices in this state; and
- (22)** To exercise all incidental powers necessary to carry out the purposes of this article.
- (b)** The powers and duties described in subsection (a) of this Code section may be exercised and performed by the director through such duly authorized agents and employees as he

deems necessary and proper.

History

Ga. L. 1979, p. 1127, § 6; Ga. L. 1988, p. 727, § 3; Ga. L. 1992, p. 2234, § 5; Ga. L. 1996, p. 6, § 12.

▼ Annotations

Research References & Practice Aids

Cross references.

Permits for disposal of radioactive wastes, § 31-13-7.

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 45. 63C Am. Jur. 2d, Public Officers and Employees, § 237 et seq.

C.J.S.

67 C.J.S., Officers and Public Employees, §§ 323 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 147.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

O.C.G.A. Title 12, Ch. 8, Art. 3, Pt. 1

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12-8-66. Permits for construction, installation, operation, or alteration of hazardous waste facilities.

(a) No person shall, and it shall be unlawful and a violation of this part to, construct, install, operate, or substantially alter a hazardous waste facility without first obtaining and possessing a hazardous waste facility permit from the director. An application for a permit shall be submitted in such manner and on such forms as the director may prescribe. A permit shall be issued to an applicant on evidence, satisfactory to the director, of compliance with this part and any standards, requirements, or rules and regulations effective pursuant to this part.

(b) The director may require that applications for such permits shall be accompanied by plans, data, specifications, engineering reports, designs, and such other information as the director deems necessary to make a determination of compliance with this part and the standards, requirements, or rules and regulations promulgated pursuant to this part.

(c) The director may amend, modify, suspend, or revoke any permit issued for cause, including, but not limited to, the following:

- (1)** Violation of any condition or provision of such permit or failure to comply with any final order of the director;
- (2)** Failure to comply with this part or any rules or regulations promulgated pursuant to this part;
- (3)** Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or

- (4)** When the permitted activity poses a threat to the environment or to the health of humans.
- (d)** An application for a permit shall include a demonstration of financial responsibility, including, but not limited to, guarantees, liability insurance, the posting of bonds, or any combination of guarantees, liability insurance, or bonds in accordance with Code Section 12-8-68, which financial responsibility shall be related to the type and size of facility.
- (e)** Permits issued under this Code section shall contain such terms and conditions, including conditions requiring corrective action beyond the facility boundary, as are deemed necessary by the director to protect the environment and the health of humans, and the director may require such testing and construction supervision as said officer deems necessary to protect the environment and the health of humans. Any permit issued subsequent to November 8, 1984, shall contain conditions requiring corrective action for any releases into the environment of hazardous waste or hazardous constituents at the facility seeking a permit, regardless of the time at which waste was placed at such facility.
- (f)** In the event of denial, amendment, modification, suspension, or revocation of a permit, the director shall send written notice of such action to the permit holder or applicant and shall set forth in such notice the reason for the action.
- (g)** The issuance, denial, amendment, modification, suspension, or revocation of any permit by the director shall become final unless a petition for hearing in accordance with Code Section 12-8-73 is filed.
- (h)** Upon the first receipt of an application for a hazardous waste facility permit, the director, within 15 days, shall provide to the government of the county in which the facility is located or is proposed to be located, to each city government located wholly or partially within that county, and to the government of each county and city having territorial boundaries within two miles of the hazardous waste facility, or proposed hazardous waste facility a written notice indicating that an application has been received and describing the hazardous waste activities the applicant proposes to conduct. Within a 30 day period after first receipt of such application, the director shall also publish in at least one local newspaper of general circulation in the county a public notice that an application for a hazardous waste facility permit has been received. A public hearing shall be held if such is requested in writing within 30 days after publication of notification and is requested by 25 or more persons who claim to be affected by the pending permit application, by a governmental subdivision, or by an association having not fewer than 25 members. If requested, the public hearing shall be conducted at the county seat of the county in which the hazardous waste facility is proposed to be located. At least 45 days prior to the date of the public hearing, the director shall provide written notice to the various local governmental subdivisions and other interested parties in the locality in which the proposed facility may be located that a public hearing has been requested, which written notice shall also include the date, time, location, and purpose of the public hearing. The date, time, location, and purpose of such public hearing shall be advertised in the legal organ of the county in which the facility is proposed at least 45 days in advance of the date set for the hearing. Such public hearings shall be held for the purpose of receiving comments and suggestions concerning the location and requirements for the operation of a hazardous waste facility. The director shall consider fully all written and oral submissions regarding the proposed facility and the pending application.
- (i)** Any person who owns or operates a facility required to have a permit under this Code section, which facility was in existence on November 19, 1980, or is in existence on the effective date of any amendment to this part or any regulation promulgated pursuant to this part which renders the facility subject to the requirement to have a permit pursuant to this

