

# Environmental Law Enforcement in Georgia

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*Abstract:* Wildlife conservation is an extremely complex matter. Not only must the different species be managed but also their habitat. Any factor that impacts the habitat is of concern to the wildlife manager. Man's activities are key factors in the destruction and loss of habitat. The bulldozing of habitat to make way for new buildings and factories creates by-products that endanger not only wildlife and their habitats but also people. These by-products are wastes and other pollutants. As a component of natural resources management, the Law Enforcement Section of the Georgia Department of Natural Resources must concern itself with violations of environmental laws.

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Traditionally the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources has used the civil penalty provisions of the environmental laws to gain compliance with the law and to protect the environment. The system works well for many types of violations and violators, but is inadequate for some of the environmental problems encountered today.

The civil process is complex and lengthy. Cases can take years to resolve, especially if appeals are filed. The civil penalty approach is hamstrung in its effectiveness against persons who have little or no financial assets to protect, who have no fixed residence, who live out of state, or who are criminals and not deterred by lawsuits.

In 1991, it was discovered that people from Florida were transporting copper wire into Georgia and burning the insulation off the wire. The removal of the insulation increased the value of the wire when sold to scrap metal dealers. This illegal open burning is a violation of the Air Quality Control Act and the Comprehensive Solid Waste Management Act.

Since the violators were from out of state, the civil penalty process was not practical and a decision was made to use the criminal provisions of the Act. Within a few months Rangers were coming into contact with others in violation of the environmental laws. Criminal prosecutions became common for these violations.

Some highly successful joint operations between EPD and the LE Section were accomplished. The violations fell into one or more of the following areas:

1. violations involving the reclamation of wire by open burning;
2. violations involving the illegal disposal of tires by open burning or dumping;
3. violations involving the dumping of sewage into waters of the state or unapproved land areas;
4. violations involving the open dumping of wastes in general; and,
5. violations involving the open burning of wastes.

Georgia Conservation Rangers are empowered by law "to enforce all state laws pertaining to functions assigned to the department" (OCGA 27-1-18). Since the Environmental Protection Division is a part of the Department of Natural Resources, criminal enforcement of the environmental laws is the responsibility of the Law Enforcement Section. Personnel of EPD are not certified peace officers and have no authority to arrest anyone. Additionally, Georgia law provides that Rangers have the authority "to go upon property outside of buildings, posted or otherwise, in the performance of their duties" (OCGA 27-1-20). This enables Rangers to enter property to investigate possible violations without a search warrant.

As Rangers became more involved in the enforcement of environmental laws, the department became aware that these laws were so complex that confusion was caused in their application by Rangers and the courts. Some of the environmental laws over-lapped and one violation could be prosecuted under two different laws. For example, burning tires is a violation of both the Air Quality Control Act and the Comprehensive Solid Waste Management Act. Also, the wording of the laws made it unclear whether a violation was a misdemeanor or a felony.

#### New Laws

Legislation was enacted in 1993 that modified the Litter Control Act and created the Waste Control Act. These laws are not to supersede the environmental laws but to define more clearly violations and penalties. They will also enable a uniform application of the laws by the Rangers and the courts. The civil process authorized by the environmental laws can still be utilized in conjunction with the criminal acts defined in the new laws. No double jeopardy is encountered by using both the criminal and civil penalties.

The Litter Control Act was modified by changing the definition of litter. Previous listed materials were left intact. An exception was added providing that those materials defined by weight, volume, or substance within the Waste Control Act are not litter.

The Waste Control Act makes it illegal to dump wastes without a permit or in unauthorized areas and containers. It provides definitions of wastes, dumping, aggravated misdemeanor and felony violations, and penalties for violations. It also provides that the new law does not supersede the authority of other state agencies in regulating wastes. This provision allows EPD to still handle violations under the environmental laws. The Waste Control Act is within the Georgia Criminal Code and addressed to all peace officers.

The definition of wastes includes a lengthy list of specific materials and three special classes of materials. These classes of materials are biomedical wastes, hazardous wastes, and hazardous substances. These special classes of wastes are

further defined in the environmental laws, rules, and regulations where listed materials are upgraded more frequently as new wastes and hazardous materials are created.

