Georgia Bar Journal

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Special Issue: Environmental Law

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On the Cover
The environmental-themed issue is made possible by the support of the Environmental Law Section of the State Bar of Georgia.

Cover photo by Kevin B. Smith

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The *Georgia Bar Journal* welcomes the submission of news about local and circuit bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: C. Tyler Jones, Director of Communications, 104 Marietta St. NW, Suite 100, Atlanta, Georgia 30303; phone: (404) 527-8736; tyler@gabar.org.

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Environmental Law: How it Affects You

Greetings from the State Bar of Georgia's Environmental Law Section. The section appreciates the opportunity to share our practice area with the Bar's general membership. The State Bar's Environmental Law Section has been in existence for over 30 years and is dedicated to serving the interests of over 400 members through educational programs and publications.

The section sponsors several informational "brown bag" lunches throughout the year, with speakers on a variety of topics and an annual summer seminar, which is attended by our numerous members throughout the state. The section also publishes an informational newsletter presenting articles on a range of environmental topics.

Several years ago, the *Fulton County Daily Report* issued a report indicating the demise of environmental law. I am happy to say that environmental lawyers are still very active in Georgia. It is likely that almost all lawyers, regardless of their practice area will encounter environmental issues at some time in their career, as environmental law touches many disciplines.

From the real property lawyer who encounters an abandoned gasoline tank on a property to the litigation attorney trying a toxic tort case to the corporate attorney wrestling with difficult environmental liability issues in a transaction, environmental law permeates legal life. Even criminal law attorneys and trust estate lawyers are not immune from environmental issues.

Further, as environmental issues have become more complex, the practice of environmental law similarly has become more challenging, presenting new opportunities for environmental lawyers. This complexity increases our responsibility to reach out to our communities, schools and public officials to explain the relevance and importance of environmental law and policy initiatives.

Our section benefits from the diversity and experience of its members. We have attorneys who practice across a wide range of specializations, representing industrial, commercial and development interests, governmental agencies at every level and environmental and citizens organizations.

Many of the members have contributed their time and talent to section activities, as authors for our newsletter, speakers at CLE programs and participants in our section lunches. Of course, we welcome new members and I hope that the information presented in the *Bar Journal* piques your interest in environmental law. GBJ

Susan Hearne Richardson is a partner with Kilpatrick Stockton, LLP, in Atlanta, where she practices environmental law. She is the chair of the State Bar of Georgia's Environmental Law Section. She graduated from the University of Tulsa in Tulsa, Oklahoma (B.S. 1984) and earned her law degree from Tulane Law School (*magna cum laude*, 1991). She may be reached at surichardson@kilpatricstockton.com.

The *Georgia Bar Journal* would like to offer a special thanks to Lynda Crum and Jeff Dehner, both of the Environmental Law Section, for their hard work in organizing and making this special issue possible.

from the President

By William D. Barwick

Closing Argument

It seems like only yesterday that I was taking the oath of office from Judge Duross Fitzpatrick at the start of my year as State Bar President. And yet here I sit, contemplating a list of proposed presidential pardons and apologies that should be made to certain interns, as well as composing my last "President's Page." When I started this year, I knew that it would necessarily end with some regrets, mostly over unfinished business. I resolved, however, that I would not back away from a project simply because it could not be completed in a year. In other words, I have clearly bitten off more than I could chew.

We have had a number of successes. This year, we will begin our subscription to Casemaker, giving every member of the State Bar of Georgia access to online computer research of Georgia case law and statutes for an annual charge of nine dollars. We have arranged for financing to be in place for the completion of the State Bar Center, including a 500 car garage available free of charge to any member of the State Bar with downtown Atlanta parking needs. The Bar Center itself will be completed by early 2005, making it the planned center for future section, committee and ICLE meetings.

We have significantly revamped the way we will train and mentor new lawyers. We have proposed to the Supreme Court of Georgia the abolishment of the dreaded "nine trial experiences" that were necessary before a young lawyer could be assigned any significant courtroom work. We will also likely revamp the Bridge the Gap CLE program, which has also been hugely popular with younger lawyers over the years. In their place, we have proposed a more intense and inclusive mentoring program that will allow every first year lawyer in this state to have access to the counsel of an older lawyer to discuss anything and everything that tends to arise in the practice of law: legal research, client relations, ethics, professionalism, billing and more.

"Thanks once again to the members of our profession who have made this a wonderful year for me. I am very proud to be a Georgia lawyer."

After an intense three-year effort, it took a special session compromise bill agreed to by the governor, chief justice and legislative leaders, to agree to fund the newly created Georgia Indigent Defense Standards Council, whose mission is to ensure the indigent defense program is fully, fairly and independently funded.

Other programs have been put in place that will, I hope, reap benefits down the road. In previous articles in the *Georgia Bar Journal*, I have described my thoughts about the way in which we select, elect and retain judges in this state, and I believe that we will have both guidelines and proposed legislation in place by the end of the year that will impact judicial elections. Of course, a great deal depends upon the tenor of the upcoming judicial campaigns, which include an unusually high number of contested races.

By next year's legislative session, we also anticipate the creation of a business court in Georgia, which will be empowered to handle complex commercial litigation. Modeled on similar business courts in 15 other states, this project was partially inspired by the loss of millions of dollars in attorneys' fees several years ago in North Carolina, resulting from a contentious merger/takeover battle between two major banks. Both the Business Law Section and the Corporate Counsel Section of the State Bar took note, and decided that the time was right to investigate the creation of a model program in Georgia.

The proposed version for Georgia would be voluntary, both on the part of the litigants and the court itself, which would have the discretion to determine that certain cases were simply not complex enough. Venue in a particular county would remain unchanged, but the physical site of the court is anticipated to be located in Fulton County, with an assigned senior judge responsible for a limited caseload of approximately three to five lawsuits per year.

These would be the types of cases that are both document and technology intensive. Although certain factual disputes may be subject to resolution by a jury or other fact-finder, it is anticipated that the types of cases in the business court would be predominately subject to summary adjudication. Expense of the court would be deferred in large part by increased filing fees, although staff and administrative costs will ultimately need to be approved by the Administrative Office of the Courts, and subject to budgeting by the Legislature.

In addition to the sections referenced above, the business court has received substantial support to date from the State Bar's Executive Committee, the chief justice and the judges of the Superior Court of Fulton County. Although numerous lawyers and judges have worked on this project, the lead standard bearer has been Ray Fortin, general counsel of SunTrust Banks, Inc. Fortin is to be congratulated for his tenacity and perseverance in pursuing the goal of a business court, and the importance of this project to many litigators and business lawyers in this state serves as a reminder that access to justice issues are just as important to corporate litigants as they are to the victims of a personal injury.

In concluding this last editorial, I would also like to thank the many lawyers throughout this state who have written or e-mailed me throughout the year regarding a wide variety of Bar-related topics. Not all of them have been complimentary, and some were even composed by cut out words from a newspaper, but I have attempted to answer them all. In addition, I have made it a habit throughout my legal career to answer my own telephone, but with the advent of caller ID, I must confess that I didn't always reach for the receiver as quickly as I have in the past. For the most part, I have enjoyed the opportunity to speak with and write to so many lawyers on a wide variety of matters of mutual interest.

Thanks once again to the members of our profession who have made this a wonderful year for me. I am very proud to be a Georgia lawyer. GBJ

from the Executive Director

By Cliff Brashier

Lawyers Urged to Use LPM Services

The Law Practice Management service offers a wealth of information designed to help members with the business side of their law practice. Many members already take advantage of this opportunity, but many others do not think about it as a resource or are unaware that it is available.

I urge you to consider using this program in three ways. First, attend the Annual Solo and Small Firm Institute and Technology Showcase. It will help you keep up with law firm technology and is one of the highest rated (by the attendees) seminars in Georgia. Second, call Natalie Thornwell or Pam Myers at (800) 334-6865 or (404) 527-8700 when you need information or an opinion on any law practice management issue that may arise in your practice. Third, invite Natalie to speak at one of your local bar meetings or CLE seminars. She consistently receives excellent reviews on her presentations.

I am pleased to share the opinion of Ronne G. Kaplan, a solo practitioner in Atlanta, about the value of this State Bar service in his practice:

Dear Mr. Brashier:

Thank you so much for having Natalie Thornwell on your staff. As director of Law Practice Management, she is not only extremely qualified, but is a great "people person." I feel incredibly fortunate to be a member of a Bar where I have access to professionals with Natalie's abilities. As a solo practitioner, it is essential that I have the resources to effectively handle all aspects of the practice of law, and without Natalie's help, I would be at a significant disadvantage.

I have overheard my colleagues complain many times about the high cost of Bar membership. However, as a member of the District of Columbia and Pennsylvania Bars, it is apparent that the Georgia Bar is truly committed to serving its members. This recent "first hand" experience has certainly proven to me how valuable the membership is.

My paralegal and I decided, around the end of last year, to purchase and use Amicus and PCLaw for time management and billing. When my part-time bookkeeper of several years unexpectedly quit to pursue other career goals, I called Natalie, in desperation, for help. We were feeling totally overwhelmed by the task of learning how to handle the billing/bookkeeping functions pre-

"The Law Practice Management service offers a wealth of information designed to help members with the business side of their law practice."

viously performed by my bookkeeper. As a solo practitioner, I am particularly dependent on a bookkeeper to get out bills and handle the financial aspects of the practice.

Although I had heard Natalie speak at several related functions, I did not call her until a few months ago when she assisted me with learning Amicus. However, that training was much less stressful than needing to process billing and balance accounts. Natalie agreed to train me and my paralegal in PCLaw, assuring me that she will not only help us through the painful process of learning the software, but will also make sure that we are able to process the billing and handle all the banking aspects of this practice. She has been incredibly understanding and sensitive during this difficult period. It has been somewhat overwhelming to deal with the business aspects of running a law office and handling the responsibility of litigating in the area of family law. Knowing that Natalie will be working with me has allowed me to sleep easier. I do not feel alone and unable to compete successfully in the competitive environment of Atlanta law firms.

Please let me know if there is anything I can do to ensure that Natalie's service to the Bar is recognized and well compensated. I believe she is a great asset and that the members need to be better aware of her skills and service.

With kindest regards, I am

Sincerely yours,

Ronne G. Kaplan

Finally, watch for the State Bar of Georgia Casemaker Service to be operational around the end of 2004. For many members, this could well be the best member benefit that the State Bar offers. I will include more on this over the next several months. If you would like a preview, please see page 65 'of this *Journal* or read "Board of Governors Approves a New Major Member Benefit" at www.gabar.org.

Your thoughts and suggestions are always welcome. My telephone numbers are (800) 334-6865 (toll free), (404) 527-8755 (direct dial), (404) 527-8717 (fax) and (770) 988-8080 (home). GBJ

from the YLD President

By Andrew W. Jones

What a Year

It's hard to believe that my term as YLD president has come and gone. It seems like just yesterday I was getting sworn in as president by the Hon. Justice Carley.

As they say, time flies when you're having fun. The primary goal of my term was to increase involvement by the younger lawyers of the large Atlanta firms in the YLD. I am happy to report that the YLD has seen large firm involvement increase dramatically over the last year. New faces and new ideas are what help keep the YLD strong and vibrant. I hope the large Atlanta law firms will continue to encourage their younger lawyers to participate in the YLD. In addition to being good for your career, Bar work is rewarding and a great way to improve the overall opinion of lawyers in our communities.

Without the help of many people my term as president would not have run as smoothly and been as enjoyable. Special thanks go out to all of the members of the YLD executive counsel, committee chairs and committee volunteers. I especially want to thank all of the younger lawyers who agreed to serve on the YLD board of directors. Everyone involved helped to keep the YLD committees focused and productive. Without their help, there is no way I could have managed all of the successful projects that the younger lawyers are doing around the state.

I also want to thank the younger lawyers who helped to organize our meetings. Specifically, Chuck Auslander and Rich Connelly of Athens who did a great job organizing our fall meeting for the Georgia vs. Alabama game. Chuck and Rich were the architects of one of the most successful tailgate parties I have ever had the pleasure of attending. The event was such a success that Laurel Landon, the incoming YLD president, has scheduled the YLD Fall Meeting in Athens for the Georgia vs. LSU game, and I'm sure she will call upon Chuck and Rich to organize the event.

I also want to thank all of the younger lawyers from around the state who took time out of their busy schedules to come to our business meetings. While several community service and committee issues are discussed, the primary focus of the meetings is for younger lawyers from around the state to get together in a social setting. The opportunity to meet with other younger lawyers around the state is good not only from a marketing standpoint but is also helpful in coordinating projects in different communities around the state. I hope all of you who have participated will continue to do so in the future.

"Thank you for the opportunity to serve as the president of this fine organization. It has been a rewarding and humbling experience, and one that I will never forget."

Special thanks also goes out to YLD Coordinator Deidra Sanderson and the entire staff of the State Bar of Georgia who worked behind the scenes to make my presidency a success. All the lawyers in Georgia are very fortunate to have such a competent and organized Bar association that makes service to the Bar and the community a real pleasure.

Special thanks also goes out to the wonderful slate of officers I worked with. President-Elect Laurel Landon, Secretary John Pope and Treasurer David Gruskin were always available with their time and ideas. I also want to thank the editor of our newsletter, Brian Scott, who gave countless hours formatting and editing our newsletter.

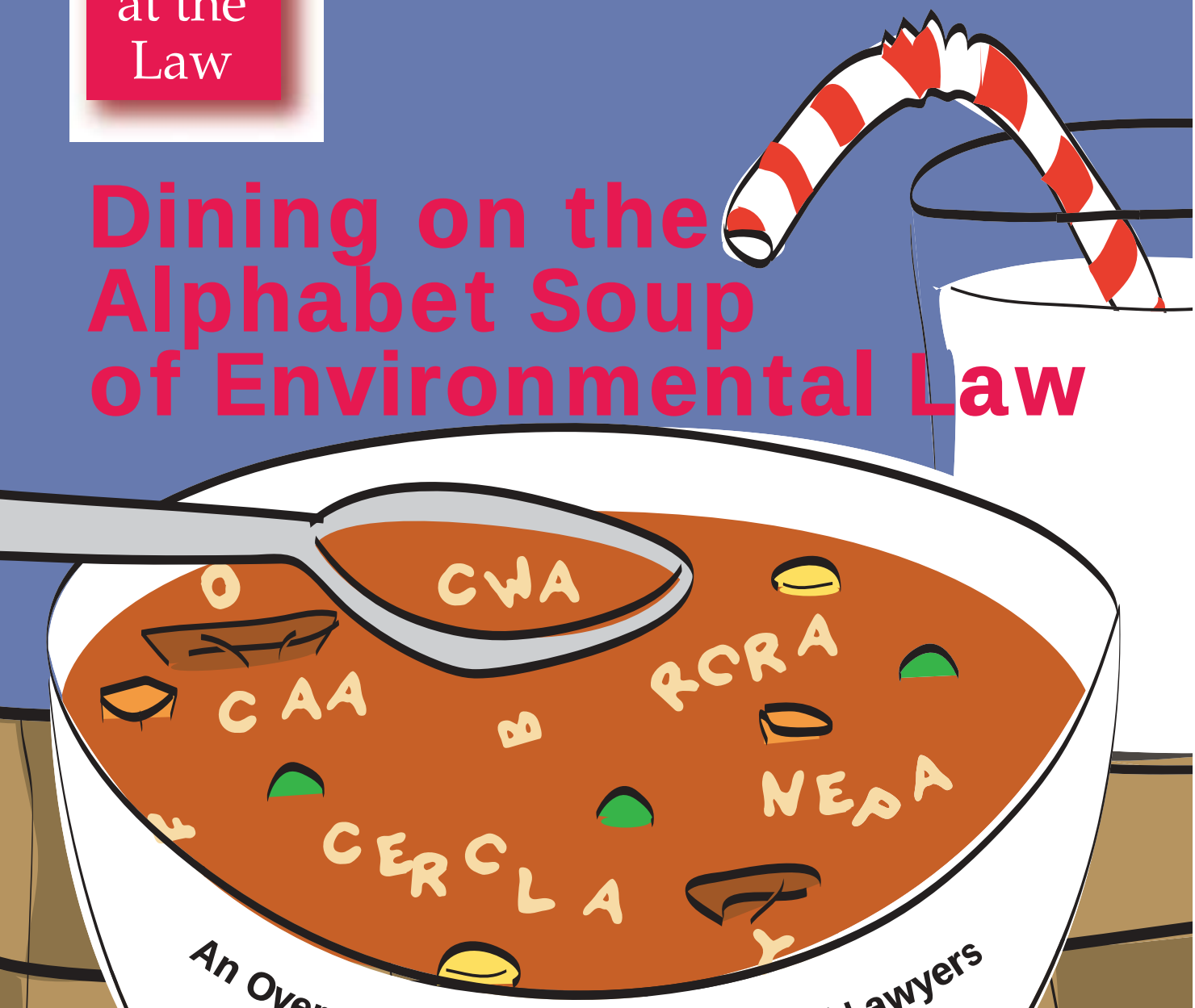
A true reflection of the hard work and commitment to expanding involvement in the younger lawyers was seen at our Spring Meeting. April 16-19, the YLD held their Spring Meeting during a three-day cruise to the Bahamas. Over 80 people participated and we had a record 23 first time attendees. Several of the first time attendees were from large Atlanta law firms. Hopefully, this exposure to the younger lawyers will encourage them to participate in the future. I had the opportunity to meet these new participants and am excited about their becoming involved with the younger lawyers.

As I have mentioned in my past columns, the Georgia YLD is a great organization that every younger lawyer in the state of Georgia should participate in. Not only do you get a chance to network with younger lawyers from around the state, you also have an opportunity to give something back to your community. Being a lawyer isn't just about billing hours and winning cases. There is a responsibility that goes with this noble profession which requires giving of your time to help others.

