

# Landfill Operating Agreement Dispute: Georgia Appellate Court Addresses Anti-Waiver Provision



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## Arkansas Environmental, Energy, and Water Law Blog

07/06/2016

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Twiggs County, Georgia brought suit against Wolf Creek Landfill ("Wolf Creek") for alleged breach of contract. *See Wolf Creek Landfill, LLC v. Twiggs County*, WL 30064457 (May 25, 2016).

The alleged breach occurred when the landfill:

1. Failed to pay an expansion fee upon receipt of a non-appealable permit from the Georgia Department of Natural Resources ("DNR")
2. Underpaid quarterly host fees

The agreement between Wolf Creek and Twiggs County provided that Wolf Creek would pay Twiggs County for each cubic yard of expansion of the landfill, upon receipt of a non-appealable expansion permit from the Georgia Department of Natural Resources. The agreement further provided that upon accepting municipal solid waste in the landfill from sources other than Twiggs or Wilkinson County, Wolf Creek would pay the County a quarterly host fee based upon the tonnage of waste received (but no less than \$135,000 per year).

Under Georgia law, "all actions upon simple contract in writing shall be brought within six years after the same become due and payable." This time frame, or statute of limitations, begins to run at the time of the alleged breach of contract. Wolf Creek was required to pay the host fees within 30 days of the end of each calendar quarter, which Twiggs County stated were due no later than January 2008, and the expansion fee was due in 2007.

Twiggs County asserts that Wolf Creek did not pay these fees. Six-years later, Twiggs County brought this lawsuit against the landfill to recover for alleged breach of contract. Therefore, the court stated that the statute of limitations set by Georgia law barred Twiggs County claims against the landfill unless the parties agreed otherwise.

The contract did include an "anti-waiver" provision. It included a statement providing if there was a failure to enforce any provision of the contract it does not constitute a waiver by either party. As a result, the provision remains in full force and may be asserted by either party at any time during the period of the contract. Until this point, Georgia appellate courts had not addressed whether an anti-waiver provision, such as the one between Wolf Creek and Twiggs County, includes a waiver or extension of the statutory limitation for breach of contract.

Many states have statutory or judicial restrictions prohibiting or limiting contractual extensions of statutes of limitations. However, Georgia does not. The court looked to the “cardinal rule of contract law” which states a contract shall be enforced by ascertaining the intention of the parties. Further, contract principles provide that words in a contract generally bear their usual and common meaning and the usual and common meaning of a word may be supplied by common dictionaries. Therefore, the anti-waiver clause in the contract applied when a party failed to enforce one of its *provisions*.

The court emphasized the word “*provisions*,” looked to the common dictionary definition, and ruled that the anti-waiver clause applied only to the contract provisions established between Wolf Creek and Twiggs County. Additionally, the court considered the intention of the parties and ruled that there was no evidence that the parties intended to extend the six-year statute of limitation. Therefore, the claims of Twiggs County against Wolf Creek Landfill were barred by the Georgia statute of limitations for breaches of contract.

[A copy of the opinion can be downloaded here.](#)