The definition of dumping is similar to that for littering but the actions of burning and discharging were added. This allows the Waste Control Act to be used to enforce violations of the Air Quality Control Act, the Water Quality Control Act and the Comprehensive Solid Waste Management Act.

Violations of the Waste Control Act are either an aggravated misdemeanor or a felony. An aggravated misdemeanor is punishable by a fine not to exceed \$5,000 and/or imprisonment for up to 12 months. A felony is punishable by a fine not to exceed \$25,000 and/or imprisonment for not more than 2 years.

Violations are classified by weight or volume of the material, by the type of material and by whether the dumping was done for commercial purposes or economic gain. Violations involving wastes greater than 10lbs in weight and/or 15 ft<sup>3</sup> in volume and less than 500lbs in weight or 100 ft<sup>3</sup> in volume are aggravated misdemeanors. Violations involving wastes over these weights/volumes are aggravated misdemeanors on the first offense and a felony on the second offense. A conviction for the first offense is not necessary for charging with a felony on a second offense. First offenses may be documented with a written warning.

Violations involving wastes that are biomedical or hazardous wastes, hazardous substances, or for economic gain or commercial purposes are felonies. Careful documentation of evidence will be necessary for successful prosecution. An economic gain can be a saving of money as well as actual earnings; such as, a subject dumping illegally to avoid paying landfill usage fees.

## **Enforcement Activity**

Since environmental violations can have a long-lasting effect on natural resources, these violations are of a priority nature. Intense enforcement efforts are directed to apprehending violators. Rangers do enjoy freedom of discretion in handling violations and may issue warnings for infractions in accordance with policy. Communication with EPD is routine whenever violations are detected that either require clean-up guidance or are of a type only regulated by environmental laws, rules, or regulations not encompassed by the Waste Control Act. Rangers can occasionally recommend that a "Notice of Violation" be issued by EPD with directions for clean-up and other procedures and whether a civil penalty should be sought.

Data shows significant increases in violator contacts when comparing Fiscal Year (FY) 1992 to FY 1993. The Waste Control Act did not become effective until April 1993, but has been used for all environmental violations, except littering, since. During the last quarter of Fiscal FY 1993, 25 violator contacts were made statewide using the Waste Control Act; 3 of these contacts were felonies. An additional 160 environmental violations in were encountered FY 1993 that now can be enforced under the Waste Control Act. It is possible that a portion of the 735

littering violations could have been enforced under the Waste Control Act if the litter exceeded 10lbs in weight or 15 ft<sup>3</sup> in volume. Rangers will use common sense in deciding which act to apply on small amounts of materials. In some cases, larger amounts of wastes might be prosecuted with a lesser charge. It is not the intent of DNR to create felons of citizens who act in ignorance of the law and can be brought into compliance with the use of more lenient charges. To aide in accomplishing the prevention of violations, an aggressive series of information and education programs will be implemented.

Each of the State's 11 law enforcement districts have different levels of enforcement activity. Activity levels are affected by such factors as population, availability of landfills and other disposal facilities, and pollution producing processes. The number of counties and Rangers assigned to the district are also factors, as is proximity to other states.

Several of these factors are found in the Albany Law Enforcement District. It is bordered by 2 states, Florida and Alabama; a growing population; and a large number (30) of assigned counties. This district was the first to make arrests for environmental violations other than littering. Close communications and guidance from the Albany Southwestern Regional EPD Office has provided Rangers in the Albany district increased skills in detecting these violations with an 89% increase in arrests from FY 1992 to FY 1993.

## **Conclusion**

Waste disposal has become a complex, and often controversial, issue in Georgia. Landfills are near capacity and new guidelines from EPD will make replacement of landfills costly. People have only limited access to proper disposal facilities for items such as tires and other regulated wastes. But people still have to dispose of wastes. Some of these wastes are being disposed of in ways that impact natural resources of air, water, habitat, and wildlife. As stewards of our natural resources, our challenge is to preserve these resources. As Rangers, we must meet that challenge.