Septage Disposal/Georgia Comprehensive Solid Waste Management Act: Georgia Appellate Court Addresses Challenge to Enforcement Action

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The Court of Appeals of Georgia (5th Division) ("Court") addressed in a June 1st Opinion an issue arising out of the disposal of domestic septage. See Docket Number A26A0366. *BOWEN et al., v. COWN.*

The issue addressed was whether the Environmental Protection Division ("EPD") of the Georgia Department of Natural Resources had the authority to prohibit the disposal of septage on a certain property without a permit.

The Bowens operate a septic tank disposal business. The business involves pumping the contents of domestic septic tanks from various locations into closed trucks and then discharging the contents of the trucks onto land they own in Rockdale County, Georgia. The Bowens did not have a permit for the disposal of septic tank waste on their property.

EPD alleged that the Bowens had violated the Georgia Comprehensive Solid Waste Management Act of 1990 ("Solid Waste Act") and the Georgia Water Quality Control Act ("Water Quality Control Act") by disposing of septage or other domestic solid waste on their land without a permit.

Domestic septage is another way to refer to the waste from a domestic septic tank. In January 2005, a superior court entered an order granting an EPD request for permanent injunction that prohibited the Bowens from "collecting or allowing unpermitted handling of solid waste" on their property.

The Bowens argued that EPD had no authority to outlaw "the disposal of septage on their property." They raised the following three arguments. The Court rejected the first two and remanded based on the third:

1. Because their property was operated as a family farm, domestic septage does not fall within the definition of "solid waste" as defined in the Solid Waste Act.
    1. The Court states that there is nothing in the language of either the Solid Waste Act or the Water Quality Act that exempts farmland from the regulatory authority of the EPD.
    2. A disposal facility is defined in the Solid Waste Act as including any facility or location where the final deposition of solid waste occurs.

3. The Bowens were using at least a portion of their property as a disposal site for the septic tank waste they collected as part of their pumping and hauling business.

2. Regardless of the designation of their property, their disposal activities cannot be regulated under the Solid Waste Act because domestic septage does not qualify as a solid waste (referencing the phrase in the definition, "but does not include … solid or dissolved materials and domestic sewage.")

    1. The rules promulgated under the Water Quality Act specifically distinguish between domestic sewage and domestic septage, making it clear that they are not, in fact, indistinguishable.

    2. Land disposal of septage collected as part of a pumping and hauling business within the regulatory authority of the EPD under the Solid Waste Act, making it clear that domestic septage is considered a solid waste under that Act even if domestic sewage is not.

3. Even if the statutory authority grants regulatory and permitting authority to the EPD over the land disposal of septage from a septic tank pumping and hauling business, the state agency never promulgated any rules or regulations governing the permitting of this activity despite being explicitly directed by the legislature to do so.

    1. The Bowens are correct that there appears to be no specific rule or regulation promulgated under the statute that specifically sets out the requirements for obtaining a land disposal site permit by a septage hauling business.

    2. Undisputed that the Bowens never applied for a permit under the statute or any other provision of the Act and no determination has been made concerning the applicability of these other statues, rules or regulations.

    3. The applicability of those other statutes and regulations has not been squarely addressed.

    4. The record is not developed on whether the septage disposal method used here comes within this rule; therefore, the Court remands to the trial court for further fact finding on this issue.

The Court vacates the superior court's order and remands for further proceedings.

A copy of the Opinion can be found here.