Thank you for the opportunity to serve as the president of this fine organization. It has been a rewarding and humbling experience, and one that I will never forget.

A Look at the Law

Dining on the Alphabet Soup of Environmental Law



An Overview for Non-Environmental Lawyers

By Bill Sapp and Kate Grunin

Illustration by Wendy C. Smith

As you were somewhat clumsily slicing the hinge muscle of an oyster at the Savannah Bar's annual oyster roast, a rival bar member, who delights in exposing your ignorance on any legal topic, strides over to you and says, "So did you hear about that TMDL[1] case up there in Atlanta?" Having never practiced a day of environmental law in your decade-long career, but not wanting to admit that shortcoming in mixed company, you smoothly reply, "Yeah, it sure was a doozy," hoping that this parry will steer the conversation toward more familiar ground. Unfortunately, a follow-up thrust comes just as several stalwart bar members join the conversation. "Well," your nemesis replies, "which do you think is worse, that Atlanta TMDL case or the Waycross PCB[2] case?"

Not knowing a PCB from an ESD[3], or a TMDL from an ACL[4], you quickly decide that you have only two options: 1) pretend to cut yourself shucking an oyster, or 2) pretend to choke on the lime wedge in your gin and tonic. You choose the latter and throw back the remains of your drink. Sputtering, gagging, and feeling ridiculous, you head to the bar for a refill. Safely disengaged from the conversation, you resolve that it's time to learn some of the basics of environmental law, if only so you will not have to repeat this scene at the next bar function or, more importantly, when entertaining your favorite client.

This article is for people bearing a resemblance to the lawyer in the vignette above—in short, for those who know very little about, but are motivated to make some sense of, the alphabet soup of environmental law—CERCLA, RCRA, TMDLs, WQSs, NEPA, ESA, CWA, CAA, and every other obscure environmental acronym clogging the West reporters. Fortunately (or unfortunately, depending on your perspective), there will be little "beef" in this article. If you want more than just the broth, and the pasta letters that float around in it, you will have to turn to the articles that follow this one. There you will find enough to satisfy the heartiest of environmental law appetites.

THE MENU

This article serves up the five federal environmental laws that are most likely to come up in conversation during legal functions in the state of Georgia.[5] They are: a) the National Environmental Policy Act (NEPA);[6] b) the Clean Water Act (CWA);[7] c) the Clean Air Act (CAA);[8] d) the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA);[9] and e) the Resource Conservation and Recovery Act (RCRA).[10] For each of the "Big Five," this article will provide the following: 1) some history about the act, 2) the purpose of the act, 3) how it works, and 4) how it is faring.

THE MEAL

The First Course — The National Environmental Policy Act

A Dollop of NEPA History

The history of NEPA shares the history of all environmental statutes because NEPA is an umbrella statute that guards against all environmental impacts—or at least tries to. Whether a given project is destined to pollute the water, soil, or air, NEPA theoretically is there to encourage federal decision-makers to do the right thing. Thus, all the environmental crises that led to the specific environmental statutes discussed below also contributed to President Nixon's signing of NEPA on Jan. 1, 1970.

This law, more than any other, resulted from the general realization that arose during the 1960s that Americans were destroying America—the Land of the Free was becoming the Land of the Freely Polluted. Throughout the first half of the 20th Century, most people thought of the environment as a sponge that could soak up every environmental spill. In the 1960s it became clear that the sponge was saturated and there was no place to wring it out.

One of the first individuals to recognize this dilemma was Rachel Carson, a renowned nature author and a former marine biologist with the Fish and Wildlife Service. In her work, Carson dared to suggest that spraying our crops and our neighborhoods with DDT was not a particularly good idea.[11] She was

Illustration by Wendy S. Smith

able to show that as DDT climbed up the food chain, it could have dramatic and deadly effects.[12]

Understandably, Carson's book made a lot of people realize that, if for no other reason, we need a clean environment because we are part of that food chain. Many of those people banded together to organize environmental protests during the 1960s and the first Earth Day in 1970. At the Earth Day marches across the country that year, environmentalists celebrated the passage of NEPA and called for more environmental legislation. President Nixon and Congress heard and answered these calls.

NEPA's Purpose

By enacting NEPA, Congress required federal agencies to take the environment into account in authorizing projects and in granting permits. This might seem like a basic concept now, but it was somewhat revolutionary at the time.

How NEPA Works

The act, as it has been interpreted and implemented, provides that before the federal government takes any "action" that may affect the environment either positively or negatively, the "decision maker" must consider the impact that the action may have on the environment. Consequently, when the federal government considers funding or permitting a project, it must ensure that an "environmental assessment" or an "environmental impact statement" is prepared assessing the alternatives to the project and detailing the potential environmental harm and benefits associated with the project.

The environmental impact statement (EIS) is the more detailed of the two documents and is called for when a "major federal action[] significantly affecting the quality of the human environment" is being proposed.[13] For projects that fall below this threshold, the federal agencies must prepare an environmental assessment (EA). The purpose of the EA is typically to determine whether an EIS is warranted.[14]

Although the federal agencies are required under NEPA to take a "hard look"[15] at how the environment would be treated if the project were pursued, it is important to note that NEPA does not prevent a decision-maker from making an informed, but "bad" decision that would negatively impact the environment.[16]

How NEPA is Faring

Initially, NEPA was a powerful tool for environmentalists, who were able to slow down many federal and federally permitted projects while the courts and federal agencies attempted to interpret the act.[17] Nowadays, federal agencies and project consultants are savvier about writing EAs and EISs, so NEPA is not as much of a factor in environmental litigation. Yet when someone is considering attacking a proposed project, NEPA is often the starting point in putting together an opposition strategy.[18]

The Second Course — The Clean Air Act

A Lite History of the Clean Air Act

The Clean Air Act was enacted due in large measure to a series of episodic inversions that had deadly side effects. In such an inversion, a layer of warm air moves in over a town or city and traps colder air beneath it. Since hot air rises only while it is hotter than the air around it, the layer of warm air in these inversions acts as a ceiling to the rising smokestack and tailpipe fumes. As a result, in an air inversion, a city can soon become engulfed in its own pollution.

The first inversion of note occurred in Donora, Pa., in 1948.[19] Twenty died. Although it sparked some research into the causes of air pollution, little was done to correct this "state" problem.[20] It was not until the "Killer Smog" took residence over London in 1962 that people on both sides of the Atlantic took notice. In that inversion, at least 340 people died.[21] Not to be outdone by the Brits, New York suffered a similar inversion the following year in which 200 to 400 people died.[22]

Although these inversions prompted the passage of the 1963 Clean Air Act and later amendments to this act, it was not until the 1970 amendments that Congress finally decided that the federal government needed to take charge of this interstate problem and impose national air quality standards.[23]

A Spoonful of Purpose

As explained in the 1990 amendments to the Clean Air Act, Congress designed the act to 1) protect and enhance the quality of the nation's air resources, 2) initiate and accelerate research to prevent air pollution, 3) ensure that the federal government could provide technical and financial assistance to state and local air pollution control efforts, and 4) encourage and assist the development and operation of regional air pollution prevention and control programs.[24]

How Does the Clean Air Act Work?

The Clean Air Act was amended in 1977 and again in 1990. In outline form, the current act looks like this:

- Title I—regulates stationary sources (factories, etc.), regulates hazardous air pollutants, requires national ambient air quality standards, provides for the prevention of significant deterioration (PSDs);
- Title II—regulates mobile sources (planes, trucks, and automobiles);
- Title III—provides for general administration, citizen suits, labor standards, air quality monitoring;
- Title IV—covers noise control;
- Title IV[25]—covers acid rain;
- Title V—requires that "major sources" of air pollution obtain operating permits;
- Title VI—covers stratospheric ozone protection.

Weighing in at 900 pages, the Clean Air Act is a very meaty statute. Considering the scope of this overview, we will only discuss the parts most relevant to Georgia.[26]

Title I: To begin, it is important to understand the general approach Congress took to regulating stationary sources under Title I. Under the act, the newly formed EPA had to divide the country up into Air Quality Control Regions (AQCR or Air Regions).[27] And after conducting numerous studies, EPA had to establish National Ambient Air Quality Standards (NAAQS or National Standards).[28] The current list of pollutants for which national standards have been developed includes the following (the parentheticals are possible sources of that pollutant):

- Ozone[29] (e.g., beverage can and automobile surface coating facilities);
- Carbon monoxide (e.g., tail pipe emissions);
- Particulate matter of 10 micrometers or less[30] (e.g., asphalt concrete plants);
- Sulfur dioxide (e.g., coal-fired electrical power plants; causes acid rain);
- Nitrogen dioxide (e.g., fossil-fuel fired steam generators); and
- Lead[31] (e.g., lead-acid battery manufacturing plants).[32]

With these criteria pollutants in mind, the states were then tasked with developing State Implementation Plans (SIPs or State Plans) to ensure that the National Standards were not exceeded. Unfortunately, many urban areas around the country were already exceeding these standards back in 1970 when the CAA was enacted. Thus, there was much work to be done.

States will typically have many Air Regions.[33] These regions will either be designated "attainment," if they are meeting the National Standards, or "nonattainment" if they are not meeting one or more of them. In Georgia, for example, Atlanta is in nonattainment for ozone.[34] The worse the air quality in an Air Region, the worse the label and the more strict the requirements. Atlanta was just elevated from SERIOUS to SEVERE[35] and as a result, new companies thinking of locating in Atlanta will have to comply with stricter air quality control requirements.[36] In developing their State Plans, states have free reign to come up with their own cocktail of controls as long as the mix looks like it will bring the problem area into attainment.[37]

Whether in a nonattainment area or not, certain "problem industries" (ones with high emissions) must comply with New Source Performance Standards (NSPS). These standards are based on the best technological system of emission reduction that has been adequately demonstrated to control NAAQS emissions.[38]

The Clean Air Act also regulates Hazardous Air Pollutants (HAPs), pollutants that are not covered under the National Standards. In the 1990 amendments to the CAA, Congress provided EPA with a list of 189 toxic air pollutants to be regulated.[39] Each of these HAPs receives special treatment.

In those areas of Georgia and the rest of the country where air quality is better than the National Standards, the applicable State Plan must include measures to ensure that there is no significant deterioration of air quality. "Major Emitting Facilities"[40] within these areas are subject to stringent preconstruction review requirements, including a permit system for imposing emission limitations and technology requirements on specific sources.

Title II: Title II of the act regulates mobile sources such as cars, trucks and planes by establishing emissions standards. With the exception of the "California Standards," the emission standards are uniform across the county. California was allowed to keep the emission standards that it set in 1966, because they were in place at the time the Clean Air Act was enacted.[41] Furthermore, they were more restrictive than the federal emission standards.

Title V: Because of the Title V operating permit requirements that came out of the 1990 amendments to the CAA, any facility that has the potential to be a "major source" under the act has to take a hard look at its air emissions.[42] If it looks as though the emissions could be over a certain threshold, the facility has to go through the permitting process. Although this process is often arduous, it provides a necessary regulatory handle to control air pollution.

How is the Clean Air Act Faring?

Considering Congress's initial goal for the act was to have the entire nation to be in attainment with the National Standards by 1975, the act is not doing so well.[43] And considering major cities such as Atlanta have not yet turned the corner on air pollution, it may be a while before air quality starts improving on a consistent basis. One thing is clear, however, CAA restrictions have markedly decreased the amount of emissions released by cars, trucks, and factories. Unfortunately, the number of tailpipes and smokestacks has increased.

The Third Course—The Clean Water Act

A Cup Full of Clean Water Act History

In 1969 the pollutant-laden Cuyahoga River in Cleveland caught fire. Some claim that it was the back draft from this fire[44] that ignited Congress to take action to save our lakes, rivers, streams and coastlines. Whether that is true or not is unclear; what was true during the 1960s is that earlier legislation, such as the Federal Water Pollution Control Act of 1948,[45] was simply not working to keep our waters clean. And the attempts being made by the Army Corps of Engineers to enforce the Refuse provision of the even older Rivers and Harbors Act of 1899, was also proving unsatisfactory.[46]

To rectify this situation, Congress passed the Federal Water Pollution Control Act Amendment of 1972. It was not until this act was amended again in 1977 that Congress renamed the entire statue the "Clean Water Act."

What was the Initial Goal for the Act?

Congress designed the Clean Water Act to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."[47] A specific "national goal" of the act was to eliminate the discharge of pollutants into the navigable waters by 1985.[48] Another interim goal was to make these same waters "fishable and swimmable" by 1983.[49]

How Does the Act Work?

Since 1972, the Clean Water Act has been amended twice, in 1977 and in 1987.[50] Currently, the act is arranged as follows:

- Title I—goals, policies and research;
- Title II—grants for sewage treatment plants;
- Title III—effluent limitations for industrial and municipal treatment systems;
- Title IV—permits and licenses (NPDES, TMDLs, and wetlands);
- Title V—citizen suits, definitions, judicial review; and
- Title VI—state-run revolving loan funds to finance sewage treatment facilities.

The title that comes up most in conversation in Georgia and in most other states is Title IV. Title IV includes the wetlands provisions (Section 404),[51] the National Pollution Discharge Elimination System (NPDES) provisions (Section 402),[52] and within Section 402, the Total Maximum Daily Load (TMDL) provision. Each of these provisions has had its share of time in the spotlight over the last couple of years.

Jurisdiction

One of the most important issues that has been and continues to be debated in the courts regarding the CWA is the scope of the act's jurisdiction. The act covers discharges of "pollutants" from "point sources" into "navigable waters."[53] "Pollutants" include such things as "dredged spoil, solid waste, incinerator residue, sewage, garbage, munitions, heat, rock and sand."[54] The courts are even called upon to

decide when water can be a pollutant.[55] A "point source" is any discrete conveyance, which includes pipes, ditches, and even heavy equipment, such as backhoes and bulldozers.[56]

Although there are jurisdictional issues surrounding both "point sources" and "pollutants," the current jurisdictional hotbed involves the definition of "navigable waters." The U.S. Supreme Court recently declined three petitions for certiorari that posed the question of whether "navigable waters" means routes of waterborne commerce and adjacent wetlands or all those waters, plus tributaries (to include intermittent and ephemeral streams) and their adjacent wetlands.[57] In the three cases that were the subject of the petitions for certiorari, two from the Fourth Circuit and one from the Sixth Circuit, the reviewing courts held that the jurisdiction of the CWA should be interpreted broadly.[58] The Courts of Appeals in the Seventh and the Ninth Circuits have issued similar decisions.[59]

Only the Fifth Circuit Court of Appeals has suggested that the narrower interpretation of CWA jurisdiction is appropriate. The court did so *in dicta* in two decisions.[60] Thus, for now at least, the broader interpretation of CWA jurisdiction prevails. It will be interesting to see how the other circuit courts address this fundamental issue in the years to come.

Section 402: Section 402 does the lion's share of the work in trying to restore this country's waters. Before a point source can discharge a pollutant—other than "dredged or fill material," which is covered under Section 404—it must secure an NPDES permit. This permit will include any applicable effluent limitations that have been developed under Title III of the act, as well as any other limitations that are necessary to protect the receiving water.[61] Each receiving water should have "water quality standards" (WQS) in place.[62] If WQS are exceeded, that means the receiving water is not safe for the "designated use" of the water. Designated uses are uses that the state has set for that water.[63] In many cases, that designated use is swimming and fishing.

Section 402 permits must also be secured for storm water runoff. For example, facilities that have stockpiles of material that are exposed to the rain may well need to get a Section 402 permit and comply with its requirements to ensure that the material does not get washed into neighboring creeks. Similarly, construction sites often must obtain "storm water" permits, install silt fencing, and take other measures to try to prevent streams and rivers from running red with Georgia clay.

TMDLs: The water quality standards operate much like the NAAQS under the Clean Air Act. And like under the CAA, if the water quality standards are not met, the state has to make modifications to its plan of action. In the case of the CWA, this triggers the TMDL process.[64] Under this process, states identify through stream testing those water bodies that are not meeting water quality standards. The state, or in some cases the EPA, then calculates a TMDL for each water body, which is the amount of the pollutant (that is causing the impairment) that the water body could assimilate on a daily basis (with a margin of safety) before the water body would exceed the WQS. By analogy, the

In order to obtain an individual permit[69] from the corps to fill in a wetland, you must first show that you have avoided the wetlands to the extent practicable, you have minimized the impacts that are unavoidable, and you are willing to mitigate for those unavoidable impacts.[70]

TMDL is the number of spoonfuls of sugar you add to your sweet tea before it becomes too sweet. To implement the TMDL, the "number of spoonfuls" must be divided up among the contributors of that particular pollutant to the water body. How this apportionment will occur is still being debated.

Section 404: Before discharging dredged or fill material into a water of the United States, you must first secure a permit from the Army Corps of Engineers.[65] The only exceptions to this requirement are found in Section 404(f) of the act. Section 404(f) provides exceptions for such activities as the construction of farm ponds, certain farm roads, certain silviculture activities and certain maintenance activities.[66]

Although all waters of the United States are covered by the Clean Water Act, it is a special type of water that is most impacted by Section 404 of the act—wetlands. Wetlands are those areas that meet the three parameter test for wetlands established by the Army Corps of Engineers and EPA; namely, they have 1) hydric soil, 2) a predominance of wetland plants, and 3) the appropriate hydrology.[67] Swamps, bogs, marshes, wet meadows, pine flatwoods, as well as many other permanently and seasonally wet areas fall into this category of waters of the United States. Even areas that never look wet at all can be wetlands. The usual test for hydrology is whether groundwater comes to within 12 inches of the ground surface for at least 5 percent of the growing season.[68]

In order to obtain an individual permit[69] from the corps to fill in a wetland, you must first show that you have avoided the wetlands to the extent practicable, you have minimized the impacts that are unavoidable, and you are willing to mitigate for those unavoidable impacts.[70] The corps reviews the permit application under the terms of the 404(b)(1) guidelines, which were developed by the EPA and spell out when a wetland is suitable for permitting.[71]

Wetlands serve a variety of functions and values such as: flood control, wildlife habitat, water quality enhancement, recreation (hunting & fishing) and green space. When a wetland is destroyed, the goal is to replace those functions and values in as close a proximity to the wetland impacted as possible.[72] Agricultural areas where wetlands have been drained in the past often serve as fertile ground for wetland mitigation sites. If wetlands cannot be restored, created or enhanced nearby, then offsite "mitigation banks" often serve as a substitute. At these previously restored wetlands, one can buy mitigation credits at a price determined on the open market.[73]

How is the Clean Water Act Faring?