Code section shall be accorded interim status, which means that such person shall be treated as having been issued a permit until such time as final administrative disposition of the person's application has been made, if and to the extent the person:

- (1)** Has notified the director of the existence of such facility as required pursuant to paragraph (17) of subsection (a) of Code Section 12-8-65;
 - (2)** Has filed an application for a permit as required pursuant to this Code section;
 - (3)** Furnishes to the director information reasonably required or requested for processing such application;
 - (4)** Does not treat, store, or dispose of hazardous waste not specified in the permit application, nor employ processes not specified in the permit application, nor exceed the design capacity specified in the permit application; and
 - (5)** Complies with all standards applicable to interim status facilities as have been or may be promulgated by the board.
- (j)** In the case of any land disposal facility which had interim status prior to November 8, 1984, interim status shall terminate on November 8, 1985, unless the owner or operator of such facility:
- (1)** Applies for a final determination regarding the issuance of a permit pursuant to this Code section for such facility prior to November 8, 1985; and
 - (2)** Certifies that such facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements.
- (k)** In the case of any land disposal facility that has interim status due to any amendments to this part or any regulations promulgated pursuant to this part on or subsequent to November 8, 1984, which render the facility subject to the requirement to have a permit pursuant to this part, interim status shall terminate on the date 12 months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility:
- (1)** Applies for a final determination regarding the issuance of a permit pursuant to this Code section for such facility before the date 12 months after the date on which the facility first becomes subject to such permit requirement; and
 - (2)** Certifies that such facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements.
- (l)** In the case of any hazardous waste incinerator which had interim status prior to November 8, 1984, interim status shall terminate on November 8, 1989, unless the owner or operator of such facility applies for a final determination regarding the issuance of a permit pursuant to this Code section for such facility prior to November 8, 1986.
- (m)** In the case of all hazardous waste facilities which had interim status prior to November 8, 1984, other than land disposal facilities and incinerators, interim status shall terminate on November 8, 1992, unless the owner or operator of such facility applies for a final determination regarding the issuance of a permit pursuant to this Code section for such facility prior to November 8, 1988.
- (n)** In the case of all hazardous waste facilities in existence on November 8, 1984, the director must make a decision to issue or deny a permit pursuant to this Code section by the following dates:
- (1)** By November 8, 1988, for all land disposal facilities;
 - (2)** By November 8, 1989, for all incinerators; and
 - (3)** By November 8, 1992, for all other hazardous waste facilities.
- (o)** The director shall not issue a permit allowing any owner or operator of a cement kiln to burn hazardous waste as fuel until the U.S. Environmental Protection Agency has completed

developing its strategy for hazardous waste reduction and combustion which may affect the burning of hazardous wastes in cement kilns.

History

Ga. L. 1979, p. 1127, § 8; Ga. L. 1982, p. 3, § 12; Ga. L. 1985, p. 266, §§ 4, 5; Ga. L. 1986, p. 10, § 12; Ga. L. 1989, p. 240, § 1; Ga. L. 1990, p. 1427, § 3; Ga. L. 1992, p. 2234, § 5; Ga. L. 1993, p. 500, § 2; Ga. L. 1994, p. 483, § 1.

▼ Annotations

Notes

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1990, the paragraph (1) designation in subsection (h) was deleted and a comma was deleted preceding "a written notice" near the end of the first sentence in subsection (h).

JUDICIAL DECISIONS

Financial responsibility requirements under O.C.G.A. § 12-8-60 et seq., and the regulations adopted thereunder meet the constitutional due process standard of bearing a rational relation to a proper and constitutionally permitted legislative purpose. *Georgia Dep't of Natural Resources v. Union Timber Corp.*, 258 Ga. 873, 375 S.E.2d 856, 1989 Ga. LEXIS 77 (1989).

Director is not obligated to establish financial responsibility requirements for individual hazardous-waste facilities. Indeed, if the director is obligated at all, the director is to exercise discretion in a manner consistent with the federal act and such criteria as the board shall establish. *Georgia Dep't of Natural Resources v. Union Timber Corp.*, 258 Ga. 873, 375 S.E.2d 856, 1989 Ga. LEXIS 77 (1989).

Research References & Practice Aids

RESEARCH REFERENCES

Am. Jur. 2d.

51 Am. Jur. 2d, Licenses and Permits, §§ 7 et seq., 45 et seq.

C.J.S.

53 C.J.S., Licenses, § 7.

ALR.

