

1 SB249
2 115029-4
3 By Senator Orr (N & P)
4 RFD: Local Legislation No. 1
5 First Read: 14-JAN-10

1 SB249

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3
4 With Notice and Proof

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6 ENROLLED, An Act,

7 Relating to Morgan County, to create source water
8 protection areas for source water of public water supply
9 systems; to provide for legislative findings and statements of
10 public policy; to define certain terms for purposes of this
11 act; to prohibit the construction and operation of a storage
12 facility, any part of which is used for the storage and
13 distribution of hazardous materials, within certain
14 proximities of a public water supply intake facility; to
15 provide a method for issuing permits by affected
16 municipalities for the construction and operation of storage
17 facilities otherwise prohibited; and to provide for civil
18 remedies for the enforcement of this act.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Legislative Finding and Declaration of
21 Policy.

22 The Legislature finds and declares it to be the
23 policy of the state, as it relates to Morgan County,
24 consistent with its duty to protect the health, safety, and
25 welfare of the citizens of Morgan County, to protect the water

1 of public water supply systems from contamination by hazardous
2 materials, including, but not limited to, any oil, gasoline,
3 diesel fuel, aviation fuel, or petroleum product. The
4 Legislature further finds that accidental spills or discharge
5 of hazardous materials, if and when they may occur, pose a
6 significant and unacceptable risk to public water supply
7 systems and thus to the public health and safety of the
8 citizens of Morgan County and, where the transport to, storage
9 in, and distribution from a storage facility occur from sites
10 that are in close proximity to intake facilities of public
11 water supply systems in Morgan County, that any spills or
12 other releases of such substances would likely be ingested
13 into the public water systems of municipalities lying within
14 or partly within Morgan County. As a consequence of potential
15 contamination risks, protection areas should be established by
16 the Legislature around the source water public water system
17 intake facility of any municipality in Morgan County, Alabama,
18 in order to reduce or prevent the risk of contamination of the
19 public water supply of the citizens of Morgan County.

20 Section 2. Definitions.

21 As used in this act, unless the context clearly
22 indicates otherwise, the following terms have the following
23 meanings:

24 (1) ENVIRONMENTAL LAWS. Any applicable federal,
25 state, or local law, rule, regulation, ordinance, order,

1 consent decree, or order of any governmental authority now or
2 hereinafter in effect relating to and defining hazardous
3 materials or the protection of the environment, health, and
4 safety of public water supply systems under the federal Safe
5 Drinking Water Act, Clean Water Act, Hazardous Materials
6 Transportation Act, and Occupational Safety and Health Act and
7 any similar state or local law; provided that any such
8 environmental law does not specifically exclude regulation at
9 the local governmental level.

10 (2) HAZARDOUS MATERIALS. Any hazardous or toxic
11 material or substance defined, listed, or regulated under
12 environmental laws and, without restricting the generality
13 thereof, shall include oil, gas, diesel fuel, aviation fuel,
14 and petroleum products in whatever form they may exist.

15 (3) INTAKE FACILITY. Any structure or facility by
16 which untreated water is taken from any source water by any
17 public water system for treatment and subsequent use or
18 consumption by members of the public of Morgan County, for
19 drinking or other purposes, including fire protection and
20 sanitary sewer operations.

21 (4) PUBLIC WATER SYSTEM. Any water supply system
22 operated by any municipality in Morgan County, or any public
23 board, authority, or agency that provides drinking water for
24 human consumption or other purposes to citizens of Morgan
25 County.

1 (5) SOURCE WATER. Any water source, including any
2 river or stream, from which water is drawn either periodically
3 or continuously, by any municipality in Morgan County, which
4 following treatment is piped for human use or consumption.

5 (6) SOURCE WATER PROTECTION AREA. Includes the
6 following areas in Morgan County:

7 (a) If an intake facility is not within a stream or
8 river, within one-quarter mile of any intake facility.

9 (b) If an intake facility lies within a river or
10 stream, the area shall include an area extending 1,000 feet
11 downstream and 5,000 feet upstream from any intake facility
12 and shall also include an additional area within such upstream
13 and downstream boundaries extending 200 feet landward from the
14 water's edge or shoreline of any source water in which an
15 intake facility for any public water system in Morgan County
16 is located.

