



AIR & WASTE MANAGEMENT
ASSOCIATION

Georgia Chapter



See the
back page
for
upcoming
events you
won't want
to miss.

In this issue:

Limiting Liabilities of Hazardous Waste Facilities in GA	1
Georgia's Ambient Air Toxic Network	1
Young Professionals Committee Created	3
A Word From Our Chair	5

Limiting Liabilities at Hazardous Waste Facilities in Georgia

By Joan B. Sasine and M. Lawrence Mattila ¹

The Hazardous Site Reuse and Redevelopment Act ("HSRRA"), also known as the Brownfield program, has become increasingly popular in Georgia. HSRRA provides broad liability protection to prospective purchasers of contaminated properties who are willing to delineate soil and groundwater contamination, and cleanup soil contamination and any source material. Provided that the statutory criteria are satisfied, prospective purchasers of certain "qualifying properties" can avoid liability to the state and third parties for various costs related to the preexisting release.

Recently, the Georgia Environmental Protection Division ("EPD") granted a HSRRA limitation of liability ("LOL") to a prospective purchaser of a former hazardous waste facility in Cobb County. The LOL was issued to a company acquiring the Damar, Inc. ("Damar") property (the "Property" or "Damar Property") in connection with a planned expansion of the adjacent Joseph T. Walker School ("Walker School").

EPD's willingness to issue an LOL in this case could be good news for owners and prospective purchasers of "hazardous waste facilities" - a term defined under the Georgia Hazardous Waste Management Act ("GHWMA") to mean "any property or facility that is intended or used for storage, treatment, or disposal of hazardous waste." O.C.G.A. § 12-8-62(11). The GHWMA is Georgia's version of the federal Resource Conservation and Recovery Act, 42 U.S.C. §§ 6921 et seq. ("RCRA"). Although hazardous waste facilities are not "qualifying properties" pursuant to HSRRA and therefore are not eligible for the LOL, the EPD appears willing to work with parties to overcome this hurdle.

Continued on page 3

Georgia's Ambient Air Toxic Network

By Susan Zimmer-Dauphinee, Program Manager - Ambient Monitoring Program
Georgia Environmental Protection Division - Air Protection Branch

The Federal Clean Air Act requires the EPA administrator to identify pollutants that may reasonably be anticipated to endanger public health or welfare. The Act also requires the Administrator to issue air quality criteria that reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare that may be expected from the presence of such pollutant in ambient air. Under the Clean Air Act, the EPA administrator established a National Ambient Air Quality Standard (NAAQS) for each pollutant for which air quality criteria were issued. The Ambient Monitoring Program of the Environmental Protection Division, Air Protection Branch, has been monitoring Georgia's ambient air for six criteria pollutants (ozone, NO2, SO2, CO, particulates and lead) for the past twenty (20) plus years using an extensive statewide monitoring network. Based on the data produced by this network a determination of attainment/non-attainment with the standard is made throughout the state.

Continued on page 2

Georgia's Ambient Air Toxic Network

Continued from page 1

However, in addition to the criteria pollutants, the Ambient Monitoring Program has been measuring air toxic compounds since 1994. By 1996 a review of the process led to the conclusion that to better characterize the toxic pollutants contribution to public health and welfare, that a different approach was needed. Thus in late 1996 an effort began to build an air toxic network with samplers statewide that measured a standardized list of metals, volatile organic compounds (VOCs), and polycyclic aromatic hydrocarbons. By establishing the network several objectives could be met including intercomparisons between locations, trends analysis, and insight into the dispersal of emissions. The initial network was to consist of twenty sites with a mixture of urban and rural locations. The two rural locations were to act as background sites, to provide a comparison for the measurements made in the larger urban areas of the state. In addition, one quality assurance site was established which maintained a primary and a quality assurance monitor of each measurement type used throughout the network. The rural control sites were established in Dawsonville and Coffee County. In addition to the rural control, an urban control site (population, but no large industry) was established along with twelve sites located in urban areas where a million pounds or more of air toxics were released to the atmosphere based on the 1990 Toxics Release Inventory. By selecting sites in areas with the highest possible stationary source emissions it was expected that these areas would be the areas with the highest toxics pollutant concentrations. The monitoring sites were not located directly downwind of the stationary sources in order to obtain a representative "urban soup" sample, thus also incorporating the effects of mobile and area sources and other environmental sources play in overall toxic pollutant concentration

The established network was completed by 2000. However, changes are still continuing with the network with the biggest change occurring in 2004 with a decrease in detection limits.