Common-law strict liability in tort of prior landowner or lessee to subsequent owner for contamination of land with hazardous waste resulting from prior owner's or lessee's abnormally dangerous or ultrahazardous activity, 13 A.L.R.5th 600.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

O.C.G.A. Title 12, Ch. 8, Art. 3, Pt. 1

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12-8-67. Hazardous waste in transit to be accompanied by manifest.

No hazardous waste shall be transported across, within, or through this state unless it is accompanied by a manifest properly issued, completed, and filled out in accordance with the rules and regulations promulgated by the board. The manifest shall accompany all hazardous waste from the point of generation through handling, storage, treatment, and disposal. A copy of the manifest shall be transmitted to the director as often as is required by the rules and regulations adopted by the board pursuant to this article.

History

Ga. L. 1979, p. 1127, § 9; Ga. L. 1992, p. 2234, § 5.

▼ Annotations

Research References & Practice Aids

RESEARCH REFERENCES

Am. Jur. 2d.

15A Am. Jur. 2d, Commerce, §§ 71. 97. 39 Am. Jur. 2d, Health, §§ 1, 3, 5, 7, 17.

C.J.S.

39A C.J.S., Health and Environment, §§ 4, 6.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

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12-8-68. Requirement of financial responsibility for persons operating or maintaining hazardous waste storage, treatment, or disposal facility; hazardous waste facility trust fund.

- (a)** No hazardous waste storage, treatment, or disposal facility shall be operated or maintained by any person unless adequate financial responsibility, by bonding or other methods approved by the director, has been demonstrated to the director to ensure the satisfactory maintenance, operation, closure, and postclosure care of the facility, any corrective action which may be required as a condition of a permit, and payment of any liabilities to third parties as set forth in the regulations adopted pursuant to this part.
- (b)** The director may require the demonstration of financial responsibility prior to issuing a permit for any hazardous waste storage, treatment, or disposal facility to assure the availability of funds to meet sufficiently the requirements for proper closure, maintenance, or postclosure care of the facility and the hazardous waste contained therein, to assure any corrective action required as a condition of such a permit, and to guarantee payment of any liabilities to third parties as set forth in regulations adopted pursuant to this part. The director is authorized to establish the financial responsibility requirements for permit applicants and classes of permit applicants, including the establishment of a range of monetary amounts.
- (c)** The board may adopt rules and regulations pursuant to this article establishing the criteria for approval, time periods for coverage, and other terms and conditions for the

demonstration of financial responsibility required by this article and for the implementation of financial responsibility instruments.

(d) If the director determines that a hazardous waste storage, treatment, or disposal facility has been abandoned, that the owner or operator thereof has become insolvent, or that for any other reason there is a demonstrated inability of the owner or operator to maintain, operate, or close the facility, to carry out postclosure care of the facility, or to carry out corrective action required as a condition of a permit, to the satisfaction of the director, the director may implement the applicable financial responsibility instruments. The proceeds from any applicable financial responsibility instruments shall be deposited in a special account designated as the hazardous waste facility trust fund. The director shall serve as trustee of any such hazardous waste facility trust fund and the funds deposited in any such fund shall be used only for closure, postclosure care, or corrective action required for the facility. The determination of whether there has been an abandonment, default, or other refusal or inability to perform and comply with closure, postclosure, or corrective action requirements shall be made by the director.

(e) An order or other action of the director under this Code section shall become final unless a petition for hearing in accordance with Code Section 12-8-73 is filed.

(f) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal Bankruptcy Code or where, with reasonable diligence, jurisdiction in any state court or any federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this Code section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which will have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(g) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this part. Nothing in this subsection shall be construed to limit any other state or federal statutory contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under Section 107 or 111 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or other, applicable law.

History

Ga. L. 1979, p. 1127, § 10; Ga. L. 1985, p. 266, § 6; Ga. L. 1986, p. 761, § 3; Ga. L. 1992, p. 2234, § 5.

▼ Annotations

JUDICIAL DECISIONS

Constitutionality. —

Financial responsibility requirements under O.C.G.A. § 12-8-60 et seq., and the regulations adopted thereunder meet the constitutional due process standard of bearing a rational relation to a proper and constitutionally permitted legislative purpose. *Georgia Dep't of Natural Resources v. Union Timber Corp.*, 258 Ga. 873, 375 S.E.2d 856, 1989 Ga. LEXIS 77 (1989).

Director not obligated to establish requirements for individual facilities. —

Director is not obligated to establish financial responsibility requirements for individual hazardous-waste facilities. Indeed, if the director is obligated at all, the director is to exercise discretion in a manner consistent with the federal act and such criteria as the board shall establish. *Georgia Dep't of Natural Resources v. Union Timber Corp.*, 258 Ga. 873, 375 S.E.2d 856, 1989 Ga. LEXIS 77 (1989).