17 (7) STORAGE FACILITY. Includes the following:

18 (a) Any aboveground or underground storage tank or
19 facility utilized for the receipt, by means of any method of
20 transportation, storage, and distribution, of any hazardous
21 materials as herein defined, having a capacity in excess of
22 10,000 gallons.

23 (b) Where source water is a stream or river, any
24 structure or facility, pump, pipeline, or other apparatus used
25 to deliver or receive a hazardous material from any vessel,

1 vehicle, tank car, or other transport device to any
2 aboveground or underground storage facility having a capacity
3 in excess of 10,000 gallons.

4 Section 3. Storage Facility Prohibited in Source
5 Water Protection Area.

6 Except as provided in Section 4, no storage facility
7 may be constructed or operated within a source water
8 protection area without regard as to whether the site or
9 location upon which the storage facility is to be constructed
10 and operated lies wholly or partially inside or outside the
11 city limits of a municipality whose public water supply intake
12 facility lies within such source water protection area.

13 Section 4. Municipal Permits to Operate a Storage
14 Facility.

15 A storage facility may be constructed and operated
16 within a source water protection area if constructed pursuant
17 to the following municipal application and permit procedure:

18 (1) Any party desiring to construct and operate a
19 storage facility at a location within a source water
20 protection area shall submit to the governing body of the
21 municipality whose intake facility lies within the area,
22 without regard as to whether the proposed site or location
23 upon which the proposed storage facility is to be constructed
24 lies wholly or partially within or outside the city limits of
25 the municipality, an application for a permit to construct

1 such a storage facility. The application shall include design
2 plans and specifications and a declaration of the purpose for
3 and method by which a storage facility will be constructed and
4 operated, which shall all be continuing representations by the
5 applicant, and any successor in interest or assignees of the
6 applicant, and any disobedience or variance therefrom shall
7 invalidate any permit granted hereunder.

8 (2) A public hearing on a permit application shall
9 be held by the municipality no sooner than 30 days after
10 public notice is given by the municipality that a public
11 hearing will be held on whether the application for a permit
12 shall be granted.

13 (3) If the municipality determines after the public
14 hearing that the construction and operation of the storage
15 facility in accordance with the terms and provisions of the
16 permit application will not constitute, to any degree, a risk
17 of contamination of the public water supply of the
18 municipality, a permit for the construction and operation of a
19 storage facility may be granted upon the terms and conditions
20 as the municipality may impose, and the construction and
21 operation of the storage facility granted a permit, in
22 accordance with all terms on which the permit was issued,
23 shall not constitute a violation of Section 3.

24 Section 5. Civil Remedies for Violations.

1 a. The construction or commencement of construction
2 of or attempted operation of a storage facility within a
3 source water protection area that is not authorized by this
4 act constitutes a violation of this act and may be enjoined by
5 a restraining order of the court upon the following actions:

6 (1) A resolution must first be adopted by the
7 governing body of any municipality in Morgan County which
8 finds and declares that the construction of a storage facility
9 constitutes a violation of this act and that the continuance
10 of the construction of the storage facility will constitute a
11 public nuisance.

12 (2) After a resolution is adopted by a municipality
13 in Morgan County, pursuant to Section 5(a)(1), above, it shall
14 file a petition in the Circuit Court of Morgan County asking
15 that any planned or threatened or in-progress construction of
16 a storage facility be abated pending a final determination by
17 a court of competent jurisdiction as to whether such storage
18 facility is authorized to be built.

19 b. Any construction or planned construction shall be
20 abated and discontinued pending any action by the Circuit
21 Court of Morgan County, Alabama, or Appellate Court of
22 Alabama, or other court of competent jurisdiction, vacating or
23 otherwise abating any such determination by any municipality
24 of Morgan County.

1 Section 6. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.

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President Pro Tempore and Presiding Officer of
the Senate

Speaker of the House of Representatives

SB249
Senate 04-FEB-10
I hereby certify that the within Act originated in and passed
the Senate.

McDowell Lee
Secretary

House of Representatives
Passed: 18-FEB-10

By: Senator Orr