The Ambient Monitoring Community nationwide is currently addressing the issue of detection limits. Georgia, as well as many other states, uses the toxic organic methods or the inorganic methods for sampling and laboratory analyses. In many cases the current detection levels available, while in the sub- micrograms per cubic meter range, are not low enough for either detecting the pollutant in ambient air or is higher than the risk assessment screening concentrations. The detection level concentration affect on the data is reflected in the Georgia network which during 2006 sampled for seventy (70) toxic pollutants, but of those seventy only 24 compounds were frequently detected, 65.9 % of which were metals and 44.1% were VOC's and no PAH's were detected.

Even with the detection limit issue, the dataset is beginning to supply valuable information for interpretation of trends and evaluation of the data to aid in assessing the potential for exposure. When looking at the air toxic VOC's data it can be noted that while the network monitors for forty-two compounds only a small subset of these compounds are detected on a frequent basis. Of the detected compounds, dichlorodifluoromethane (FREON 12) is interesting. This compound was used as the main refrigerant for automobile cooling until the mid 1990's when FREON 12 manufacturing was halted in the United States. It is known that the life expectancy of the compound is long and this is verified by our sampling. In 2006 it was detected at every site and during every sampling event with little variation in the concentration statewide. In addition, the 2006 concentration of FREON 12 in Georgia is comparable to the mean urban concentrations detected in the atmosphere by other researchers in the 1980's.

Continued on page 4



We're on the web!
www.gaawma.org





Limiting Liabilities at Hazardous Waste Facilities in Georgia

Continued from page 1

The Damar Property became eligible for the LOL after going through a process that took approximately eighteen (18) months. First, Damar's consultant submitted a corrective action plan ("CAP") that proposed, among other things, excavation of soil impacts and aggressive groundwater cleanup. Potassium permanganate injections were proposed in order to remediate a plume of solvent contamination that impacted both the Property and the adjacent Walker School property.

Next, after providing an opportunity for notice and comment, the EPD modified Damar's RCRA permit for post-closure care, allowing the corrective action to proceed. EPD's approval of the corrective action paved the way for early termination of the Damar's RCRA permit and opened the door for the prospective purchaser to obtain an LOL. The corrective action was funded out of the purchase price for the Property, which was held in escrow along with the title to the Property until the corrective action was implemented.

Subsequently, Damar and EPD entered into a consent order that terminated the RCRA permit upon completion of certain corrective actions. The Damar Property basically ceased to be a "hazardous waste facility" after injecting the potassium permanganate (i.e., at the "construction complete" stage of remediation), even though other activities would continue to be required under the consent order, including groundwater monitoring and operation of recovery systems. In this case, EPD terminated Damar's RCRA permit less than eighteen (18) months after aggressive corrective actions were proposed. The LOL was then issued to the prospective purchaser less than two (2) weeks later, on June 7, 2007.

Thus, prospective purchasers of other hazardous waste facilities may also be able to convince EPD to issue an LOL. To the extent parties are willing to direct a portion of the purchase price toward aggressive cleanup and can convince EPD that state assets will not be risked by issuing the LOL, then there may be a trend toward increased redevelopment of hazardous waste facilities. •

¹ Ms. Sasine is a partner and Mr. Mattila is an associate in the Tort Litigation and Environmental Practice Group at Powell Goldstein, LLP, where they specialize in environmental law. The authors welcome comments to the article and can be reached at the following email addresses: jsasine@pogolaw.com; mmattila@pogolaw.com.

Young Professionals Committee Created

The Georgia Chapter of the Air & Waste Management Association (AWMA) recently created a "Young Professionals (YP)" committee that will be led by Benjamin Sessions. This committee is designed to attract professionals age 35 and younger to become active members in the AWMA. This committee will focus on increasing opportunities for a YP in the environmental field by holding hot topic workshops, networking meetings, and activities geared toward professionals and students 35 and under.

The environmental field is growing and could be one of the hottest industries to work for in the coming generation. The AWMA seeks to be at the forefront of exposing young people to these opportunities. Please recommend potential member names to Benjamin Sessions via email Bsession@trinityconsultants.com or phone 404.256.1919.



Georgia's Ambient Air Toxic Network

Continued from page 2



The toxics data collected may be evaluated to assess the potential for health concerns. The results of the 2006 assessment finds that in Georgia of the seventy pollutants measured at all sites, the possible risk is driven by only two pollutants, hexavalent chromium (CR+6) and carbon tetrachloride. Hexavalent chromium is interesting due to the chromium chemistry, which is complex and can lead to very different degrees of toxicity depending on the form. Chromium +3 is the form that often predominates in the natural environment, and is essential for good nutrition. Cr+6 is the most toxic. The Georgia toxic network monitors for total chromium, a combination of chromium in all forms including chromium +3 and chromium +6. During 2006 the average statewide chromium concentration was 2.5 ng/m³ with the lowest concentration (1.4ng/m³) detected at the Milledgeville site and the highest (4.5 ng/m³) detected in Warner Robins. Since the percentage of hexavalent chromium in the total samples is not known, the risk assessment assumes that the hexavalent chromium concentration is equal to the total chrome measurement. This is a very conservative assumption and results in a statewide average exposure risk of 3.2×10^{-5} .