Opinion Notes

OPINIONS OF THE ATTORNEY GENERAL

Third party's action on corporate guarantee for subsidiary's liability. —

Parent corporation's guarantee for its subsidiary's liability for sudden and nonsudden accidental occurrences at hazardous waste treatment, storage, and disposal facilities would be fully valid and enforceable by third parties who have sustained injury or damage caused by such occurrences. 1986 Op. Att'y Gen. No. 86-35.

Research References & Practice Aids

U.S. Code.

The federal Bankruptcy Code, referred to in this Code section, is codified at 11 U.S.C. § 1 et seq. The federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in this Code section, is codified throughout Titles 26, 42, and 49 U.S.C.

RESEARCH REFERENCES

Am. Jur. 2d.

51 Am. Jur. 2d, Licenses and Permits, § 50 et seq.

C.J.S.

53 C.J.S., Licenses, §§ 59, 60, 107.

ALR.

Equitable considerations in allocating response costs to owner or occupant of previously contaminated facility in action pursuant to § 113(f) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCA § 9613(f)), 148 A.L.R. Fed. 203.

RESEARCH REFERENCES**ALR.**

What Settlement Agreements May Give Rise to Action for Contribution Under CERCLA § 113(f)(3)(B), 42 U.S.C.A. § 9613(f)(3)(B), 86 A.L.R. Fed. 3d Art. 1.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

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12-8-69. Variances.

(a) Unless variances are prohibited by the federal act or the standards, rules, and regulations promulgated thereunder, the director may grant variances from the requirements of this article or the rules and regulations effective under this article whenever the director finds that compliance with any provision of this article or any standard, rule, or regulation will result in an arbitrary and unreasonable taking of property or will result, in effect, in the closing and elimination of any lawful business, occupation, or activity without sufficient corresponding benefit or advantage to the public, provided that no variance shall be granted where the effect of a variance will permit the continuation of a condition which poses an undue present or potential threat to the environment or to the health of humans; provided, further, that any variance so granted shall not be construed so as to relieve any person from any liability imposed by law or rule and regulation.

(b) Variances may be granted for such periods of time and under such provisions and conditions as shall be specified by the director.

(c) As a condition precedent to the issuance of a variance, the director may require the filing of a bond in accordance with Code Section 12-8-68, sufficient to ensure compliance with the terms and conditions of the variance. The director may require that the bond shall remain in effect until all terms and conditions of the variance are met and compliance is achieved with this article and the rules and regulations promulgated under this article.

(d) Upon failure of a person to comply with the terms and conditions of any bond or any variance issued by the director, a variance may be amended, modified, suspended, or revoked, or the bond may be forfeited by the director or ordered to be modified or amended. The proceeds from any forfeited bond shall be deposited in either the hazardous waste facility trust fund in accordance with Code Section 12-8-68 or the hazardous waste trust fund in accordance with Code Section 12-8-91, as the director deems appropriate.

History

Ga. L. 1979, p. 1127, § 11; Ga. L. 1992, p. 2234, § 5; Ga. L. 1994, p. 483, § 2; Ga. L. 1996, p. 6, § 12.

▼ Annotations

Research References & Practice Aids

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, §§ 55, 57, 171.

C.J.S.

73 C.J.S., Public Administrative Law and Procedure, § 165 et seq.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

O.C.G.A. Title 12, Ch. 8, Art. 3, Pt. 1

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12-8-70. Inspections and investigations.

(a) The director or the director's authorized representative, upon presentation of his credentials, shall have a right to enter upon, to, or through premises of persons subject to this article, or premises whereon a violation of the article or rules and regulations is reasonably believed to be occurring or is reasonably believed to be about to occur, to investigate, take samples, copy all records relating to hazardous wastes, and inspect for compliance with the requirements imposed under this article or the rules and regulations or to determine whether such a violation or threatened violation exists in accordance with the following purposes:

- (1)** For the purpose of determining whether any person subject to the requirements of this article is in compliance with any standard or requirement imposed pursuant to this article;
- (2)** For the purpose of investigating conditions relating to hazardous waste management or hazardous waste management practices where the director is in possession of information sufficient to form a reasonable belief that a violation of this article or the rules and regulations is occurring or is about to occur;
- (3)** For the purpose of determining whether there has been a violation of any of the provisions of this article, the rules and regulations promulgated under this article, or any permit or order issued pursuant to this article and the rules and regulations; or
- (4)** For the purpose of determining whether a release of hazardous wastes, hazardous constituents, or hazardous substances is occurring or has occurred.

(b) In the event any person does not consent to an inspection or investigation, the director or his authorized representative may seek to obtain a warrant authorizing the inspection or investigation.