To gauge the success of the Clean Water Act, we need look no further than the Chattahoochee River. The Upper Chattahoochee River was chosen as a focus area for a recent national water quality study commissioned by the Environmental Protection Agency. The study found that "[w]ater quality in the Upper Chattahoochee River, particularly in the vicinity of Atlanta, has improved dramatically . . . . Chemical, physical, and biological data all indicate a great improvement in water quality when compared to data from investigations done in the 1940s, 1950s, 1960s and 1970s."[74] Unfortunately, the rate of improvements during the 1970s and 1980s leveled out during the 1990s. Rapid urban and suburban development has led to increased sediment loading and general water quality degradation. To keep pace with growing development pressures, federal, state, and local governments will have to be even more vigilant in protecting Georgia waters from point and nonpoint source pollution so that the CWA gains of the 1970s and 1980s are not washed away in the new millenium.[75]

The Fourth Course—Resource Conservation and Recovery Act of 1976

A Pinch of RCRA History

The Resource Conservation and Recovery Act established the federal program regulating solid and hazardous waste management—who takes out the "trash," what the "trash" is allowed to include, where it is taken, and how it is disposed.[76]

These are critical questions, because this country generates a lot of solid and hazardous waste and the amount has grown dramatically over the last few decades. At the end of World War II, the United States industrial machine was generating roughly 500,000 metric tons of hazardous waste per year. By 1995 this number had increased to 279 million metric tons, a more than 500-fold increase.[77]

Not surprisingly, the advances in waste management that were made during this same period were rapidly eclipsed by the rising tide of solid and hazardous waste. Much of the hazardous waste produced was entering the environment and threatening ecological systems and public health in ways that we did not even begin to realize or appreciate.[78] However, in the wake of NEPA, the CAA, and the CWA, the environmental movement and Congress turned its attention to the problem of solid and hazardous waste disposal. By 1976, the Resource Conservation and Recovery Act was on the books.[79]

What was the Initial Purpose for the Act?

The goal of RCRA was to get a handle on where the waste in this country was being generated, where it was going, and how it was being disposed of. In keeping with this overall purpose, the act has four main goals: to protect human health from improper waste disposal, to encourage recycling, to reduce the amount of waste generated and to ensure that wastes are properly managed.[80]

How Does the Act Work?

To accomplish these goals, Congress established three distinct, yet related programs in the statute. Subtitle D covers solid waste. Subtitle C covers hazardous waste. And Subtitle I covers underground storage tanks. Subtitle D requires states to design and implement comprehensive plans to manage non-hazardous industrial solid waste and municipal solid waste, sets criteria for municipal solid waste landfills, and prohibits the open dumping of solid waste. Subtitle C establishes a system using manifests that tracks hazardous waste from "cradle to grave"—from the time it is generated to the time it is disposed. Subtitle I regulates underground tanks that store hazardous substances and petroleum products.[81]

In the event that hazardous wastes are released into the environment from a RCRA facility, the EPA can order the responsible party to take corrective action to remediate the damage to the environment.

How is RCRA Faring?

Based on the 2001 National Biennial RCRA Report, the EPA and the states regulate 40,821,481 tons of hazardous waste that is generated each year by 19,024 facilities.[82] In addition, approximately 3,700 sites are undergoing corrective action, almost three times the number of sites found on the Superfund National Priorities List, which is the subject of the next section.[83]

The Fifth Course — Comprehensive Environmental Response, Compensation, and Liability Act

A Dash of CERCLA History

As successful as RCRA has been in curbing the improper disposal of hazardous wastes, a substantial amount of "trash" had been improperly buried and abandoned long before RCRA was enacted. For example, the Hooker Chemical Company, formerly located near Niagara Falls, N.Y., took out many barrels of "trash" in the form of off spec chemicals and buried them in the "Love Canal."[84] To Hooker, this abandoned canal appeared to be a suitable hiding place for the chemicals. However, houses and a school were soon built over the site and it wasn't too long after that, that the barrels started leaking. During the "nationally televised" cleanup, the entire neighborhood had to be relocated. And although Love Canal was remediated, it demonstrated that there was a hole in the environmental statutory fabric. None of the existing statutes covered a "Love Canal."

What was the Initial Purpose for the Act?

Congress was in too much of a hurry to include a purpose section in CERCLA, but it remedied that six years later when it included Section 213(a) in the Superfund Amendments and Reauthorization Act of 1986. In Section 213(a), Congress explains the purpose of CERCLA in the following:

> The area known as Love Canal located in the city of Niagara Falls . . . was the first toxic waste site to receive national attention. As a result of that attention Congress investigated the problems associated with toxic waste sites and enacted CERCLA to deal with these problems.[85]

In short, CERCLA was enacted to deal with future Love Canals.

How Does the Act Work?

Typically, what happens in a superfund case is that EPA will dis-

cover a release of hazardous substances and take immediate action to prevent any further releases at the site. The removal actions typically last less than a year and cost less than $2 million dollars.[86] If additional work needs to be done at the site after the removal is complete, EPA will apply to have the site assessed for the National Priority List (NPL). The site will be scored using the Hazardous Ranking System (HRS) and all sites that score above 28 points are placed on a list for future funding, with the most hazardous sites receiving funding first.

The preferred funding avenue, however, is to track down the parties that caused the contamination and make them pay for the removal work that was done and convince them that it is in their best interests to perform the remedial work that needs to be completed. The rule of thumb in the CERCLA arena is that the Potentially Responsible Parties (PRPs) can do a cleanup much more cheaply than the federal government so the PRPs have a big incentive to work out their differences.

Before a PRP or PRP Group can take over a cleanup, however, the EPA must fully investigate the site, have public meetings, and come up with an appropriate remedy. The document that contains this remedy is the Record of Decision (ROD).

The superfund itself is used to fund the removals and those remediations where there are no PRPs or where the PRPs are not willing to do the cleanup. The money to fund the "Superfund" originally came from taxes on the petroleum and chemical industries, as well as from "cost recovery" actions lodged against PRPs. More recently, superfund has been funded by congressional appropriations.

How is CERCLA Faring?

Since 1980 EPA, working with the states and tribes, has assessed nearly 44,418 sites. Seventy-five percent of these have been removed from the superfund inventory to help encourage economic redevelopment. The remaining 11,312 sites remain in the site assessment program or have been listed on the National Priority List. The cleanups at 846 sites are complete. And enforcement actions against Potentially Responsible Parties have yielded approximately $20.6 billion.[87]

"Check Please"

Now that you have had your fun, or not, as the case may be, dining on environmental law, here is the bill—go out there and do something good for the environment. Become a member of one of the environmental groups described in this issue, participate in a river cleanup, participate in a canoe race, vote for a politician who likes the environment, or simply go out and enjoy the environment. Until more people take ownership of the environment, we will continue to have the pollution problems that plague this nation.

Now that wasn't such a bad price to pay for this environmental appetizer. For those of you who still have an appetite for more, turn the page and dine on.

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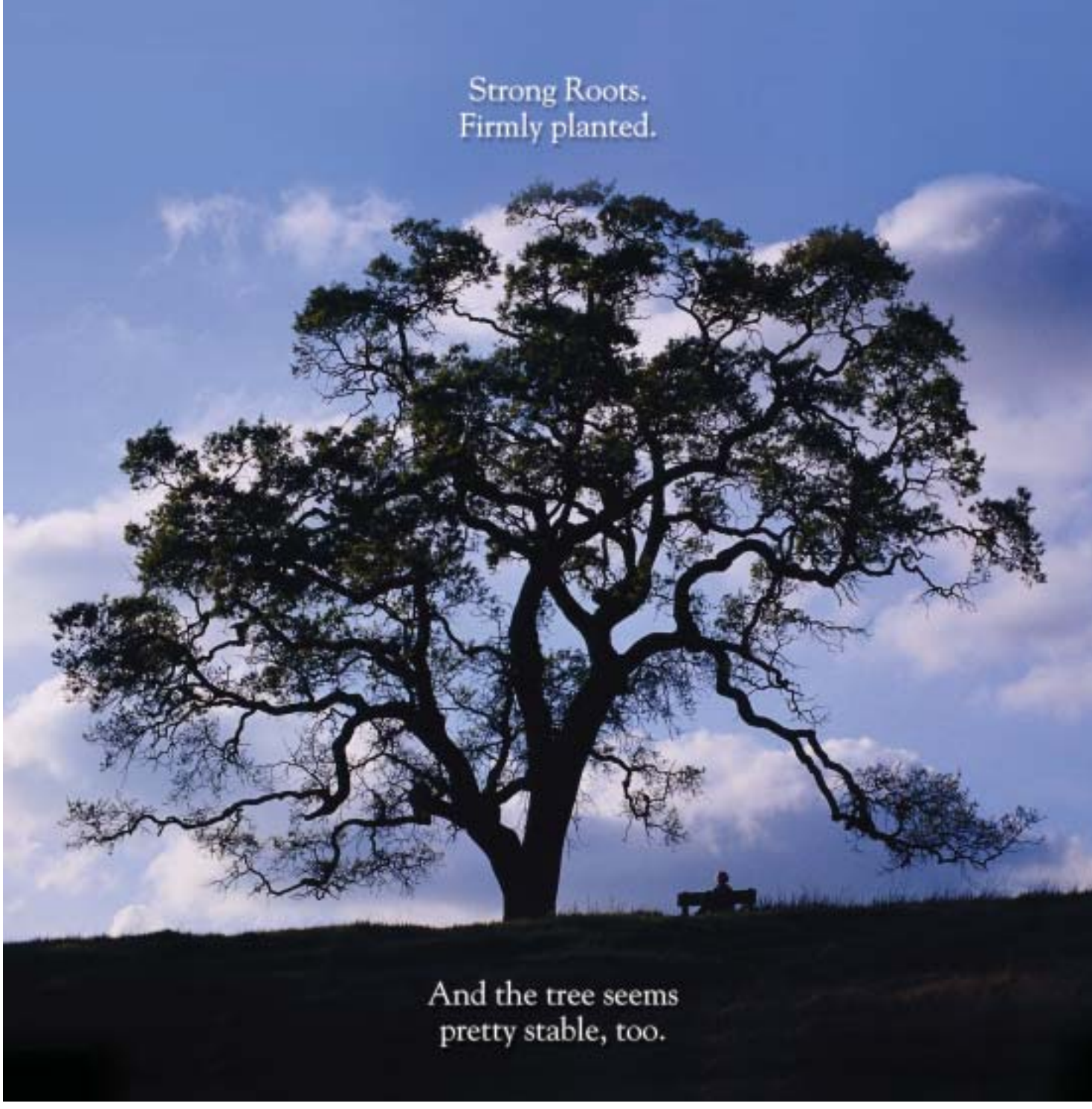
Any opinions expressed in this article are solely those of the authors and should not be attributed to the Environmental Protection Agency or any other government agency discussed in the article.

Endnotes

1. Total Maximum Daily Load, 33 U.S.C. § 1313(d)(1)(C)-(D).
2. Polychlorinated biphenyls are toxic chemicals that are regulated under the Toxic Substance Control Act, 15 U.S.C.A. §§ 2601 to 2692 and under other environmental laws.
3. When the EPA makes a change to a record of decision at a Superfund site, it often issues an ESD or "explanation of significant differences" to explain the change. 42 U.S.C.A. § 9617(c).
4. Alternate Concentration Limit. 42 U.S.C.A. § 9621(d)(2)(B)(ii).
5. Notice I did not say the five "most important" environmental statutes. The Endangered Species Act, for starters, is a very important statute, it simply is not as "hot" a conversation topic at the moment.
6. 42 U.S.C.A. §§ 4321 – 4370(f).
7. 33 U.S.C.A. §§ 1251-1387.
8. 42 U.S.C.A. §§ 7401-7671(q).
9. 42 U.S.C.A. §§ 9601-9675.
10. 42 U.S.C.A. §§ 6901-6992(k).
11. Erin Perkins, 2001 Yearbook: Hazardous Materials and Energy: The Stockholm Convention on Persistent Organic Pollutants: A

Step Towards the Vision of Rachel Carson, 2001 Colo. J. Int'l Envtl. L. & Pol'y, 191, 191 (2001).
12. *Id.* at 193.
13. National Environmental Policy Act of 1969, 42 U.S.C.A. § 4332(C).
14. 40 C.F.R. 1508.9.
15. Kleppe v. Sierra Club, 427 U.S. 390, 410, n.21 (1976).
16. *See* Fund for Animals v. Rice, 85 F.3d 535 (11th Cir. 1996).
17. For example, the Tennessee-Tombigbee Waterway through Alabama was slowed down by NEPA litigation. Nonetheless, the Army Corps of Engineers persevered and the canal was built. Environmental Defense Fund, Inc. v. Corps of Engineers of United States Army, 492 F.2d 1123 (5th Cir. 1974).
18. For example, when organizers met to discuss how they could derail the Athens to Atlanta Commuter Line, one of the first questions the organizers raised was whether the commuter rail proponents had done an EIS. Conversation with a member of a community group located on the rail line, (November 1, 2002).
19. JONES, CLEAN AIR: THE POLITICS AND POLICIES OF POLLUTION CONTROL 26 (1975).
20. DAVIES, THE POLITICS OF POLLUTION 51 (1970). (The Bureau of the Budget stated that "unlike water pollution, air pollution¼ is essentially a local problem.")
21. A. REITZE, JR., AIR POLLUTION LAW 2 (1993).
22. *Id.*
23. Although the Air Quality Act of 1967 sought to set air quality standards throughout the nation, it did not take the next, crucial step of establishing uniform national standards. *Id.*at 4.
24. Clean Air Act, 42 U.S.C.A. § 7401(b).
25. No this is not a typo. There are two Title IV's to the Clean Air Act. Congress added the second Title IV in the 1990 amendments. This is yet further evidence that attorneys cannot count or do math of any kind.
26. You can find a more thorough overview of the Clean Air Act in the following article: Henry A. Waxman, *An Overview of the Clean Air Act Amendments of 1990*, 21 Envtl. L., 1721 (1991).
27. 42 U.S.C.A. § 7407.
28. 42 U.S.C.A. § 7409.
29. Ozone is a secondary pollutant in that it is not directly emitted from smokestacks or tailpipes. It forms in the atmosphere when volatile organic compounds (VOCs), Nitrogen Oxide, Nitrogen Dioxide, and Oxygen mix. Originally, EPA chose the broader array of "photochemical oxidants" as the criteria pollutant, but later changed the chemical designation to ozone in 1979 and excluded about 10 percent of the compounds previously covered.
30. In 1987, this criteria pollutant was changed from particulate matter, to particulate matter measuring 10 micros in size or less. It was determined that the small particles were more harmful to human health.
31. In 1970, hydro-carbon was the sixth criteria pollutant. It was eliminated in 1983 as a criteria pollutant because it was determined that hydro-carbons were not harmful to human health. However, lead was added as a criteria pollutant in 1978, so we still have six criteria pollutants.
32. *See* 40 C.F.R. § 50.
33. 42 U.S.C.A. § 7407.
34. EPA, Nonattainment Area Web Site, http://www.epa.gov/air/data/nonat.html?st~GA~Georgia.
35. EPA, Green Book, Currently Designated Nonattainment Areas for all Criteria Pollutants (http://www.epa.gov/oar/oaqps/greenbk/ancl.html).
36. There are five possible classifications for nonattainment (in ascending order of magnitude): Marginal, Moderate, Serious, Severe, and Extreme. *See* 42 U.S.C.A. § 7418(a).
37. Train v. NRDC, 421 U.S. 60 (1975).
38. 42 U.S.C.A. § 7411.
39. 42 U.S.C.A. § 7412.
40. 42 U.S.C.A. § 169(1). Section 169(1) defines "major emitting facility" to include any source falling into one of the twenty-six listed categories, which emits, or has the potential to emit, 100 tons per year or more of any air pollutant regulated under the act. In addition, a facility can be regulated under the act even if it does not fall in one of the listed categories if it emits or has the potential to emit over 250 tons per year or more of any air pollutant regulated under the act.
41. 42 U.S.C.A. § 7543(b).
42. 42 U.S.C.A. § 7661(a).
43. *See* Train v. Natural Resource Defense Council, 42 U.S. 60, 63-67 (1975).
44. The Cuyahoga River in Cleveland caught fire on June 22, 1969. Some, such as Hillary Clinton, view the fire as a watershed moment in the environmental movement. Others contend that it played a much smaller role.
45. 33 U.S.C.A. §§ 1251-1387.
46. The Refuse provision makes it a misdemeanor to discharge refuse matter of any kind into the navigable waters of the United States without a permit.
47. 33 U.S.C.A. § 1251(a).
48. 33 U.S.C.A. § 1251(a)(1).
49. 33 U.S.C.A. § 1251(a)(2).
50. Clean Water Act of 1977, Pub. L. No. 95-217, 91Stat. 1566; Water Quality Act of 1987, Pub. L. No. 100-4, 101 Stat 7.
51. 33 U.S.C.A. § 1344.
52. 33 U.S.C.A. § 1342.
53. 33 U.S.C.A. § 1311.
54. 33 U.S.C.A. § 1362(6).
55. The question of whether water can be a pollutant is currently being debated. In South Fla. Water Mgmt. Dist. v. Miccosukee, 541 U.S. ___, ___ (2004), 2004 Lexis 2376, the U.S. Supreme Court, before remanding the case to the lower courts, recently wrestled with the issue of whether water pumped from one side of a large weir structure to the other side triggered the requirement for a Section 402 permit. The Miccosukee Indians argued that the water being pumped was dirtier than the receiving water, and thus, the permittee, the Florida Water Management District, should have to secure a section 402 permit. The District argued, among other things, that the water in this nation is all one unitary body, and therefore, no permit is required. Since the "unitary water theory" had not been briefed before the lower courts, the U.S. Supreme Court remanded the matter to the lower courts for further development.
56. Avoyelles Sportsmen's League, Inc. v. Marsh, 715 F.2d 897, 922 (5th Cir. 1983).
57. Lance D. Wood, Don't be Misled: CWA Jurisdiction Extends to All Non-Navigable Tributaries of the Traditional Navigable Waters and