To better understand the quantity of hexavalent chromium in the ambient air, experimental measurements for hexavalent chrome are being made at the South Dekalb site. The average 2006 total chrome concentration was 3ng/m³, while the hexavalent chromium concentration was 0.046 ng/m³ or 1.5% of the total chromium concentration, and comparable to other studies that show that even close to industrial sources hexavalent chromium concentration account for 1-25% of the total chromium concentration. The South Dekalb measurement results in a significantly reduced risk of 6×10^{-7} .

The establishment of the air toxic monitoring network in Georgia has provided a wide range of information made available to the public. By continuing to operate the network and conducting data analyses Georgia will have the information available to make the best future decisions. •

2008 Georgia Chapter Officers

Chair Russell C. Griebel, P.G., R.B.P.: rgriebel@unitedconsulting.com

Vice Chair Ron Methier: ronmethier@comcast.net

Secretary / Publications Committee Susan Jenkins: susan_jenkins@dnr.state.ga.us

Treasurer Les Engel: lester_engel@erm.com

Education Chair Rochelle Routman: riroutma@southernco.com

Programs Chair Joan Sasine: jsasine@pogolaw.com

Membership Chair / Publications Committee Melissa Eller: meller@pangean-cmd.com

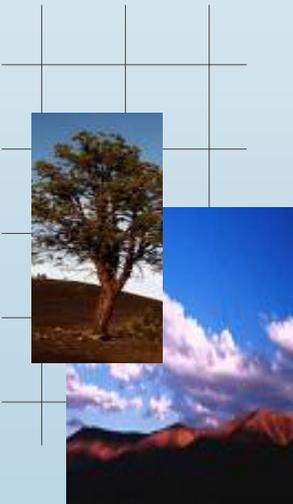
Young Professionals Chair Benjamin Sessions: bsession@trinityconsultants.com

Director 2006-2008 / Awards Committee Rick Turner: roturner@gapac.com

Director 2007-2008 / Awards Committee Albert G. Edwards: aedwards@cerm.com

Director 2008-2010 Heather Abrams: heather.abrams@dnr.state.ga.us

Past Chair Karen Dorman: kdorman@gesinc.com



A Word from Our Chair

Greetings Friends and Happy Spring!

With the New Year here and rolling full speed into the spring season, the Georgia Chapter of the A&WMA is implementing a membership drive to increase our 2008 membership base and benefits. To start I would like to remind everyone that the A&WMA is a nonprofit, nonpartisan professional organization that enhances knowledge and expertise by providing a neutral forum for information exchange, professional development and training, networking opportunities, public education, and outreach to more than 9000 environmental professionals in 65 countries. A&WMA also promotes global environmental responsibility and increases the effectiveness of organizations to make critical decisions that benefit society.

Within our organization, two primary membership levels exist; local and national. As a member of the local Georgia Chapter an individual is referred to as an Associate, while a national member is referred to as a Member. Each of these memberships carries specific *valuable* benefits including access to membership directories, discounts on conferences, workshops, and publications and much more. Please refer to www.gaawma.org and www.awma.org for a complete list of benefits.

For 2008, the Georgia Chapter is excited to let you know that due to the success of our 2007 annual events, the Chapter was able to keep our annual membership fee at a very reasonable \$30.00. With the support of National, we are also able to extend 2008 annual National memberships (to new Members) at a reduce cost of \$100.00. This is a 55% reduction from the normal Membership fee of \$180.00.

With our benefits and our fee structure, we hope that you can see the *value* in being a member of our organization. Please take a moment to join or renew TODAY! You can join/renew at the local level at our Chapter website (www.gaawma.org) and by clicking on the [Renew Ga. Assoc. Membership](#) link or at the national level at our National website (www.awma.org/join/index.html). If you have any questions, please do not hesitate to contact me directly at my address listed below.

Sincerely,

Russell C. Griebel, P.G., R.B.P.

Chair, A&WMA Georgia Chapter

rgriebel@unitedconsulting.com



Upcoming Events

- ◆ GA Chapter A&WMA holds the Spring Regulatory Update Conference on April 17, 2008 at the Sam Nunn Federal Building in downtown Atlanta. www.gaawma.org
- ◆ American Institute of Professional Geologists presents: Innovative Remediation Technology on May 7-8, 2008 at Kennesaw State University. www.aipg.org
- ◆ GA Chapter A&WMA's fall technical conference: Greenology- Ownership and Accountability is set for October 9, 2008 at the GA Tech Global Learning Center. www.gaawma.org