(c) Each such inspection or investigation shall be commenced and completed with reasonable promptness. If the director or his authorized representatives obtain any samples prior to leaving the premises, he or they shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(d) Any person whom the agency has reason to believe is contributing to or may have contributed to or may be responsible for a release of or the disposal of hazardous wastes, hazardous constituents, or hazardous substances or who is the owner of real property where a release or disposal has occurred or is suspected to have occurred, when requested by the director, shall furnish to the director any information which that person may have or may reasonably obtain which is relevant to the release and has been requested by the director.

History

Ga. L. 1979, p. 1127, § 12; Ga. L. 1992, p. 2234, § 5; Ga. L. 1996, p. 6, § 12.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

O.C.G.A. Title 12, Ch. 8, Art. 3, Pt. 1

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12-8-71. Proceedings for enforcement.

(a) Whenever the director has reason to believe that a violation of any provision of this part, a violation of any rule or regulation of the board, or a violation of any order of the director has occurred, the director shall attempt to remedy the same by conference, conciliation, and persuasion. In the case of failure of such conference, conciliation, or persuasion to correct or remedy any violation, the director may issue an order directed to such violator or violators. The order shall specify the provisions of this part, the rules and regulations, or the order alleged to have been violated and may direct that necessary corrective action be taken within a reasonable time to be prescribed in the order.

(b) Whenever the director has reason to believe that there is or has been a release of hazardous waste or hazardous constituents into the environment, regardless of the time at which release of such hazardous waste or hazardous constituents occurred, and has reason to believe that such release poses a danger to health or the environment, the director shall attempt to obtain corrective action for such release by conference, conciliation, and persuasion. In the case of failure of such conference, conciliation, or persuasion to obtain corrective action, the director may issue an order directed to any person, including any past or present generator, past or present transporter, or past or present owner or operator of a hazardous waste treatment, storage, or disposal facility, who has contributed or who is contributing to such release. The order may direct that necessary corrective action be taken within a reasonable time to be prescribed in the order.

(c) Any order issued by the director under this Code section shall be signed by the director. Any such order shall become final unless the person or persons named therein request in writing a hearing pursuant to Code Section 12-8-73.

History

Ga. L. 1979, p. 1127, § 13; Ga. L. 1985, p. 266, § 7; Ga. L. 1988, p. 727, § 4; Ga. L. 1992, p. 2234, § 5.

▼ Annotations

JUDICIAL DECISIONS

Obligation to remedy violations by “conference, conciliation, or persuasion.” —

Finding that company holding a “corrective action permit” wilfully and flagrantly violated the corrective action plan and that the Environmental Protection Division acted reasonably in attempting to obtain compliance was sufficient to show the division acted in accord with the requirements of O.C.G.A. § 12-8-71. *Reheis v. AZS Corp.*, 232 Ga. App. 852, 503 S.E.2d 36.

Research References & Practice Aids

RESEARCH REFERENCES

C.J.S.

73 C.J.S., Public Administrative Law and Procedure, § 226. 73A C.J.S., Public Administrative Law, § 277 et seq.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

O.C.G.A. Title 12, Ch. 8, Art. 3, Pt. 1



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12-8-72. Application for injunctive relief.

Whenever, in the judgment of the director, any person has engaged in or is about to engage in any act or practice which constitutes or would constitute a violation of this article, the rules and regulations, or any order or permit conditions, he may apply to the superior court of the county in which the violative act or practice has been or is about to be engaged in, or in which jurisdiction is appropriate, for an order enjoining such act or practice or for an order requiring compliance with the article, the rules and regulations, or the order or permit condition. Upon a showing by the director that such person has engaged in or is about to engage in any such violative act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing the lack of an adequate remedy at law.

History

Ga. L. 1979, p. 1127, § 14; Ga. L. 1982, p. 3, § 12; Ga. L. 1992, p. 2234, § 5.

▼ Annotations

Research References & Practice Aids

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 385.

C.J.S.

73 C.J.S., Public Administrative Law and Procedure, §§ 144, 145. 73A C.J.S., Public Administrative Law, §§ 575, 577.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

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12-8-73. Hearings on contested matters; judicial review.

All hearings on and the review of contested matters, orders, or permits and all hearings on and the review of any other enforcement actions or orders under this article shall be provided and conducted in accordance with subsection (c) of Code Section 12-2-2. The hearing and review procedure herein provided is to the exclusion of all other means of hearing or review.

History

Ga. L. 1979, p. 1127, § 15; Ga. L. 1992, p. 2234, § 5.