to Their Adjacent Wetlands, 34 Envtl. L. Rep. News & Analysis, 10187 (2004).
58. United States v. Rapanos, 339 F.3d 447 (6th Cir. 2003), cert. denied April 5, 2004; United States v. Newdunn, 344 F.3d 407 (4th Cir. 2003), cert. denied April 5, 2004; United States v. Deaton, 332 F.3d 698 (4th Cir. 2003), cert. denied April 5, 2004).
59. United States v. Krilich, 303 F.3d 784 (7th Cir. 2002), cert. denied 123 S. Ct. 1782 (2003); Headwaters, Inc. v. Talent Irrigation District, 243 F.3d 526 (9th Cir. 2001).
60. Rice v. Harken Exploration Co., 250 F.3d 264 (5th Cir. 2001); In re: Needham, 354 F.3d 340 (5th Cir. 2003).
61. 33 U.S.C.A. § 1311(e).
62. 33 U.S.C.A. § 1313.
63. 33 U.S.C.A. § 1313(c)(2)(A).
64. 33 U.S.C.A. § 1313(d).
65. 33 U.S.C.A. § 1344(a).
66. 33 U.S.C.A. § 1344(f).
67. "The term 'wetlands' means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." 33 C.F.R. § 328.3(b).
68. U.S. Army Corps of Engineers, Corps Wetlands Delineation Manual, 30 (1987).
69. The Corps also issues Nationwide Permits or Regional Permits for "minor" wetlands impacts such as road crossings. 33 C.F.R. § 330. The application process is much shorter for these activities.
70. Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines (1990).
71. 40 C.F.R. § 230 (1994).
72. Sapp, William W., *The Supply-Side and Demand-Side of Wetlands Mitigation Banking*, 74 Or. L. Rev. 951, 986 (1996); Sapp, William W., *Mitigation Banking: Panacea or Poison for Wetlands Mitigation*, 1 Envtl. Law. 99, 113 (1994).
73. *Id.* at 967; *id.* at 108.
74. U.S. Environmental Protection Agency, Progress in Water Quality, An Evaluation of the National Investment in Municipal Wastewater Treatment, 10-13 (2000).
75. *Id.* at 10-14.
76. RCRA amends the earlier legislation (the Solid Waste Disposal Act of 1965), but since the amendments were so comprehensive, the act is commonly referred to as RCRA.
77. Environmental Protection Agency, RCRA Orientation Manual, I-1, January 2003.
78. *Id.*
79. RCRA amended the Solid Waste Disposal Act of 1965, and has itself been amended by the following: the Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616. 98 Stat. 3221; the Federal Facilities Compliance Act of 1992, Pub. L. No. 102-386, 106 Stat. 1505; and the Land Disposal Program Flexibility Act of 1996, Pub. L. No. 104-119; 110 Stat. 830.
80. Environmental Protection Agency, RCRA Orientation Manual, I-2, January 2003.
81. *Id.*
82. EPA, National Biennial RCRA Hazardous Waste Report: Based on 2001 Data, 1-1, (see www.epa.gov/epaoswer/hazwaste/data/brso1/national.pdf).
83. *Id.* at III-121.
84. The canal was named after William Love who in 1896 began digging the canal to connect Lake Ontario and Lake Erie (bypassing Niagara Falls). The canal was to function as a water power conduit. Love never completed the canal.
85. Section 213(a) of Pub. L. 99-499 (Oct. 17, 1986).
86. Some removal actions last much longer than a year and can cost far more than $2 million depending on the particular cleanup.
87. EPA, Superfund Accomplishment Figures, Summary Fiscal Year (FY) 2003, (Dec. 31, 2002) (http://www.epa.gov/superfund/action/process/numbers.htm); see also, General Accounting Office Report: "Superfund Program: Current Status and Future Fiscal Challenges," July 31, 2003 http://www.gao.gov/-text/do3850.txt).



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A Look at the Law

Speaking Whale:

The Impact of Georgia's New Nonattainment Designations on the Georgia Business Community

By Randy E. Brogdon and Debra S. Cline

While it is often said that "life imitates art," it is much less frequently observed that the Clean Air Act (CAA) imitates fish. In fact, this article may be a first in that regard. Novelty notwithstanding, there is a scene in Pixar's recent animated movie *Finding Nemo* that bears the observation out.

In the movie, Dory and Marlin (two star-crossed fish adventurers), encounter a whale and Marlin wants to ask it about his missing son, Nemo. Dory, Marlin's addled blue fish companion, is confident that she "speaks whale" and proceeds to whistle, groan, click and squeak at the whale. The whale of course doesn't understand much, if any, of what Dory is saying and goes about its business (mostly eating krill), until it swallows Dory and Marlin whole.

Photo by Kevin B. Smith

Strangely enough, the discourse between regulators charged with implementing CAA programs and the regulated community is often similar to this misguided fish-whale discussion. The CAA is filled with legal and technical jargon—words and concepts like *nonattainment areas, offset ratios, emissions netting*—that are often foreign (or at least unfamiliar) to many business owners and operators. When it comes to understanding the practical impact of air quality related changes on business decisions, the message often comes out as, well... whale-speak.

Recently, for example, the Georgia Environmental Protection Division (EPD) recommended that more than 20 counties in Georgia be designated as "nonattainment" for the new federal 8-hour ozone standard, and a number of major cites face nonattainment status for the new particulate matter (PM) 2.5 standard. Even after considerable public outreach by the U.S. Environmental Protection Agency (EPA) and, especially, EPD, there continues to be uncertainty as to the impact of nonattainment designations on Georgia businesses and the future growth of Georgia's cities. Even when the jargon becomes familiar, there is an additional layer of translation that remains, namely, how does an area's attainment status for a particular pollutant affect the siting, operating, and modification decisions for companies operating in those areas?

DESIGNATION OF NONATTAINMENT AREAS

The genesis of the nonattainment issue lies in federal ambient air quality standards established pursuant to the CAA. Section 109 of the CAA authorizes EPA to establish new National Ambient Air Quality Standards (NAAQS) for certain pollutants and to revise those standards periodically.[1] To date, EPA has established standards for ozone (which includes nitrogen oxides (NOx) and volatile organic compounds (VOCs)), carbon monoxide (CO), and PM, among others.[2]

Upon promulgation of a new or revised NAAQS, CAA § 107 requires EPA to determine which areas of the country do not meet (or "attain") those standards.[3] Toward that end, states are required under Section 107(d) to submit to EPA a recommended list of areas for designation as attainment, nonattainment or unclassifiable.[4] The Act specifies that nonattainment areas shall include "any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant." The CAA further specifies a timetable for action on designations. Specifically, states must submit recommendations within one year after promulgation of a new or revised standard.[5] After receiving a state's recommended list of nonattainment areas, EPA may approve the list or modify the designations.[6]

Several years ago, EPA determined that the current standard for ozone (the "1-hour ozone standard") was not adequately protective of human health and the environment. As a result, EPA established a new criteria for ozone – the "8-hour ozone standard." About the same time, EPA promulgated a new standard for fine particulate matter, or $PM_{2.5}$ (currently there is only a standard for larger particu-

late matter, or PM_{10}.) It is anticipated that considerably more cities, counties, and businesses will be affected by EPA's new NAAQS for ozone under the 8-hour standard and for $PM_{2.5}$.

There are currently 13 counties that are part of the 1-hour ozone nonattainment area in metro Atlanta. The number of counties designated under the 8-hour standard is nearly double that number of counties. The designations for nonattainment under the new $PM_{2.5}$ standard are likely to center not only around Atlanta but also Macon, Athens, Rome, Columbus and, perhaps, Augusta.

NEW STANDARDS FOR OZONE AND PARTICULATE MATTER

In 1997, EPA determined that the 1-hour ozone standard was not adequate in protecting human health and the environment from the effects of ozone.[7] At that time, EPA determined that a more stringent standard based on an 8-hour period would be more beneficial to air quality. This standard is 0.08 parts per million averaged over an 8-hour period, rather than the former standard of 0.12 parts per million averaged over a one-hour period. The new 8-hour standard allows no more than three exceedances at any monitor in the area in a year, or there is a "violation" of the standard.

In the case of *American Trucking v. EPA*, the 8-hour ozone standard was challenged by a number of businesses, the U.S. Chamber of Commerce, and industry groups, but the Supreme Court eventually upheld the constitutionality of the 8-hour ozone standard and EPA's interpretation of the CAA. In March 2002, the D.C. Circuit Court rejected all remaining challenges to the 8-hour ozone standard allowing EPA to begin implementation of the revised NAAQS.[8]

Therefore, after a lengthy legal battle, the path was cleared for EPA to implement the 8-hour ozone standard. The process for designating areas as attainment or nonattainment of the 8-hour ozone standard is through a federal rule-making with final designations published in the Federal Register. As a result, EPA established a deadline of July 15, 2003, for states to submit their recommendations for areas within their states that they believe should be designated as nonattainment areas under the 8-hour ozone standard.[9] EPA responded to these recommendations on Dec. 4, 2003, agreeing with some designations and modifying others pursuant to CAA § 107. EPA issued final nonattainment area designations on April 30, 2004.[10]

States with areas that are designated as nonattainment must submit a State Implementation Plan (SIP) by 2007 that outlines how they will meet the 8-hour ozone standard. The areas' deadlines for meeting the 8-hour standard will range from 2007 to 2021 depending on the severity of the ozone problem. To aid areas in transitioning from attaining and maintaining the one-hour ozone standard to implementing the 8-hour ozone standard, EPA proposed an implementation rule in June 2003 that outlined the requirements nonattainment areas must meet and procedures for transitioning to the 8-hour standard.[11]

On July 15, 2003, Georgia submitted its recommendations to EPA for designating areas in the state as nonattainment under the 8-hour ozone standard.[12] On Dec. 3, 2003, EPA responded to Georgia's 8-hour ozone nonattainment recommendations which included several modifications to Georgia's recommended designations and boundaries.[13] First, EPA stated that all counties that are part of an Early Action Compact (EAC) that contain a violating ozone monitor should be included as part of the nonattainment area. EPA stated, however, that in its proposed rule to implement the 8-hour standard, the agency plans to defer the effective date for these areas for as long as the areas continue to meet the milestones required for EAC areas. As a result of its decision to include the EAC areas in the nonattainment designated area, EPA modified EPD's recommendation to include Catoosa County in the Chattanooga area.

On April 30, 2004, EPA announced that it is designating the following counties in Georgia as nonattainment areas under the 8-hour ozone standard: Barrow, Bartow, Bibb, Carroll, Catoosa, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Monroe (only a portion of the county), Murray (only that portion of Murray that is in the Class I area), Newton, Paulding, Rockdale, Spalding and Walton.[14]

The NAAQS for PM was established in 1971 and first revised in 1987 when EPA changed the standard to regulate inhalable particles, or PM_{10}, which are smaller than or equal to 10 micrometers in diameter (approximately one-quarter of the size of a single grain of table salt). In 1997, EPA further revised the PM standards by separating standards for fine particles ($PM_{2.5}$) from PM_{10}.[15]

As part of the challenge to the 8-hour ozone standard in *American Trucking*, the petitioners also challenged EPA over a 1997 revision of the PM standard.[16] As described, the Supreme Court in 2001 overturned the court of appeals decision in *American Trucking* and upheld the EPA's authority to set NAAQS.[17] As with the ozone standard, in March 2002, the Court of Appeals for the DC Circuit rejected all remaining challenges to the 1997 PM standard.[18]

Like the new 8-hour ozone standard, the first step in the process of designating $PM_{2.5}$ nonattainment areas was EPA's request that states and tribes provide a list of recommended nonattainment area designations to EPA by Feb. 15, 2004.[19] Following those submissions, EPA intends to respond to these recommendations in July 2004. Following EPA's announcement of modifications to the states' $PM_{2.5}$ nonattainment area designation recommendations, EPA will allow 120 days for states and tribes to comment on any modifications that EPA makes to the recommended designations.

EPA intends to publish final $PM_{2.5}$ nonattainment area designations by Dec. 15, 2004. In addition, under a consent agreement with nine environmental groups, EPA must designate nonattainment areas and issue proposed regulations regarding the PM standards by March 31, 2005, and a final rule by Dec. 20, 2005.[20] In compliance with the consent agreement, EPA plans on issuing the final $PM_{2.5}$ implementation rule by the end of 2004.

Based on data gathered since 1999, several cities in Georgia may be considered nonattainment for $PM_{2.5}$. These include metro Atlanta, Athens, Rome, Columbus and Augusta. Macon, Savannah and Albany are considered borderline.[21] The areas that are ultimately subject to the $PM_{2.5}$ NAAQS will face new nonattainment requirements once Georgia revises its SIP to include the statutory provisions in CAA § 189.[22]

WHAT DOES NONATTAINMENT MEAN?

Assuming an area is designated as nonattainment, what's next? Once nonattainment area designations are established, the CAA requires states to submit a SIP to EPA which includes a detailed roadmap for how the state will achieve the NAAQS.[23] SIPs are then subject to review by EPA which must determine whether the proposed SIP includes all statutorily required elements to bring the area into attainment of the

NAAQS.[24] In short, if an area does not meet the required standards, a state is required to submit a plan to EPA outlining steps to reach these standards.

To demonstrate what a nonattainment area means as far as the statutory requirements associated with the designation, Atlanta's current nonattainment status for ozone provides a good example of the types of SIP requirements that may apply in nonattainment areas. Because the metro Atlanta area is already considered a nonattainment area for ozone under the 1-hour standard, Georgia was required to include various statutory requirements in its SIP to bring the area into attainment. These include:

- Enhanced vehicle inspection and maintenance program to reduce NOx and hydrocarbon emissions.
- An inventory of actual emissions from all sources.
- Implementation of Reasonably Available Controlled Technologies (RACT) for existing major sources. RACT is defined as "devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account (1) the necessity of imposing such controls in order to attain and maintain [the NAAQS]; (2) the social, environmental, and economic impact of such controls, and (3) alternative means of providing for attainment and maintenance." [25] In order to implement RACT, EPA has developed guidelines for various categories of major sources.[26] These guidelines are in turn implemented by states in their SIPs.
- The imposition of New Source Review (NSR) permitting requirements for new and "modified" stationary sources. The NSR permit program requires that major new sources or major "modifications" at those sources apply for and receive NSR construction permits prior to construction of the new major source or modification. The NSR program requires the permit to include requirements for the installation of often expensive pollution control technology defined as the "lowest achievable emission rate" (LAER). LAER is defined as the most stringent emission limitation contained in any SIP or that is achievable in practice by the same or similar source category, whichever is more stringent. The NSR program also requires that NSR construction permits include provisions for the emissions of the nonattainment pollutant from the new or modified source to be offset by emission reductions elsewhere at a specific ratio. This requirement is to ensure progress towards attainment of the NAAQS. These offsets must be in effect and enforceable by the time the new source or modification commences operation.[27] For "serious" nonattainment areas, the offset ratio required is 1.2 to 1. Therefore, for every ton of new emissions, sources must obtain (either internally or from other sources) emissions reductions of 1.2 tons.
- Demonstration of progression toward control of NOx.
- Regulation of vehicle refueling (Stage Two).
- Enhanced ambient air quality monitoring.
- Implementation of a clean fuel vehicle program.
- Implementation of transportation control measures, or "transportation conformity." This means the state must submit for the nonattainment area both long-term plans and short-term transportation improvement plans to demonstrate that planned and federally-funded road projects will not worsen air quality or interfere with the goals of the SIP.[28]

For emitting sources these new requirements mean that lower emission standards and more stringent permitting requirements will be imposed. As part of these stringent permitting requirements, new sources or existing sources wishing to make modifications will need to obtain offsets as described above. Often times these offsets are difficult to obtain in the market place and cannot be generated internally.

This onerous requirement may make it difficult for new businesses to locate into nonattainment areas or for existing businesses to expand. In addition, it will become more difficult for local and state government to accomplish road projects because the projects will have to conform to and be a part of long and short-range EPA-approved transportation plans. Finally, citizens living in the area will also be affected on an individual basis as automobiles will become subject to enhanced vehicle inspections and maintenance.

A MATTER OF PERCEPTION

Despite the permitting and transportation conformity concerns described above, the *perception* of the negative impacts of nonattainment designations are often out of touch with the actual effects. At a recent meeting at the Metro Atlanta Chamber of Commerce, EPA Administrator Mike Leavitt held up a map of the United States. The map highlighted in red the areas in

the U.S. that were designated as nonattainment for ozone. Leavitt observed that he was familiar with such maps from his work on air quality issues as governor of Utah and described the red markings as "warning beacons" for business and community development.

While Leavitt was correct in his observation that nonattainment status may serve as a warning beacon—businesses certainly should be aware of the unique issues associated with nonattainment areas—it is not a stop sign for development and growth. To borrow from our aquatic theme, nonattainment is not like the Great White Shark in *Jaws,* waiting to gobble up unsuspecting Georgia businesses treading the economic waters of the state. Under EPA's proposed class, option 2, based on 2001-03 air quality data, Atlanta would be classified as "marginal" for the 8-hour standard.