▼ Annotations**Research References & Practice Aids**

RESEARCH REFERENCES**Am. Jur. 2d.**

2 Am. Jur. 2d, Administrative Law, §§ 260, 385.

C.J.S.

73A C.J.S., Public Administrative Law and Procedure, §§ 278 et seq., 374 et seq.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

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12-8-74. Judgment in accordance with final orders.

Any order of the hearing officer issued after a hearing as provided in Code Section 12-8-73 or any order of the director issued pursuant to Code Section 12-8-71 or 12-8-96, either unappealed from as provided in those Code sections or affirmed or modified on any review or appeal pursuant to Code Section 12-8-73, and from which no further review is taken or allowed under Code Section 12-8-73, may be filed, as unappealed from or as affirmed or modified, if reviewed or appealed, by certified copy from the director in the superior court of the county wherein the person under order resides, or if such person is a corporation in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred or in which jurisdiction is appropriate, whereupon such superior court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though such judgment had been rendered in an action duly heard and determined by such court.

History

Ga. L. 1979, p. 1127, § 16; Ga. L. 1992, p. 2234, § 5.

▼ Annotations

Research References & Practice Aids

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, §§ 358, 359.

C.J.S.

73A C.J.S., Public Administrative Law and Procedure, §§ 329 et seq.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

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12-8-75. Powers of director in situations involving imminent and substantial endangerment to environment or to public health.

Notwithstanding any provision of this article to the contrary, the director, upon receipt of evidence that the past or present handling, storage, treatment, transportation, or disposal of any solid waste or hazardous waste is presenting or may present imminent and substantial endangerment to the environment or to the health of humans, may bring an action as provided in Code Section 12-8-72 to restrain immediately any person, including any past or present generator, past or present transporter, or past or present owner or operator of a hazardous waste treatment, storage, or disposal facility, who has caused or is causing or has contributed or is contributing to such handling, storage, treatment, transportation, or disposal to stop such handling, storage, treatment, transportation, or disposal or to take such other action as may be necessary. If it is not practicable to assure prompt protection of the environment or the health of humans solely by commencement of such a civil action, the director, with the concurrence of the Governor, may issue such emergency orders as may be necessary to protect the environment or the health of humans who are or may be affected by such past or present handling, storage, treatment, transportation, or disposal.

Notwithstanding Code Sections 12-8-71, 12-8-72, 12-8-73, 12-8-74, 12-8-81, and 12-8-96, such order shall be immediately effective for a period of not more than 48 hours unless the director brings an action under the first sentence of this Code section before the expiration of

such period. Whenever the director brings such an action within such period, such order shall be effective for such period of time as may be authorized by the court pending litigation or thereafter.

History

Ga. L. 1979, p. 1127, § 18; Ga. L. 1982, p. 3, § 12; Ga. L. 1985, p. 266, § 8; Ga. L. 1992, p. 2234, § 5.

▼ Annotations

Research References & Practice Aids

Cross references.

Emergency powers of Governor generally, §§ 38-3-22, 38-3-51, 45-12-29 et seq.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

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12-8-76. Legal assistance by Attorney General.

It shall be the duty of the Attorney General or his representative to represent the director in all actions in connection with this article.

History

Ga. L. 1979, p. 1127, § 22; Ga. L. 1992, p. 2234, § 5.

▼ Annotations**Research References & Practice Aids****RESEARCH REFERENCES****Am. Jur. 2d.**

7 Am. Jur. 2d, Attorney General, §§ 41, 42.

C.J.S.

7A C.J.S., Attorney General, § 28 et seq.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

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12-8-77. Contracts to provide solid waste handling, reclamation, or recycling services.

(a) Any provision of law to the contrary notwithstanding, in order to comply with this article, with the federal act, or with applicable state and federal rules, regulations, or guidelines, or in order to be eligible for grants-in-aid and other allotments, the State of Georgia, the division, and each municipal corporation and county in this state are authorized, at the discretion of its governing authority, to enter into valid and binding contracts with each other or with private persons, firms, associations, or corporations to provide solid waste handling, reclamation, and recycling services to such private persons, firms, associations, or corporations, or to each other.

(b) As used in this Code section, the terms “solid waste handling,” “solid waste,” “reclamation,” and “recycling” shall be construed to have the meanings given them in Code Section 12-8-62 or in the rules and regulations effective under this article.

History

Ga. L. 1979, p. 1127, § 19; Ga. L. 1992, p. 2234, § 5.

▼ Annotations

Research References & Practice Aids

Cross references.

Authority of municipalities and counties to enter into contracts to provide industrial waste water treatment services, § 36-60-2.

RESEARCH REFERENCES

C.J.S.

73 C.J.S., Public Administrative Law and Procedure, § 184.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

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12-8-78. Public access to information; protection of confidential information; access to confidential information by federal government and courts.

(a) Any records, reports, or information obtained from any person by the director under this part or the rules and regulations promulgated under this part shall be available to the public for inspection and copying at the expense of the person requesting copies.

(b) Notwithstanding subsection (a) of this Code section, upon a showing satisfactory to the director by any person that any records, reports, or information, or any particular part thereof, to which the director has access under this article or the rules and regulations would, if made public, divulge information entitled to protection or confidentiality under law, the director shall consider such information or any particular portion thereof confidential in accordance with the purposes of the law under which confidentiality or protection is claimed, provided that such records, reports, documents, or information may be disclosed to officers, employees, or authorized representatives of the United States government concerned with carrying out the terms of the federal act or when required by any court in any proceeding under the federal act or under this article.

History

Ga. L. 1979, p. 1127, § 20; Ga. L. 1992, p. 2234, § 5; Ga. L. 1996, p. 6, § 12.

▼ Annotations

Research References & Practice Aids

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 100.

C.J.S.

73 C.J.S., Public Administrative Law and Procedure, §§ 47 et seq.

Hierarchy Notes:

O.C.G.A. Title 12

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12-8-79. Effect of other laws on permits issued under article and rules and regulations.

Subject to the provisions of the Constitution of Georgia, no other law of this state and no action, ordinance, regulation, or law of any county, municipality, or other political subdivision shall operate to prevent the location or operation of a hazardous waste facility holding a valid hazardous waste facility permit issued under this article and the rules and regulations promulgated hereunder, provided that nothing in this Code section shall prevent any county, municipality, or other political subdivision from challenging a facility's compliance with this article or any rule or regulation, order, or permit provision or condition adopted or issued under this article.

History

Ga. L. 1979, p. 1127, § 21; Ga. L. 1992, p. 2234, § 5.

▼ Annotations

JUDICIAL DECISIONS

Preemption feature of O.C.G.A. T. 12, C. 8, A. 3 operates only in regard to facility already holding valid permit. *Earth Mgt., Inc. v. Heard County*, 248 Ga. 442, 283 S.E.2d 455, 1981 Ga. LEXIS 1023 (1981).

Research References & Practice Aids

Law reviews.

For survey article on constitutional law, see 34 Mercer L. Rev. 53 (1982).

For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982).

For survey article on real property, see 34 Mercer L. Rev. 255 (1982).

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

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12-8-80. [Reserved] Applicability of article.

History

Ga. L. 1979, p. 1127, § 3; repealed by Ga. L. 1992, p. 2234, § 5, effective July 1, 1992.

▼ Annotations

Notes

Editor's notes.

Ga. L. 1992, p. 2234, § 5 repealed and reserved this Code section, effective July 1, 1992.

Research References & Practice Aids

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

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12-8-81. Civil penalties; procedures for imposing penalties.

(a) Any person violating any provision of this article, the rules or regulations effective under this article, or any permit condition or limitation established pursuant to this article or any person negligently or intentionally failing or refusing to comply with any final or emergency order of the director issued as provided in this article shall be liable for a civil penalty not to exceed \$25,000.00 per day. Each day during which the violation or failure or refusal to comply continues shall be a separate violation.

(b) Whenever the director has reason to believe that any person has violated any provision of this article, any rule or regulation effective under this article, or any permit condition or has negligently or intentionally failed or refused to comply with any final order or emergency order of the director, he may upon written request cause a hearing to be conducted before a hearing officer appointed by the board. Upon finding that such person has violated any provision of this article, any rule or regulation effective under this article, or any permit condition or has negligently or intentionally failed or refused to comply with any final order or emergency order of the director, the hearing officer shall issue his decision imposing civil penalties as provided in this Code section. Such hearing and any administrative or judicial review thereof shall be conducted in accordance with Code Section 12-8-73.

(c) In rendering a decision under this Code section imposing civil penalties, the hearing officer shall consider all factors which are relevant, including, but not limited to, the following:

- (1) The amount of civil penalty necessary to ensure immediate and continued compliance and the extent to which the violator may have profited by failing or delaying to comply;
- (2) The character and degree of impact of the violation or failure on the natural resources of the state, especially any rare or unique natural phenomena;
- (3) The conduct of the person incurring the civil penalty in promptly taking all feasible steps or procedures necessary or appropriate to comply with this article or to correct the violation or failure;
- (4) Any prior violations of, or failures by, such person to comply with statutes, rules, regulations, orders, or permits administered, adopted, or issued by the director;
- (5) The character and degree of injury to or interference with public health or safety which is caused or threatened to be caused by such violation or failure; and
- (6) The character and degree of injury to or interference with reasonable use of property which is caused or threatened to be caused by such violation or failure.