Yet misinformed perceptions regarding nonattainment impacts continue to worry Georgia businesses. For industrial operations, the ability to expand, change and adapt is rightly seen as the key to long-term financial viability. When that ability to change is impaired, a company's ability to survive and thrive is similarly impaired. In many cases, companies are faced with an "expand or shut-down" scenario, that is, the ability to change operations to fit market demand is necessary to continue long-term viability. Faced with this scenario, plant operators are concerned that company executives may conclude that their plant is now a poor candidate for future expansion.

"Operating units within major corporations are always competing for investment dollars," commented one environmental plant manager from Augusta. "When the new designation recommendations were announced, there was a real concern that if corporate headquarters believed that permitting is going to be more difficult due to a new nonattainment status, that those investment dollars will be given to other plants, and the Georgia plants would be passed over for future expansion plans."[29]

However, the truth is that nonattainment is hardly a regulatory girdle to growth. And one of the best illustrations of this fact is Atlanta. Since it was initially designated nonattainment in 1978, Atlanta has experienced tremendous growth. Despite its nonattainment status, between 1980 and 2000, population in the Atlanta Metropolitan Statistical Area increased by 1.9 million—an 84 percent growth rate.[30]

But the perception of the air quality situation in Atlanta is skewed by

the regulatory jargon. Because the Atlanta metropolitan area failed to attain the 1-hour ozone NAAQS by the statutory deadline of 1999, the Atlanta area was recently "bumped up" from a "serious" nonattainment area to a "severe" nonattainment area for ozone.[31] As a result of this change in nonattainment status, Atlanta faces even more stringent requirements.

What is ironic about these fairly draconian measures is that the air quality in Atlanta is getting better, not worse. When it comes to communication issues, Kevin Green of the Metro Atlanta Chamber of Commerce commented that this fact is difficult to convey.

"There's a real disconnect in the language of nonattainment and what's going on in Atlanta," he said. "It's counterintuitive to think that Atlanta's air quality is improving at the same time EPA is down-grading its status, but that's precisely what's happening. Even after decades of tremendous growth, Atlanta's air quality is steadily improving. Our programs are working."

COMMUNICATION AND A PROACTIVE RESPONSE ARE CRITICAL

Correcting misperceptions and taking on nonattainment issues head-on is key to managing nonattainment status. One good example of such a proactive response was the city of Augusta and Richmond County. When industrial sources in Augusta and Aiken learned that Richmond County was facing nonattainment status, they quickly organized a committee to try to address the problem head-on. In July of 2003, a committee consisting of representatives from 15 industrial sources in the Augusta area was created to evaluate local options and to educate local government on the effects of nonattainment.

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— Kevin Green, Metro Atlanta Chamber of Commerce

For areas that comply with the 1-hour peak ozone standards of 0.12 but not the new 8-hour ozone standard of 0.8, there is a deferral options known as an Early Action Compact (EAC). The EAC is designed to give local areas flexibility to design their own approaches to comply with the 8-hour ozone standard by Dec. 31, 2007. The goal of the EAC is to improve air quality faster and avoid the rigid compliance conditions normally imposed on nonattainment areas.

In the case of Augusta and Richmond County, the EAC approach—coupled with good monitoring data over the past few years—was a success. After reviewing the resulting monitoring data and receiving agreement from the EAC industry team to continue its efforts, EPD revised their recommendation for the area to attainment. EPA responded and removed the area from the ozone nonattainment list.

The Augusta example illustrates that outreach is a two-way street—industries and local governments need to clearly communicate their concerns to regulators. Simply listening to EPA and EPD is not enough. "Educating businesses and local communities regarding air quality rules and regulations is a vital part of what we do at Georgia EPD." Commented Ron Methier, air director for EPD. "But an important part of any outreach effort is to listen to concerns from businesses and local communities. Businesses and local governments do need to consider how they will factor nonattainment designations into their planning decisions."

But Methier also stressed that such planning should not be limited to cities / counties that have been formally designated as nonattainment. "Air quality is largely a regional issue. Just because an area is identified as attainment, it doesn't mean that it is immune from nonattainment regulations. In Georgia, it may be necessary to include some attainment areas as part of the SIP plan to address nonattainment issues in neighboring areas."

Taking on those issues proactively in the present may pay big dividends in the future. Methier stated that many of these areas are "pretty border-line" and could

achieve attainment within a few years if progress is demonstrated.

CONCLUSION

So what is the message behind the whale-speak? First, being designated as nonattainment is not a death-knell for the expansion of businesses and communities in Georgia. As Sam Williams of the Metro Chamber recently observed, air quality issues are largely the products of strong economic growth and a public perception of a good quality of life, *i.e.,* areas have air quality issues because people want to live in and work in those areas.

Nonattainment status does, however, mean that industrial sources in these areas must consider new SIP requirements in their planning and expansion plans. Yet these additional considerations are manageable through a proactive approach by the regulated community and local governments. Perhaps the greatest hurdle in addressing the nonattainment issue is overcoming misinformed perceptions about nonattainment designation. As these new designations are implemented in Georgia, it is critical that city and county governments, industrial sources, and environmental agencies work cooperatively to educate the public—and one another—about the real world impacts of nonattainment. GBJ

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Endnotes

1. 42 U.S.C. § 7409
2. 42 U.S.C. § 7407(d)(4)
3. 42 U.S.C. § 7407
4. 42 U.S.C. § 7407(d)(1)(A)
5. 42 U.S.C. § 7407(d)(1)(A)
6. 42 U.S.C. § 7407(d)(1)(B)
7. 62 Fed. Reg. 38856 (July 18, 1997)
8. American Trucking Assoc. v. EPA, 283 F.3d 355 (D.C. Cir. March 26, 2002).
9. Memorandum from Jeffrey R. Holmstead, Assistant Administrator to Regional Administrators, Regions I-X (Nov. 14, 2002) ("Holmstead Memo")
10. 69 Fed. Reg. 23951 (April 30, 2004)
11. 68 Fed Reg. 32802 (June 2, 2003)
12. Letter from Harold F. Reheis, Director, Georgia Dept. of Natural Resources, Environmental Protection Division, to Mr. James I. Palmer, Jr., Regional Administrator, U.S. EPA (July 15, 2003).
13. Letter from J.I. Palmer, Jr., Regional Administrator, EPA, to Carol A. Couch, Ph.D., Director, Georgia Environmental Protection Division (Dec. 3, 2003).
14. 69 Fed. Reg. 23951 (April 30, 2004)
15. 62 Federal Register 38652 (July 18, 1997).
16. American Trucking Assoc. v. EPA, 175 F.3d 1027 (D.C. Cir. 1999)
17. Whitman v. American Trucking Assoc., 531 U.S. 457 (Feb. 27, 2001)
18. American Trucking Assoc. v. EPA, 283 F.3d 335 (D.C. Cir. March 26, 2002).
19. Memorandum from Jeffrey R. Holmstead, Assistant Administrator, EPA to Regional Administration, Regions I-X (April 1, 2003)
20. American Lung Assoc. v. Whitman, No. 022239 (D.D.C. Nov. 13, 2002).
21. "Curbs on Particle Smog Planned; Cities Face Tighter Federal Regulations," *The Atlanta Journal-Constitution* (Oct. 30, 2003).
22. 42 U.S.C. § 7513a
23. 42 U.S.C. § 7410(a)
24. 42 U.S.C. § 7410(k)
25. 42 U.S.C. § 7502
26. 42 U.S.C. § 7511(b)
27. 42 U.S.C. § 7503
28. 42 U.S.C. § 7502(c) and 7511a(c)
29. A 1997 study by Research Atlanta, Inc., summarized the issue for the Atlanta area as follows: There are any number of cities in the southeastern United Sates that do not have Atlanta's air quality problems. Industry seeking to relocate would find it less expensive to locate in those cities than to locate in the Atlanta metropolitan area, an area burdened by sanctions for not meeting air quality standards. "The Costs of Nonattainment: Atlanta's Ozone Imbroglio." Research Atlanta, Inc. (1997).
30. U.S. Census Bureau. State and Metropolitan Area Data Book, 1997-98, A statistical Abstract Supplement, Table B-1: Metro Areas — Area and Populations; U.S. Census Bureau; Washington, DC, April 1998; Ranking Tables for Metropolitan Areas: 1990 and 2000, Table 4 Metropolitan Areas /Ranked by Numeric Population Change: 1990-2000; Census 2000 PHC-0T-3; U.S. Census Bureau: Washington D.C, April 2, 2001.
31. 68 Federal Register 55469 (Sept. 26, 2003).

A Look at the Law

Georgia's Hazardous Site Response Act:

Growing Pains for Georgia's Baby Superfund

By Robert D. Mowrey and Shelly Jacobs Ellerhorst

The Comprehensive Environmental Response, Compensation and Liability Act (formally known as CERCLA)[1] and its state counterparts place enormous power in the hands of both the government and the courts to require "polluters" to pay for the vast costs of cleaning up the legacy of this nation's industrial development. These statutes define "polluter" quite broadly, often sweeping a huge cross section of parties into a strict, joint and several, and retroactive liability net.[2] An aggressive application of these statutes has resulted in the targeting, in some circumstances, of corporate officers and directors, parent and other affiliated corporations, and lenders. Plus, the potentially harsh application of these statutes has substantial political support. As part of the 2004 elections, the Sierra Club is running prominent television advertisements in battleground states against the Bush Administration carrying the tag line: "Make the Polluter Pay."[3]

Photo courtesy of the Environmental Protection Agency

An article of faith among advocates of federal and state superfund liability is that the statutes' coercive aspects should be upheld as a legitimate exercise of the police power; that all doubts should be resolved in favor of broad liability because the statutes are "remedial" in nature; and that governmental cleanup mandates, no matter how questionable, should be immune to challenge. These beliefs are increasingly under question. The federal Court of Appeals for the D.C. Circuit recently authorized a challenge to the constitutionality of certain of CERCLA's most coercive features.[4] The U.S.

Supreme Court has granted certiorari to review the widespread use of CERCLA by private parties to bludgeon others into paying for cleanup costs.[5] And, in 2002, Congress passed legislation to address at least a few of the most onerous aspects of CERCLA and to otherwise protect certain small businesses commonly caught up in CERCLA's web.[6]

Against this backdrop, Georgia's principal program for identifying and cleaning up historic contamination has faced considerable controversy of its own. The Hazardous Site Response Act (HSRA) was enacted in 1992 to "protect human health and the environment" by requiring "responsible parties" to investigate and clean up hazardous substances in the environment.[7] Usually, the hazardous substances are a result of long-past practices that were the standard of the day. Often, the "responsible party" in fact had little or no involvement in the creation of the hazardous site. Sometimes, the "hazardous condition" has little realistic potential to actually threaten human health or the environment. And frequently, if there is a potential threat, it could be relatively easily managed in ways not allowed under the HSRA regulatory structure.

In fact, the HSRA regulatory scheme is viewed by some as among the most rigid and expensive state superfund programs in the nation, leading, in a number of instances, to substantial pain—the expenditure of time, money and energy—for little environmental gain.

Have the controversies that swirl around HSRA impeded the effectiveness of the program for those sites that unquestionably pose a risk to human health or the environment? Perhaps. The Georgia Environmental Protection Division (EPD) reports that over 90 percent of Compliance Status Reports—the first step in investigating a HSRA site—receive a "Notice of Deficiency." Environmental and community groups point to this statistic as proof that the regulated community intentionally thwarts HSRA's mandates in an effort to undermine the program and make enforcement unlikely given EPD's limited resources. The regulated community, on the other hand, sees this statistic as a symptom of serious problems inherent in the HSRA program: unrealistic rules, inflexible requirements, and a failure to correlate requirements to tangible environmental benefits.

HOW COSTLY IS HSRA?

No certain method to project HSRA's costs exists and precise figures are not known. Although most HSRA costs will be incurred by the private sector (at least 65 percent of all identified sites are expected to be funded by private parties),[8] costs projected by EPD shed some light on the question. As of a 2001 state audit of the program, EPD expected to fund the cleanup of approximately 9 percent of known sites where no "responsible party" could be found. EPD also expected to provide partial reimbursements to local government to assist with their obligations at sites, which comprised 23 percent of known sites.[9] For this fraction of the HSRA universe, EPD projected costs exceeding $240 million,[10] and many believe that figure is a substantial underestimate. Using an admittedly unscientific survey, an industry group has stated that HSRA costs could hit $5 billion, most of which will be borne by the private sector.[11] EPD disagrees, but acknowledges that a typical site may cost $2.45 million to clean up and that the overall program costs may hit $1.2 billion.[12]

The regulated community claims that, whatever the real price tag, it is unnecessarily high because of the flaws in the HSRA Rules.[13] Examples:

- EPD has required expensive investigations even where cleanup is not required. At one Atlanta-area site, EPD accepted the property owner's calculation regarding groundwater cleanup levels that showed that once soil removal was complete, no active groundwater cleanup would be necessary. Yet, because HSRA's Rules require contaminants to be "delineated" to "background," EPD required the owner to install numerous additional groundwater monitoring wells, including expensive wells drilled into bedrock, to meet the requirement that the contaminant plume be surrounded by wells showing no detection. No apparent environmental protection was derived from this practice, but the additional work cost the property owner nearly $100,000.
- At a number of sites placed on the HSRA list because of their potential for harm through exposure to surface soils, the rules have required expensive groundwater investigation and cleanup even though the original evaluations of the sites showed that groundwater exposure itself did not pose sufficient risk to justify listing the site.
- At non-industrial sites throughout the state, the HSRA soil cleanup standards are applied to

soils at whatever depth they are found—even if they are beneath pavement or structures—despite the fact that these cleanup standards are based on assumptions that people will come into physical contact with those soils. Thus, millions of dollars have been spent digging up soils at great depth or soils beneath concrete barriers that have no real potential to cause harm.

These are a few of the examples of how HSRA's Rules are applied, and it is the philosophy that underlies these applications that has caused controversy.

THE DEBATE

Members of the regulated community initially touched off a debate on the appropriateness of the HSRA Rules in 2001, advancing a white paper critiquing HSRA when the statute's funding mechanism was subject to legislative renewal. That white paper recommended substantial reforms to HSRA. EPD responded fiercely by claiming that such reforms were unnecessary. Subsequently, a series of discussions have taken place between the regulated community, EPD, and environmental and community groups to attempt to find common ground on potential HSRA reforms.

Boiled down, the debate centers on the regulated community's claim that HSRA often results in unnecessary expenditures to control merely hypothetical risks and that the program makes many practical solutions unavailable. This critique centers largely on two points. First, the HSRA Rules assume (and therefore require actions to protect against) hypothetical exposures by people to hazardous substances that are unlikely ever to occur. For example, the statute sets cleanup standards for soils at levels that are scientifically based on assumptions involving daily exposure to a hypothetical resident over a period of up to 30 years. These standards apply to soil, even at great depths, having little or no potential to result in any human exposure, much less daily exposure for 30 years. Likewise, groundwater cleanup standards are generally calculated from an inflexible assumption that groundwater at a property will be used, daily, as drinking water. In many of these cases, residents will never drink the groundwater.

The second critique is largely a function of the first: that in most instances HSRA requires nearly complete removal of contamination—sometimes at extraordinary expense—without consideration of whether effective technologies or engineered barriers could be utilized to safely and more cost-effectively manage the material in its place. Contamination is often dug out of the ground only to be redeposited in other ground at an engineered landfill, where it would often be far less expensive to engineer exposure barriers in place.

The responses to these critiques fall in two categories. First, the argument goes, since no one can predict all future land use scenarios at a site, particularly into the distant future, we cannot be sure what future exposures might occur at a particular site. Thus it is "safer" to assume the type of daily exposures noted above even if they are not now realistically likely. Second, there are external costs to remedies that leave contamination in place, including the cost of long-term monitoring and tracking by the government, and perceived costs to a community that must live with the assumed stigma associated with such a site. An additional moralistic argument is advanced, by some, that it is justifiable to make the "polluter" pay, notwithstanding that HSRA's no-fault net captures many parties having little or no culpability for the conditions at these sites.

Photo courtesy of the Environmental Protection Agency

THE HSRA DIALOGUE AND 2003 HSRA RULE AMENDMENTS

From the regulated community's critique of HSRA and EPD's reaction has been born a process to engage in a regular dialogue among HSRA's stakeholders—continuing as of this writing—to systematically discuss whether rule changes can be agreed upon to make HSRA more cost effective.

That dialogue has resulted in some initial progress in the form of rule changes enacted in 2003. While some view these changes as too modest, they are a welcome first step and set the stage for potential additional reforms through continued discussion. The most significant rule changes are outlined below along with a brief discussion of the implications of each.

Source Material

The original HSRA Rules referred to "source material" but did not define it. The importance of a definition centers on the fact that cleanup standards apply to source materials. The 2003 changes added the following definition of "source material" to the rules: "any material[s] . . . that act or may likely act as a reservoir for migration of regulated substances . . . or acts as a source for direct exposure."[14] The prior rules required that all source material had to be "removed or decontaminated," therefore effectively precluding the possibility of *in situ* remediation (e.g., adding a material such as cement to contamination to render it immobile and harmless in the ground). The new definition allows for the possibility of using *in situ* solidification—often far less expensive than excavation—to render material incapable of acting as "a reservoir for migration of regulated substances."[15]

How EPD applies this rule will determine the significance of the change. For example, the rule itself does not establish the degree of demonstration that a party might be required to make to prove that something will not be considered a source material. EPD's approach will have a major practical effect on whether this rule change materially helps the regulated community.

More Reasonable Non-residential Standards for Soil

The HSRA Rules establish separate soil cleanup standards for residential and non-residential sites.[16] Within each category, a party may choose to apply default cleanup standards or to calculate partially site-specific risk-based standards. For non-residential properties, the default standards are Type 3 standards, and the calculated standards

Under the old rule, Type 5 standards allowed waste and soil to remain in place, but required that institutional controls be used to prevent the contamination from spreading and to prevent exposure to the waste or contaminated soil.

are Type 4 standards. In many (but not all) cases, using a Type 4 approach results in slightly less stringent cleanup standards.

Under the old rule, an anomaly existed with respect to Type 4 standards, making them more costly than Type 3 standards. Type 4 soil standards required the entire soil column to achieve the same cleanup standards—they did not differentiate between subsurface and surface soil. Under the new rule, the Type 4 soil standards state that exposure-based criteria apply only in the "surface soil."[17] Type 3 standards define "surface soil" as "soil within two feet of the land surface."[18] This change may reduce the cost of cleanups at many non-residential sites because the regulated community will find the Type 4 risk based standards more attractive.

Type 5 Standards for Groundwater

The HSRA Rules recognize situations where a remedy will necessarily involve leaving contamination in place, where removal or decontamination is "not appropriate under the present circumstances."[19] This standard leaves EPD with wide discretion as to when to use this Type 5 cleanup standard, and EPD's approach essentially has been to limit its use to closed landfills. A serious, and still unresolved, dispute between EPD and the regulated community centers on this restrictive interpretation. In any event, there are significant numbers of closed landfills in Georgia, so the standard is important.

Under the old rule, Type 5 standards allowed waste and soil to remain in place, but required that institutional controls be used to prevent the contamination from spreading and to prevent exposure to the waste or contaminated soil. The Type 5 standards for groundwater, however, required that all groundwater be cleaned up essentially to Type 1 through 4 standards, including the areas directly beneath the waste. This rule results in a highly questionable use of resources, not to mention the likelihood that the standard could never be reached in many cases.

The new Type 5 standard for groundwater gives a responsible party two additional options in lieu of cleaning the groundwater. If all of the source material at the site is removed or treated, then the responsible party can implement institutional controls, engineering controls and monitoring to ensure that the groundwater: does not migrate beyond the limits of the controls; does not "increase in concentration or toxicity . . . at the limits of the controls;" and is not exposed to regulated substances.[20] If all the source material at the site is not removed or treated, then the removal or treatment of groundwater is required at the downgradient limit of the controls. This change makes HSRA more realistic because it recognizes the reality that in some instances it is more sensible to control, and not completely clean, contaminated groundwater.[21]

Type 5 Soil Exposure Averaging

Another critique raised by the regulated community is that the HSRA soil cleanup standards are inappropriately applied on a "bright line" basis. In other words, if the cleanup standard for a particular substance in soil is 100 parts per million, the cleanup must achieve 100 parts per million or lower in all soils at the site. Although this rule seems sensible at first blush, the reality is that the science used to derive the 100 parts per million standard is based on a hypothetical person exposed on a daily basis over a number of years to 100 parts per million on average. Thus, it is argued, that the average exposure at the site should equate to 100 parts per million, and the use of soil exposure averaging methodologies should be allowed. Depending on the dispersion of hazardous substances at a site, the bright line approach can double or triple the amount of soil requiring removal.

EPD steadfastly rejected considering use of exposure averaging on Type 1 through 4 sites. However, the agency did agree to change the HSRA Rules to allow this methodology at Type 5 sites.[22] (As noted above, Type 5 sites are generally closed landfills, where in all likelihood the hypothetical person experiencing a daily exposure for a period of years does not even exist). Once the cleanup standard is achieved on an average basis at a

Type 5 site, engineering and institutional controls must permanently maintain the exposure conditions on the site consistent with the averaging methodology. The benefits of this rule change are not as dramatic as they would be on Type 1 through 4 sites, because Type 5 assumes leaving contamination in place. Nevertheless, the rule change should make achieving a remediation at a Type 5 site more feasible.

CONCLUSION: THE DEBATES CONTINUE

The rule changes discussed above are, in the view of many in the business community, a small but useful step forward toward the goal of shaping a program that more appropriately calibrates scientifically recognized risks and costs. The program still involves too many instances where substantial costs are incurred for little if any cognizable environmental protection. With that critique in mind, the parties to the HSRA dialogue agreed, after the rule changes were completed, to continue meeting, although without formal procedures. Stakeholders now meet roughly quarterly, and continue to debate the issues. Only time will tell whether this process will result in further reform or will instead stall, and, if the process stalls, whether some stakeholders will seek legislative relief from a program they view as substantially flawed. GBJ

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Endnotes

1. 42 U.S.C. §§ 9601 – 9675 (2003).
2. *Id.* at § 9607(a).
3. Sierra Club, *Communities at Risk* (visited March 29, 2004) *available at* http://www.sierraclub.org/pressroom/media/.
4. See Gen. Elec. Co. v. EPA, No. 03-5114, 2004 WL 374261 (D.C. Cir. March 2, 2004).
5. Cooper Indus., Inc. v. Aviall Servs., Inc., 124 S. Ct. 981 (2004).
6. The Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, 115 Stat. 2356 (2002) (codified as amended in scattered sections of 42 U.S.C. §§ 9601-9628).
7. O.C.G.A. § 12-8-90 (2001). HSRA's liability provisions were, at the time of its enactment, largely comparable to CERCLA's liability provisions at that time. *See generally*, Robert D. Mowrey, Georgia Goes Superfund: A Look at the New Georgia Hazardous Site Response Act, 44 MERCER L. REV. 1 (1992). A number of CERCLA liability provisions have since been amended. *See supra* n. 6.
8. Performance Audit Operations Div., Ga. Dep't of Natural Res., *Follow-Up Review: Sufficiency of the Hazardous Waste Trust Fund* (2001) *available at* http://www.audits.state.ga.us/internet/pao/paorpts/pao-01-0204fur.pdf.
9. *Id.*
10. Dep't of Audits, Ga. Dep't of Natural Res., *State of Georgia Program Evaluation: Sufficiency of the Hazardous Waste Trust Fund* (1999) *available at* http://www.broc.state.ga.us/pdfsp262p262_306.pdf.
11. Ga. Indus. Envt'l Coalition, *Making HSRA Cost Effective…Still Protective* (2001) (White Paper on file with authors).
12. Response Letter from Harold F. Reheis, Director, Ga. Envt'l Prot. Div. to Carol Jackson, Ga. State Senator and Tom E. Shanahan, Ga. State Representative (Oct. 25, 2001) (on file with authors).
13. As required by the statute, the Board of Natural Resources has enacted a series of rules, administered by the Environmental Protection Division (EPD), to implement HSRA (the "HSRA Rules"). *See* GA. COMP. R. & REGS. r. 391-3-19-.01 to -.09 (2003). The HSRA Rules include procedures for notifying EPD of the discovery of contamination, the process for listing sites on HSRA's Hazardous Site Inventory (HSI), requirements for investigating listed sites, cleanup standards for listed sites, and requirements for placing notices on deeds and deed records concerning the presence of contamination on certain sites.
14. GA. COMP. R. & REGS. r. 391-3-19-.02(2)(y) (2003).
15. *See id.*
16. *See id.* at 391-3-19-.07.
17. *Id.* at 391-3-19-.07(9)(d)(2).
18. *Id.* at 391-3-19-.07(8)(d)(2).
19. *Id.* at 391-3-19-.07(10)(a).
20. *Id.* at 391-3-19-.07(10)(d)(4).
21. An open issue is whether these additional groundwater choices will be available when Type 1 through 4 standards are used for soil cleanup.
22. GA. COMP. R. & REGS. r. 391-3-19-.07(10)(d)(5) (2003).

Environmental Groups in Georgia —Searching for a Tipping Point

By Allison Burdette and Chad Baum

Within Georgia resides a host of environmental groups that are striving to protect and improve the air we breathe, the water we drink, and the natural resources we enjoy. This article features four of these groups—the Georgia Conservancy, the Upper Chattahoochee Riverkeeper, the Southern Environmental Law Center and the Georgia Center for Law in the Public Interest.[1] What follows is based on published organizational materials, as well as interviews with key members of each group—John Sibley, president of the Conservancy; Sally Bethea, executive director of the Riverkeeper; Ciannat Howett, director of the Georgia/Alabama office of SELC; and Justine Thompson, executive director of the Georgia Law Center.

While researching this article, it became clear to us that each of the groups, whether they would express it in this manner or not, are seeking the elusive "tipping point." As Malcom Gladwell explains in his national bestseller by that name, a tipping point is reached when, for instance, a marketer is able to convince a critical mass of people that they absolutely need the marketer's product and the run on the product becomes an "epidemic."[2] According to Gladwell, every epidemic has a tipping point, the "place where the unexpected becomes expected, where radical change is more than a possibility."

One of Gladwell's favorite examples is when New York City was able to turn the direction of its crime rate around by paying attention to the "little things" like graffiti, broken windows and even jaywalking. Once New Yorkers internalized the message that crime of any kind was not acceptable, the crime rate reached its tipping point and even the most violent crime statistics began to plummet.[3]

In a similar vein, the environmental groups are striving for their own tipping point—the day when the environmental ethic begins to sweep across Georgia with such force that citizens, policy makers, and corporations all come to realize that environmental protection is not a zero sum game. Instead environmental protection is a necessary partner in the quest for long-term economic vitality.

Gladwell also states in his book that for an organization to reach a tipping point it must have: "the bedrock belief that change is possible, that people can radically transform their behavior or beliefs in the face of the right kind of impetus."[4] All of the groups profiled in this article share this bedrock belief as they work to foster in a new era of environmental awareness in Georgia.

In the following, we provide some background for each group, and then discuss the mission, accomplishments, and goals of the groups. Finally, we discuss the tools and techniques that each group uses to achieve its goals and fulfill its mission.

ENVIRONMENTAL GROUPS

Georgia Conservancy

Background

By our count, the Georgia Conservancy is the oldest and most established of Georgia's environmental organizations. It is a statewide organization with offices in Savannah, Moultrie, Columbus and Atlanta. More than anything else, the Georgia Conservancy works to bring citizens, organiza-

tions and experts together to craft solutions to environmental issues that range from the neighborhood to the statewide level. Teamwork is the word that comes to mind after talking to John Sibley. "We find that the most can be done by bringing people together to work out solutions," he said. "And we are especially good at bringing people together."[5]

Georgia Conservancy Mission

The Georgia Conservancy's mission is to "make sure Georgian's have healthy air, clean water, unspoiled wild places and community green spaces now and in the future."[6]

Recent Accomplishments

One of the best examples of how the Georgia Conservancy employed its approach to environmentalism was in the formation of the Georgia Water Coalition. Over 80 different groups banded together to form this coalition that has as its mission the protection of water quality and water usage in the state. The Georgia Conservancy, together with the Riverkeeper and the SELC, played a crucial role in organizing this group that has been very effective in helping shape how Georgia protects its water resources.

The Georgia Conservancy helped build another coalition recently, one that was successful in stopping the Northern Arc. But their work has not stopped there; this effort is part of a bigger push to change the way Atlanta thinks about transportation and land use. As Sibley stated, "Thoughtful leaders from around Atlanta have come to understand that sprawl is bad for business and bad for the environment."[7]

Goals for 2004 and Beyond

During our talk, Sibley identified water pollution and usage issues together as the number one environmental priority for Georgia right now. Georgia has a finite water resource, and it is time that we all come to realize it. With the Georgia Water Coalition in place, the Conservancy is well positioned to move forward on this vital issue.

Another goal of the Conservancy is to help Georgian's see that "air quality is a health issue for every family."[8] In short, Sibley would like to reach a tipping point on air. Perhaps a Georgia Air Coalition is in the works?

Tools and Techniques

Sibley credits the Conservancy's reputation for integrity as its most important tool in working to protect Georgia's natural resources. This integrity is instrumental in the Conservancy's coalition building. The Conservancy also favors education, advocacy and facilitation over litigation. It is rare that you will see the Conservancy's name featured in the style of a pleading.

The Georgia Conservancy's "Blueprints for Successful Communities" is an illustration of what makes this organization so successful. The Blueprints approach brings together community leaders, engineers, architects and transportation engineers to help, as Sibley stated, "Communities understand choices, and envision their own best possible communities."[9] Community, in the Blueprints context, can be defined as narrowly as a neighborhood or as broadly as a county or river basin—anywhere individuals have a shared vision of community. The Homepark Neighborhood, which abuts the Atlantic Station, participated in Blueprints to decide how it should interface with Atlantic Station. In the end, Homepark decided to become part of the evolving and dynamic Atlantic Station community.

As Malcolm Gladwell would say, the Georgia Conservancy is an organization of "connectors" that is seeking the environmental tipping point by building coalitions.[10]

Upper Chattahoochee Riverkeeper

Background

The Upper Chattahoochee Riverkeeper has been protecting the Chattahoochee River Basin from the north Georgia mountains to West Point Lake for almost 10 years. It is part of the Waterkeeper Alliance that includes 115 other Riverkeeper organizations across the nation. Other Riverkeepers in Georgia cover the Altamaha, Canoochee, Savannah, Coosa and the Lower Chattahoochee Rivers. Sally Bethea has been at the helm of the Upper Chattahoochee Riverkeeper from its inception. With her boundless energy and boundless knowledge of this stretch of the river, Bethea might best be characterized as one of Malcolm Gladwell's "mavens"—a person critical to reaching a tipping point because of the knowledge and insight she brings to an issue.[11] Bethea was recognized for her grasp of Georgia's environmental issues, when she was appointed to the Department of Natural Resources Board by then Gov. Roy Barnes.

UCR's Mission

The Riverkeeper's mission is "to advocate and secure the protection and stewardship of the Chattahoochee its tributaries and watershed in order to restore and conserve their ecological health for the

people, fish and wildlife that depend on the river system."[12]

Recent Accomplishments

The Riverkeeper has played a critical role in remedying the Atlanta sewer problems. Through legal action, Riverkeeper was able to help the city of Atlanta realize that it needed to address the city's antiquated sewer system that, for decades, had been spilling millions of gallons of untreated sewage into the Chattahoochee and its tributaries during and after storm events. Now the Riverkeeper is a strong voice, seeking diverse funding sources to fix the $2 billion problem. In addition to overseeing the city's compliance with the federal consent decree, Riverkeeper also advises the city's $25 million greenway acquisition program—a supplemental environmental project negotiated in lieu of massive fines for the city's pollution of the river.

Another notable accomplishment came through the Riverkeeper's work with the Georgia Water Coalition last year, which helped defeat House Bill 237,[13] a water privatization plan, which would have allowed Georgia's water resources to be sold to the highest bidder. This year the Riverkeeper and the Georgia Water Coalition were able to help secure the passage of an improved House Bill 237 that calls for the development of a statewide water management plan. This legislation has been touted as being one of the most important pieces of legislation in recent history.

An accomplishment of a different sort was the first Back to the Chattahoochee Race and River Festival that was held last June. Despite a downpour on the morning of the race, over 200 people canoed or kayaked down the eight-mile course. Bethea feels that once people get back on the river and take ownership of it, they will become better stewards of the Chattahoochee and all environmental resources across the state.[14]

Goals for 2004 and Beyond

For 2004, Riverkeeper will largely focus on protecting stream buffer zones and controlling storm water runoff from construction and industrial sites. A vegetated streamside buffer can help prevent most of the run-off from roads, parking lots, livestock manure, and agricultural fertilizers from entering state waters. In its 2004 Session, the General Assembly debated Senate Bill 460, a bill that would have weakened stream buffer protection laws.[15] Needless to say, the Riverkeeper fought hard against this bill until the objectionable portions were removed. Unfortunately, this issue is sure to arise again and Riverkeeper and the Georgia Water Coalition will have to mobilize again.

Tools and Techniques

Two-thirds of Riverkeeper's time is devoted to advocacy—commenting on state and local permits and regulations, investigating complaints, involving citizens in river advocacy, legislative work and litigation. One example of this advocacy is the role Riverkeeper is playing in the battle over Gwinnett County's permit to release 40 million gallons of treated sewage into Lake Lanier. Bethea argues that this is a precedent setting permit so the standards set must clearly protect human health and the environment.

The other third of Riverkeeper's focus is on education—activities as diverse as in-school programs, science teacher education, water testing and boat trips. In February 2004, Riverkeeper premiered an interactive CD-Rom that provides a virtual tour of the river. This CD-Rom will be distributed to schools as an educational tool.

Southern Environmental Law Center

Background

"The SELC is the leading environmental organization dedicated to protecting the natural resources of the South."[16] SELC has five offices and covers six states—North and South Carolina, Virginia, Tennessee, Georgia and Alabama. It was founded in 1986 by Rick Middleton. Middleton, who had been active in national environmental organizations, felt that there was a need for an environmental organization focused exclusively on the Southeast. Recognizing that the Southeast is important ecologically because of its many rivers, coastline, mountains, and forests, SELC is dedicated to giving this area of the country the special attention it deserves.

Mission

SELC's mission, as explained by Ciannat Howett, is to "protect the natural places and our quality of life in the South."[17] Within this mission, SELC has five primary areas of focus: the coast and wetlands, national and private forests, water quality, air quality and land use planning.

Recent Accomplishments

SELC recently helped score an important victory when it won a case before the Eleventh Circuit Court of Appeals[18] against the EPA requiring the agency to address Atlanta's ozone pollution problem. The court held that in reviewing the state implementation plan for

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the greater Atlanta metropolitan area, the EPA had illegally extended deadlines for the state to come into compliance with the Clean Air Act. This case is leading to tighter emission restrictions in the Atlanta area.

SELC also recently won an important case in Fulton County Superior Court that will help protect Georgia's unique and fragile coastal marsh hammocks—small islands that lie nestled in coastal marshlands—that are facing terrific development pressure.[19] Each of these cases raised public awareness and the level of protection for the natural resources involved.

Goals for 2004 and Beyond

SELC has ongoing projects in each of its five practice areas. Two areas of focus this year are wetland preservation and water allocation issues.