History

Ga. L. 1979, p. 1127, § 17; Ga. L. 1992, p. 2234, § 5; Ga. L. 1996, p. 6, § 12.

▼ Annotations

Research References & Practice Aids

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C.J.S.

36A C.J.S., Fines, § 3.

ALR.

Recovery of cumulative statutory penalties, 71 A.L.R.2d 986.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

O.C.G.A. Title 12, Ch. 8, Art. 3, Pt. 1



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12-8-82. Criminal penalty.

(a) Any person who:

(1) Knowingly transports or causes to be transported any hazardous waste as defined in this article to a facility which does not have a permit or interim status pursuant to Code Section 12-8-66, which does not have a variance pursuant to Code Section 12-8-69, or which is not subject to an order of the director which specifically authorized continued operation of such facility;

(2) Knowingly treats, stores, or disposes of any hazardous waste as defined in this article:

(A) Without a permit or interim status pursuant to Code Section 12-8-66, a variance pursuant to Code Section 12-8-69, or an order of the director allowing such treatment, storage, or disposal of hazardous waste;

(B) In knowing violation of any material condition or requirement of such permit, interim status, variance, or order; or

(C) In knowing violation of any material condition or requirement of any applicable regulations or standards promulgated in accordance with Code Section 12-8-64;

(3) Knowingly omits material information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with this article or regulations promulgated in accordance with Code Section 12-8-64;

(4) Knowingly generates, stores, treats, transports, disposes of, exports, or otherwise handles any hazardous waste as defined in this article, whether such activity took place before or takes place after March 14, 1985, and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with this article or regulations promulgated in accordance with Code Section 12-8-64; or

(5) Knowingly transports without a manifest or causes to be transported without a manifest, any hazardous waste required by this article or regulations promulgated in accordance with Code Section 12-8-64 to be accompanied by a manifest

shall, upon conviction, be subject to a fine of not more than \$50,000.00 for each day of violation, or imprisonment for not less than one nor more than two years, or three years in the case of a violation of paragraph (1) or (2) of this subsection, or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, the maximum punishment under the respective paragraphs shall be doubled with respect to both fine and imprisonment.

(b) Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste as defined in this article in violation of paragraph (1), (2), (3), (4), or (5) of subsection (a) of this Code section and who knows at that time that by such action another person is placed in imminent danger of death or serious bodily injury shall, upon conviction, be subject to a fine of not more than \$250,000.00 or imprisonment for not less than one nor more than 15 years, or both. A defendant that is an organization shall, upon conviction of violating this subsection, be subject to a fine of not more than \$1 million.

(c) An organization may be convicted for the criminal acts set forth in subsections (a) and (b) of this Code section, if an agent of the organization performs the conduct which is an element of the crime while acting within the scope of such agent's office or employment and in behalf of the organization or if the commission of the criminal act set forth in subsection (a) or (b) of this Code section is authorized, requested, commanded, performed, or recklessly tolerated by the board of directors of the organization or by a managerial official who is acting within the scope of such official's employment on behalf of the organization.

History

Ga. L. 1979, p. 1127, § 7; Ga. L. 1982, p. 3, § 12; Ga. L. 1985, p. 266, § 10; Ga. L. 1986, p. 10, § 12; Ga. L. 1992, p. 2234, § 5; Ga. L. 1994, p. 1101, § 4.

▼ Annotations

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21 Am. Jur. 2d, Criminal Law, § 721. 21A Am. Jur. 2d, Criminal Law, §§ 822 et seq., 849 et seq.

C.J.S.

22 C.J.S., Criminal Law, §§ 17, 19, 41 et seq. 22B C.J.S., Criminal Law, § 2002.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

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12-8-83. Use of material mixed with dioxin or other hazardous waste for dust suppression or road treatment prohibited.

The use of waste or used oil or other material which is contaminated or mixed with dioxin or any other hazardous waste as defined in this article, other than a waste identified as a hazardous waste solely on the basis of ignitibility, for dust suppression or road treatment is prohibited.

History

Code 1981, § 12-8-83, enacted by Ga. L. 1985, p. 266, § 11; Ga. L. 1992, p. 2234, § 5.

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For note, "Regulating a Toxic Chemical: The Dioxin Controversy in Georgia," see 9 Ga. St. U.L. Rev 717 (1993).

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Liability for Dioxin Contamination, 25 POF3d 473.

Hierarchy Notes:

O.C.G.A. Title 12

O.C.G.A. Title 12, Ch. 8

O.C.G.A. Title 12, Ch. 8, Art. 3

O.C.G.A. Title 12, Ch. 8, Art. 3, Pt. 1

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