Recent federal court decisions such as the U.S. Supreme Court's decision in Solid Waste Agency of Northern Cook County[20] have led some federal agencies responsible for regulating wetlands to pull back on the protections they offer these vulnerable ecosystems. As a result, SELC is keeping a careful eye on the Army Corps of Engineers and the Environmental Protection Agency to ensure that the corps and EPA are vigilant in fulfilling their responsibilities to protect the wetlands in the South. This is no easy task considering that wetlands law is in a state of flux and development pressures are reaching a fever pitch.

Water allocation is a dominant issue in Georgia, particularly as Atlanta and its surrounding counties demand increasing amounts of water for continued growth. Negotiations between Georgia, Florida and Alabama over allocation of water in the Apalachicola, Chattahoochee and Flint water basin broke down last summer. Therefore, these issues are currently being litigated by these three states. SELC is part of the Tri-State Conservation Coalition, an organization of about 50 conservation groups from the three states. As part of its role in the coalition, SELC is closely monitoring the litigation. The outcome of the battle over the water contained in this watershed is critical to all interested parties. SELC is fighting to ensure that the environment gets its due when put up against other water interests such as industry and municipal water supply.

Tools and Techniques

SELC uses several types of advocacy to fulfill its mission, working in all three branches of government—the courts, legislatures and agencies—and on a state and national level to protect the environment of the South. SELC works in partnership with other environmental organizations to support and complement environmental protection efforts with legal expertise.

Like fixing the broken windows in New York or cleaning the graffiti off of subway trains, simply showing that someone is paying attention can spawn dramatic changes. SELC shows someone is paying attention in Congress and state legislatures by testifying on proposed environmental law and policy, in regulatory agencies by providing guidance on implementation of the law, and in the courts by setting legal precedents and stopping environmental abuses. Although SELC would much rather rely on persuasion outside of the courtroom, its skilled courtroom lawyers are capable of providing a persuasive voice for environmental protection when presenting their case to a judge or hearing officer.

When deciding to bring a legal challenge, SELC attorneys consider first, the importance of the resource being threatened and the potential health threat involved. Second, the attorneys consider the precedent that the case will set. And third, they consider their chances of prevailing. Through all of this, of course, they pay particular attention to their clients that bring them the cases. They represent a wide range of clients, including local groups like the Altamaha Riverkeeper, and national environmental groups such as the Sierra Club and the National Wildlife Federation.

Georgia Center for Law in the Public Interest

Background

The first of its kind in Georgia, the Georgia Center for Law in the Public Interest was founded in Athens in 1992, by a small group of lawyers, judges and academics that recognized the essential need for a powerful public interest legal group to effectively challenge illegal industry and government actions that have degraded Georgia's environment. Originally, the Center's activities focused primarily on cleaning up Georgia's rivers. Now located in Atlanta, the Georgia Law Center has expanded its focus to include reducing unhealthy air pollution, protecting endangered and threatened species, and ensuring that disad-

vantaged communities are not disproportionately impacted by unhealthy pollution.

Mission

Justine Thompson described the Georgia Law Center's mission as providing "free legal and technical assistance to Georgia's communities to help them achieve their goals of reducing unhealthy air pollution and preventing toxic pollutants from reaching our rivers and lakes."[21] The Georgia Law Center also fights for environmental equality. As the organization's mission statement points out, the benefits of the vast increase in environmental regulation in the past 30 years has not accrued to all Americans equally. "People of color and low-income Americans often suffer disproportionately from the effects of toxic pollution. . . ."[22] The Georgia Law Center strives to ensure that environmental regulation protects all Georgians equally.

Recent Accomplishments

The Georgia Law Center's accomplishments include settling a complex lawsuit with one of the top 10 dischargers in the state, ITT Rayonier's paper pulp mill on the Altamaha River. As a result of the lawsuit, Rayonier is working to develop new technologies to clean up its discharge into the river that will potentially offer a new and effective approach to cleaning up paper mill discharges nationwide.

In addition, as a result of lawsuits taken on behalf of communities statewide, cities have built new wastewater treatment plants and upgraded outdated plants that had been violating federal standards. In a lawsuit in which the Georgia Law Center represented community residents in south DeKalb County, the Center helped to close Waste Management's Live Oak landfill. This important and precedent setting victory reflects the Georgia Law Center's efforts to empower disadvantaged citizens.

Like SELC, the Georgia Law Center works with partner environmental organizations to help achieve shared goals. The Georgia Law Center is currently working cooperatively with Sierra Club and Riverkeeper to prevent dirt from leaving construction sites and entering Georgia's waterways. The Georgia Law Center has chosen to focus on this type of pollution, because it is the number one source of water pollution in the state.

Other Georgia Law Center actions have included successful efforts to reduce harmful power plant emissions as part of the Georgia Clean Air Project. These actions have already resulted in the reduction of more than 1,200 tons of smog-causing pollutants. In addition, the Georgia Law Center favorably resolved a case where the government had failed to implement a rule that would require the reduction of 63,000 tons of nitrogen oxides, which is the same as taking all cars and trucks off of metro-roads for over 200 days.

Goals for 2004 and Beyond

The Georgia Law Center is going to continue to work toward ensuring that the Clean Air Act[23] and the Clean Water Act[24] are implemented correctly. It also plans to continue to provide legal representation for communities at risk from inadequate environmental protection. In working to achieve its goals, Thompson emphasized the need to continue to act as a "part of a community; nothing we do is alone."

Tools and Techniques

The Georgia Law Center operates much in the same way as SELC, in that it uses the courts and targeted litigation to get its message across. As seen from its successes, the Georgia Law Center is effective and active. Thompson emphasizes that litigation is expensive and time consuming, so it is used only as a last resort. Like the other organizations profiled in this article, the Georgia Law Center prefers to engage potential targets of a lawsuit, whether the

government or polluters, in constructive discussions about how to reduce pollution. In the past, litigation has resulted in productive cooperative work to improve technology to reduce pollution.

The Georgia Law Center attorneys are "grassroots attorneys" providing tools for public advocacy. The center works to empower citizens through instruction. These instructions include providing explanations about hard to decipher environmental laws. They have developed programs specifically targeted at public education about Clean Air Act[25] and Clean Water Act[26] permits.

CONCLUSION

One theme that repeated itself throughout the interviews and in our research was that all of these environmental groups are striving to work together. Despite subtle variations in their mission statements, they are all striving for that elusive environmental tipping point. By working together, these organizations and all the other organizations like them in Georgia are much more likely to achieve true environmental protection. As Gladwell states in his book, "In the end, tipping points are a reaffirmation of the potential for change and the power of intelligent action. Look at the world around you. It may seem like an immovable, implacable place. It is not. With the slightest push—in just the right place—it can be tipped."[27] And by having more eyes looking for "just the right place," we are more likely to find it. GBJ

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Chad Baum is a senior at Emory University's Goizueta Business School. He has a concentration in both information technology and consulting. He currently serves on the BBA Council as chief technology officer for the 2004-05 academic year. Baum plans to attend law school after graduating in May of 2005.

Endnotes

1. Our choice of these groups is not meant to diminish the role that other Georgia environmental groups play in protecting the environment. There are many other groups that also make vital contributions to protecting our Georgia environment and all of them are critical to the ultimate welfare of our environment.
2. MALCOLM GLADWELL, THE TIPPING POINT 56-58 (Back Bay Books 2002).
3. *Id.*
4. *Id.*
5. Interview with John Sibley, President of Georgia Conservancy State Office in Atlanta, GA. (Feb. 17, 2004).
6. *Georgia Conservancy* (visited April 9, 2004) <http://www.georgiaconservancy.org>.
7. Interview with John Sibley, President of Georgia Conservancy State Office in Atlanta, GA. (Feb. 17, 2004).
8. *Id.*
9. *Id.*
10. MALCOLM GLADWELL, THE TIPPING POINT 56-58 (Back Bay Books 2002).
11. *Id.*
12. *Upper Chattahoochee Riverkeeper* (visited Feb. 16, 2004) <http://www.chattahoochee.org>.
13. House Bill 237 (2003-2004).
14. Interview with Sally Bethea, Executive Director of Upper Chattahoochee Riverkeeper in Atlanta, GA. (Feb. 16, 2004).
15. Senate Bill 460 (SB460). HB 237 was left in a conference committee following the 2003 legislative session. The House and Senate approved a conference committee report that does NOT include water permit trading and focuses exclusively on the development of a comprehensive water management plan for Georgia.
16. *Southern Environmental Law Center* (visited Feb. 4, 2004) <http://www.selcga.org>.
17. Interview with Ciannat Howett, Executive Director of Southern Environmental Law Center Alabama/Georgia Office in Atlanta, GA. (Feb. 4, 2004).
18. Southern Organizing Committee for Economic and Social Justice v. United States Environmental Protection Agency, 333 F.3d 1288 (11th Cir. 2003).
19. Center for a Sustainable Coast v. Coastal Marshlands Protection Committee, Civil Action No. 2002CV52219 (Super. Ct. Fulton County Oct. 24, 2002).
20. Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, 531 U.S. 159, 121 S.Ct. 675 (2001).
21. Interview with Justine Thompson, Executive Director of Georgia Center for Law in the Public Interest in Atlanta, Ga. (Feb. 6, 2004).
22. *Id.*
23. Clean Air Act, 42 U.S.C.A. 7401-7671 (2003).
24. Clean Water Act, 33 U.S.C.A. §1251-1387 (2003).
25. Clean Air Act, 42 U.S.C.A. 7401-7671 (2003).
26. Clean Water Act, 33 U.S.C.A. §1251-1387 (2003).
27. MALCOLM GLADWELL, THE TIPPING POINT 56-58 (Back Bay Books 2002) at p. 259.

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2004 Georgia General Assembly Water Legislation Update

By Julie V. Mayfield

The 2004 Georgia General Assembly was not supposed to provide nearly the fireworks that occurred in the 2003 legislative session over water legislation. Last year the battle centered on House Bill 237, which was the legislative embodiment of the work done by the Joint House-Senate Water Plan Study Committee (Joint Study Committee) appointed in 2001. The controversy in that bill was not whether the state should begin a statewide planning process for comprehensive water management; everyone agreed that it should.

Instead, the disagreements were over a provision in the bill that would have allowed holders of water withdrawal permits to sell those permits. Environmentalists believed this would privatize a common, public resource and fundamentally undermine Georgia's current water law framework, while proponents of permit trading believed it was necessary for the more efficient allocation of water in drought-stricken areas of the state.

Photo by Kevin B. Smith

Environmentalists won that battle last year in the waning minutes of the 2003 session when the House voted down the final conference committee report on HB 237. The conservation community later claimed another victory when the sponsor of HB 237, Rep. Bob Hanner, D-Parrott, announced last fall that he would remove the permit trading language in the bill and instead propose a bill that would only call for the creation of a statewide water management plan. Given that promise, many observers of this issue hoped that the 2004 legislative session would be a walk in the park compared to last year. While the controversy this session did not focus so much on HB 237, two other water bills provided fertile ground in which the conflicts over this valuable resource continued to grow.

HB 237

As promised, Hanner brought HB 237 to the 2004 session as a pure planning bill. Procedurally, at the close of last session, the bill was in a conference committee, and it was to that committee that Hanner presented his revised bill.[1] The bill mandated the creation of a statewide water management plan by the Georgia Environmental Protection Division (EPD) by 2007. The plan, which would have to be updated every three years, could be changed by and would have to be approved by the Water Council and finally approved by the Department of Natural Resources (DNR) Board. The legislation required EPD to solicit "extensive" stakeholder involvement from other agencies, the business community, local governments, Regional Development Centers and non-profit advocacy organizations in developing the plan. In addition, the legislation stated that the statewide plan would include policies to guide the creation of river basin management plans and local water plans as well as any regional water planning efforts. Finally, the policy statement in the bill read, "Georgia manages water resources in a sustainable manner to support the state's economy, to protect public health and natural systems, and to enhance the quality of life for all citizens."

The Water Council, created by the bill, would be chaired by the EPD director and would consist of the following additional positions: DNR commissioner, executive director of the State Soil and Water Conservation Commission, commissioner of community affairs, commissioner of human resources, commissioner of agriculture, director of the Georgia Forestry Commission, and executive director of the Georgia Environmental Facilities Authority. In addition, the speaker of the house and the president pro tem of the Senate each could appoint a non-legislator to the council. Finally, the chairmen of the House and Senate Natural Resources Committees and an additional member from each of those committees would be non-voting members of the council.

This proposal was quickly agreed to by the conferees, and it was widely supported by all constituencies. The conference committee report easily passed the Senate in early February but then hit a bump in the House. Several House members objected to the report because it did not allow the legislature to vote on the plan, and they believed, gave the governor too much power in creating and approving the plan.[2] Legislative approval was an element of last year's HB 237, and due to its absence, the House unanimously voted against the conference committee report.

The conference committee met again in early March to hear a new proposal from Hanner that placed the Legislature, instead of the DNR board, in the position of approving the plan. The Senate conferees would not agree to this and the disagreement was not resolved until March 31, the third to last day of the session. The compromise agreed to by the conferees leaves everything as it was in the first conference committee report except for the final approval process, which will work as follows: 1) the Water Council will submit the plan to the 2008 General Assembly; 2) the General Assembly will indicate its approval of the plan by passing a joint resolution; 3) if the General Assembly disagrees with the plan as submitted, the council can revise and resubmit the plan to the legislature anytime before the 20th day of the session; 4) if the General Assembly does not approve the Water Council's plan or create and pass its own plan by the end of the session, the last plan submitted by the council will go into effect after the session is over.

The House and Senate overwhelmingly passed the revised conference committee report later that day. The compromise ensures that the Legislature will have an opportunity to review and approve the plan, but it also ensures that Georgia will have a statewide water management plan in place by the close of the 2008 legislative session. There is every expectation that the governor will sign the legislation, bringing to a close over three years of hard work by hundreds of legislators, civic and business leaders, environmentalists and citizens. EPD is expected to begin developing the scope of the plan this summer.

House Bill 1615

While most of the controversial portions of the original HB 237 were dropped this year and did not arise in other legislation, one difficult issue, inter-basin and intra-basin transfers, proved resilient. An inter-basin transfer occurs when water is withdrawn from one river basin and is discharged into another river basin. This practice already occurs widely in metro Atlanta, which contains portions of five major river basins,[3] and it occurs with less frequency in other parts of the state as well. While they can facilitate regional planning for water use, inter-basin transfers can result in unnaturally low flow conditions in the basin of origin, the introduction of non-native plant and animal species in the receiving basin, and water quality problems in both basins. An intra-basin transfer is the movement of water within the same river basin. Because Georgia has several long river basins that stretch north to south over much of the state, intra-basin transfers can present some of the same problems as inter-basin transfers, depending on the locations of the withdrawal and discharge.

Under current Georgia law, there is no special regulation of inter- or intra-basin transfers and no opportunity for EPD to look at the specific issues presented by each application. House Bill 1615, introduced by Rep. Tom McCall, D-Elberton, proposed to change that in several ways. First, as originally introduced, the bill contained a list of 22 criteria that EPD would use to determine whether to issue a permit for future inter- or intra-basin transfers. These criteria were lifted from the final report of the Joint Study Committee[4] and are generally accepted as good criteria. The bill also prohibited inter-basin transfers that cross more than two counties, and intra-basin transfers that cross more than four counties. This allowed for a certain amount of regional planning, but prevented water from being moved long distances. The bill also contained an "anti-wheeling" provision that prohibited recipients of inter- or intra-basin transfers in one county from transferring that water to another county. Finally, the bill exempted the 16-county Metro North Georgia Water Planning District from the two-county limitation on inter-basin transfers, meaning water could be moved freely from any county and any one of the five river basins in the district to any other county and river basin in the district.

This exemption for the district, which was later expanded to also exempt several counties in the Savannah area, proved to be the primary point of controversy. Environmentalists and others[5] believed that creating limitations and exemptions for inter- and intra-basin transfers was premature, given the hope that HB 237 would pass and a statewide water management planning process would soon be underway. These groups believed that that the planning process was the proper place to address transfer issues and that the Legislature should not tie the planners' hands by creating rules that would limit transfers in most of the state but exempt other areas entirely. Environmentalists were also concerned that the district's exemption would only ensure that the district would keep more water for Atlanta in the future and leave less water for downstream users. Proponents of the bill argued that the Legislature needed to act now to put some regulation of inter- and intra-basin transfers in place until the statewide water plan was completed.[6]

This bill was amended in several significant ways as it moved through the House. First, Rep. Debbie Buckner, D-Junction City, proposed an amendment that would have left the exemption for the District in place only until the statewide water management plan was complete. The intent of this amendment was to allow the planners to consider fully the issue of inter- and intra-basin transfers on a statewide basis in the planning process and make new recommendations in the plan on appropriate limitations or exemptions. Rep. Chip Rogers, R-Woodstock, proposed another amendment that would have prohibited any new inter-basin transfers from the Etowah River basin after July 1, 2004. This amendment cut to the heart of and possibly even invalidated the district's plans, as those plans contemplate a significant increase in inter-basin transfers from the Etowah basin to other parts of the district.

Both of these amendments passed the House, but were quickly stripped from the bill by the Senate Natural Resources and Environment Committee. The substitute bill that emerged from that committee benefited the district even more by saying that any new inter-basin transfer applications made before July 1, 2004, and any applications for renewals, modifications, or extensions of existing inter-basin transfers, would be judged against the current criteria instead of against the newly proposed and more protective 22 criteria. This amendment ensured that the district's current inter-basin transfers would never be reviewed against the new criteria. It also likely ensured that the new inter-basin

transfers contemplated in the district's water supply plan would not be subject to the new criteria, because the district would presumably submit the applications prior to July 1, 2004.

Another committee amendment to HB 1615 was by Sen. Eric Johnson, R-Savannah, who added the provisions of one of his bills, Senate Bill 524, that was stalled in the House. This amendment eliminated the "stay rule" that currently applies when environmental permits are appealed by either the permittee or aggrieved citizens. Under the amendment, the permitted activity would be allowed to proceed as the appeal progressed through the administrative appeal process.

This bill, which was the subject of intense lobbying on both sides, came to the Senate floor on the second to last day of the session at 9 p.m. It quickly became clear that the debate would be long and contentious, so the bill was tabled after approximately 15 minutes of discussion. The bill remained tabled the rest of that night and through the last day of session, meaning the bill died at midnight on the last day. The demise of this bill means that EPD will continue to evaluate applications for inter- and intra-basin transfers as they do now and that the planners can begin planning without any limitations on their ability to examine existing and proposed inter- and intra-basin transfers.

Senate Bill 460

Senate Bill 460 was the most controversial water bill this session. Sponsored by Sen. Casey Cagle, R-Gainesville, this bill sought to eliminate the current 25-foot stream buffer requirement for small headwater streams. In its original form, the bill would have allowed property owners simply to pay EPD $30, $40 or $50 a linear foot, depending on the size of the drainage area, to eliminate the buffer. Following an overwhelming and immediate public outcry, Cagle quickly amended the bill to provide for a general variance for the piping and paving of streams that flow 25 gallons per minute or less on an annual average. Under the general variance provision, property owners would not have to apply for and receive an individual variance as is currently required. Instead, they would simply have to give notice to either EPD or their local government of the location and length of the piping, the measures used to minimize the impact of the piping, and the method used to measure the volume of water discharged by the stream.

The bill also required DNR to review and revise the criteria used to grant individual stream buffer variances and include three new criteria listed in the bill.

The sponsors of this bill characterized it as a property rights bill that would allow property owners to use their land without intrusive and unnecessary government regulation. They also argued that this bill simply makes the law for warm water streams consistent with the law for trout streams, which currently allows the piping of trout streams that have an average annual flow of 25 gallons per minute or less. Asserting also that the current buffer variance criteria are too strict and that the process to receive a variance is broken, developers and others involved in the real estate industry strongly support the bill. Environmentalists, on the other hand, dubbed the bill "The Headwaters Destruction Act" and "The Mud Bill." Their concern was that piping these small, headwater streams would increase downstream flooding and erosion of stream banks, would decrease water quality, and would destroy important aquatic and wildlife habitat. Noting that most of the trout streams that might currently be available for piping under the current law are in national forests and will never be piped, environmentalists said that the environmental consequences of piping these small warm water streams could be significant.

SB 460 passed the Senate after 90 minutes of debate and with two amendments, both offered by Cagle, which improved the bill from the environmentalists' perspective. The House Natural Resources and Environment Committee tweaked the bill slightly, and then, still strongly supported by developers and opposed by environmentalists[7], the bill went to the House Rules Committee. There was again fervent lobbying from both sides, which served to keep the bill in the Rules Committee until 5:30 p.m. on the last day of the session. Even then, however, Rules Committee Chairman Calvin Smyre, D-Columbus, allowed it to pass out of committee on one condition: the bill would not come to the floor of the House unless the two sides reached agreement on the bill's language.

The two sides then began five hours of intense negotiation, culminating in substitute language that removed all references to piping small streams and left only the requirement that EPD revise the buffer variance criteria and include three new, specific criteria.[8] At approximately 11:50 p.m., the House passed this version of the bill with no discussion. At 11:58 p.m., with two minutes to spare, the Senate passed the substitute bill as well.

In summary, this session resulted in the passage of one of the most important pieces of water legislation in recent history: HB 237, which requires the creation of a statewide water management plan. HB 1615 and SB 460 provided good theater, but neither will have an effect on Georgia's water resources. With water planning now in motion, the water agenda for the 2005 session is not yet clear, but it will likely continue in the contentious fashion of the last two sessions as environmentalists, industry, agriculture and municipalities struggle over this valuable and finite resource. GBJ

Julie V. Mayfield is the vice president and general counsel for the Georgia Conservancy, a statewide environmental education and advocacy organization. She is a graduate of Davidson College (B.A., cum laude, 1989) and Emory Law School (J.D., with distinction, 1996).

Endnotes

1. The conferees were Reps. Hanner, Tom McCall, and Richard Royal and Senators Hugh Gillis, Eric Johnson, and Casey Cagle.
2. The governor appoints the members of the DNR Board and many members of the Water Council.
3. The rivers that flow through or originate in the District are the Chattahoochee, Flint, Etowah, Ocmulgee, and Oconee.
4. The report can be found at http://www.cviog.uga.edu/water.
5. For instance, the Georgia Water Pollution and Control Association.
6. Environmentalists countered that another bill, House Bill 1345, was a more appropriate bill to regulate inter- and intra-basin transfers until the statewide plan was completed. This bill only contained the 22 protective criteria and did not contain any limitations or exemptions. This bill did not pass out of committee.
7. Southwire Company joined the environmentalists in their battle against SB 460, agreeing that buffers along streams were critical to maintaining water quality.
8. The new criteria that EPD must use when considering a buffer variance application are: 1) when the landowner has received a Clean Water Act Section 404 (33 U.S.C. § 1344) permit from the U.S. Army Corps of Engineers and approval of a mitigation plan; 2) when the landowner can show that the project will improve downstream water quality; and 3) if the project is on or upstream of a stream listed on the Clean Water Act's Section 303(d) (33 U.S.C. § 1313(d)) list of impaired streams and the landowner can show the project will either improve or have no adverse impact on the water quality of the stream.

Water, Growth Management Are Georgia's Most Serious Issues

A Conversation with EPA Region 4 Administrator Jimmy Palmer

By Jeffrey S. Dehner

Jimmy Palmer was appointed regional administrator for Region 4 of the U. S. Environmental Protection Agency in January 2002 and is responsible for a staff of over 1,200 in programs throughout Georgia, Kentucky, Tennessee, North Carolina, South Carolina, Alabama, Mississippi and Florida. Prior to his appointment, he practiced law as a member of Butler, Snow, O'Mara, Stevens, and Cannada, PLLC, in Jackson, Miss., where he practiced environmental, natural resources and energy law.

Upon graduating from Mississippi State University in 1970 with a B.S. degree in civil engineering, Palmer first worked as assistant engineer with the Mississippi Public Service Commission and then as director of resource planning with the Mississippi Board of Water Commissioners, now the Office of Land and Water Resources in the Mississippi Department of Environmental Quality.

James I. "Jimmy" Palmer

Upon graduating with honors from the Ole Miss Law School in 1977, he practiced law for three years and then became a special assistant attorney general in Mississippi. On the attorney general's staff, Palmer specialized in a variety of environmental, energy and natural resource practice areas, including air and water pollution control; marine resources; oil and gas development; surface mining; hazardous wastes; nuclear wastes; maritime boundaries; and numerous others, including the licensure and regulation of professional engineers and land surveyors.

Palmer became an administrative assistant and staff counsel to Gov. Bill Allain in 1984, and later served as executive director of the governor's Office of General Services until September 1987, when he was appointed executive director of the Mississippi Department of Natural Resources, now the Mississippi Department of Environmental Quality (MDEQ). He then served continuously as the MDEQ executive director through the administrations of Gov. Ray

Mabus and Gov. Kirk Fordice. MDEQ is Mississippi's principal environmental regulatory agency, with responsibilities for the administration and enforcement of federal environmental programs by delegation from the U.S. Environmental Protection Agency and the Department of the Interior, Office of Surface Mining, as well as state regulatory programs over surface mining, surface water and groundwater use, and oil and gas exploration and development on state-owned lands onshore and offshore.

Palmer has been recognized for his professional contribution to the environmental field by receiving a Distinguished Service Commendation from the U.S. Environmental Protection Agency Gulf of Mexico Program in 2000 and a Distinguished Environmental Enforcement Service Commendation from the U.S. Department of Justice in 1998. Additionally, in 1998 and 1999, Palmer served as chairman of the U.S. Department of the Interior Outer Continental Shelf Policy Committee, where he was presented an Award of Appreciation in 2000 on behalf of Secretary of the Interior Bruce Babbitt. Palmer has also received a Distinguished Service Commendation by the Delta Council in 1999 and was named an Outstanding College of Engineering Alumnus for Mississippi State University in 1991.

Palmer recently took time to discuss his position and the state of Georgia's environment. Special thanks to Jean West and Allen Barnes of the administrator's staff for their assistance.

Growth pressures in North Georgia and along the state's coastline will bring even more stress upon water, wastewater, and solid waste infrastructure and sensitive ecosystems.

Q&A With Palmer

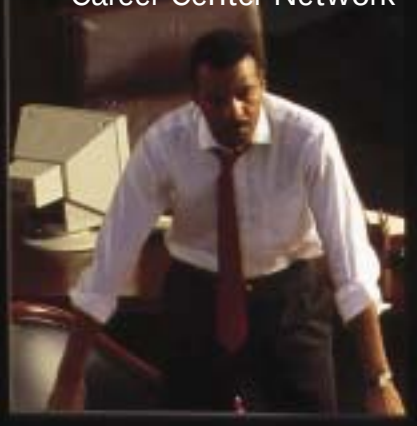
What would you consider to be the two most significant environmental issues affecting Georgia today and/or that are likely to affect Georgia most seriously over the next 10 years?

Even though air quality issues (i.e. nonattainment designations for both ozone and fine particles) are very prominent nationally and in Georgia at the moment, I firmly believe that water and growth management issues are the two most serious issues facing Georgia, both now and in the future. Water quantity and supply issues will intensify, and Total Maximum Daily Loading (TMDL) implementation statewide will pose substantial challenges to both point sources and nonpoint sources alike. Growth pressures in North Georgia and along the state's coastline will bring even more stress upon water, wastewater, and solid waste infrastructure and sensitive ecosystems.

What is your agency's role in addressing these issues?

EPA is the federal agency that is principally responsible for the administration and enforcement of federal environmental laws and regulations. While some federal statutes place responsibilities directly on the states, with default obligations on EPA (e.g. Clean Water Act Section 303), EPA bears the direct responsibility for making federal laws work efficiently and effectively. Many of these laws are delegable to state environmental agencies, and all eight states included in EPA Region 4 now hold substantial delegated authority to administer and enforce federal laws and regulations as the contractual agent for EPA.

While EPA certainly has a role to play in water quantity and supply matters, this role is much narrower than it is in water quality matters (see Clean Water Act Section 101(g)). The principal authority for water resources planning and management, in general, rests with the states. EPA has much more authority over drinking water, wastewater and solid waste disposal systems. EPA's



principal regulatory role with respect to sensitive ecosystems arises under the National Environmental Policy Act (NEPA) and Clean Water Act Section 404, which covers activities impacting wetlands.

What environmental initiative or enforcement case has your agency implemented or concluded during your tenure that you are particularly proud of?

As already mentioned above, EPA has a narrow role in water resources planning and management matters beyond water quality. However, since water quality considerations are a critical factor in the overall water resources equation, I have, from my very first public address upon becoming regional administrator, vigorously stressed the imperative need for the states in Region 4 to strengthen their water resources authorities and operational programs.

Streamflow modeling, on a watershed basis, is critical not only to equitable allocation of available flows, but also to competent TMDL development. Several, but not all, of the eight Region 4 states have water resources laws on the books (to one degree of sophistication or another). Unfortunately, a couple have few statutory and regulatory tools to work with, which poses major challenges regarding such things as maintenance of minimum instream flows, permitting and monitoring of withdrawals, interbasin transfers, and conjunctive use of surface water and groundwater. And, of course, groundwater management is yet another water resource issue of great importance in this region, and must get more attention in the future.

From your experience, what are the most important roles lawyers play in shaping issues affecting Georgia's environment?

As I said to the members of both the Environmental Section of the State Bar of Georgia and ABA / SEER in 2002, lawyers occupy numerous roles in the field of natural resources management and environmental regulation. As elected officials, legislative legal staff, and even lobbyists, they shape public law and policy. As counselors, they provide wide-ranging advice about environmental matters to the regulated community, citizen groups, and non-governmental organizations. As public and private advocates, they represent parties in both permitting and compliance and enforcement actions in the administrative and judicial arenas where issues of law, fact and procedure abound. Lawyers serve in regulatory and natural resources agencies and occupy many capacities in the areas of environmental education, public information, technology development and land use planning. Of course, lawyers also serve as judges and magistrates throughout our federal, state and local judicial systems. GBJ

Jeffrey S. Dehner is the chair-elect of the Environmental Law Section of the State Bar of Georgia and practices environmental law with Hartman, Simons, Spielman & Wood, LLP. He is a graduate of the Emory University School of Law and Miami University (Ohio).

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2004 General Assembly: An Action-Packed Adventure

By Mark Middleton

Like the third installment of an action movie trilogy, the 2004 session did not disappoint those expecting the excitement, political intrigue, and sheer length of the previous two sessions, which also went into the history books as among the most tumultuous legislative sessions in history. And yet, in the midst of the legislative drama, the State Bar obtained passage of several important legislative agenda items originating in the State Bar's Fiduciary Law, Business Law, and Real Property Law sections.

With last year's new leaders now settled into their roles within the executive and legislative branches, it appeared that the 2004 session might be more predictable than the previous two sessions. However, this was not to be as several colossal issues converged to test the limits of the legislative process. First, continually lagging tax revenue collections resulted in another dismal budget cycle, and lawmakers were required to cut additional mil-

Photo by Daniel L. Maguire

lions from the budget. Also, legislators spent hours debating and passing a resolution seeking a constitutional amendment banning gay marriage. The politically charged HOPE scholarship required attention as lawmakers debated and eventually passed a bill designed to address projections showing that lottery revenues are not going to meet continued program growth.

Tort reform initiatives, which produced huge crowds of lawyers, doctors, insurance executives and others to the lobby outside the chamber, demanded numerous procedural maneuvers and several lengthy floor debates. However, in the end, the conference committee could not agree upon a compromise bill. And, of course, nothing compared to the aftershocks produced by the federal court's decision in *Larios v. Cox* on Feb. 10, which eventually resulted in new House and Senate legislative maps, and effectively ended the careers of several members of the House and Senate.

Despite competing with these huge issues for legislative time and focus, the State Bar once again effectively advanced the Board of Governors' legislative proposals, as several State Bar agenda bills were passed and await the governor's signature. The General Assembly passed bills modernizing and improving the guardianship code, the corporate non-profit code, the corporate code relating to the use of electronic transmissions, and the code relating to cancellation of judgments. The State Bar also supported HB 1311, the successful effort of our legislative allies, the Georgia Realtors Association, to prohibit non-lawyers from conducting real estate closings.

Agenda Bills that Passed

The following State Bar agenda bills passed both chambers of the Legislature, and were sent to the governor for final approval:

Guardianship Code Modernization HB 229, authored by House Judiciary Chair Mary Margaret Oliver, D- Decatur, and Rep. Wendell Willard, R- Dunwoody), produced a massive overhaul of Title 29 of the code relating to guardianship practice. The bill reorganized Title 29 by providing distinct chapters for provisions relating to minors, and adults. The chapters also introduces new terminology and separate provisions regarding guardianship of the 'person' and of 'property.' The bill also incorporates many recent legislative changes and judiciary decisions as well. The State Bar is grateful for all who served on the Guardianship Code Revision Committee, including Chairman Bill Linkous and Reporter Mary Radford. Sen. Seth Harp, R-Columbus, handled the bill on the Senate floor, and Rules Chairman Don Balfour, R-Snellville, assured that the bill was placed on the calendar during the final legislative day. The bill becomes effective July 1, 2005, in order to give practitioners and judges a full year to comprehend the changes that have been made.

Nonprofit Corporation Code Revision Senate Bill 555, the Business Law Section's proposal to amend the nonprofit section of the corporate code was necessary to conform the nonprofit code to changes made in the corporate code since 1991. Section Member Randy Johnson provided key committee testimony in the House and Senate on this important measure. The bill, authored by Sen. Randy Hall, R-Augusta, and Sen. Michael Meyer Von Bremen, D-Albany, and han-

dled in the House by Judiciary Chair Mary Margaret Oliver and Rep. Larry Walker, D-Houston helps provide certainty and clarity to nonprofit practitioners advising their clients.

Corporate Code Revision In order to keep Georgia on par with other progressive corporate codes, the Business Law Section also once again proposed several enhancements to the for-profit code. In particular, SB 532 by Sen. Chuck Clay, R-Marietta, and Sen. David Adelman, D-Decatur, allowed for electronic transfers to be used by corporations for many routine corporate functions. The bill also contained several cost saving provisions relating to notice and mailing methods. This continual effort by the Business Law Section to modernize the corporate code provides additional incentives to companies to incorporate under Georgia law. Tom McNeill provided tremendous leadership for the Business Law Section in all matters before the legislators. Thanks to some procedural maneuvering aided by Chairperson Oliver and Sen. Hall, the corporations bill was added to the nonprofit bill in time for final passage of both.

Cancellation of Judgment Liens This initiative by the Real Property Section, and authored by Rep. Barry Fleming, R-Augusta, will assist buyers and sellers in avoiding unnecessary expenses and delays in certain real estate closings. Under current law, holders of satisfied tax liens and satisfied judgment liens are required to file a satisfaction of record with the clerk. This measure provides a deadline of 30 days for the cancellation of a judgment lien and in the absence of a regular cancellation allows the closing attorney to satisfy the lien with a sworn affidavit that the lien has been previously satisfied. Sen. Mary Squires, D-Norcross, and Special Judiciary Chairman Rene Kemp, D-Hinesville, provided the skill and leadership necessary to pass the bill in the Senate.

Bar Section Program

The Bar continues to rely on its Bar Section Legislative Tracking Program, in which Bar section members monitor bills of importance to the Bar during the legislative session. Bar members tracked bills through the Georgia General Assembly Web site, and numerous bills were sent out to the sections for review and comment. Our thanks goes out to all Bar members who provided timely responses to the legislative representatives regarding issues affecting the practice of law. "The participation of the various sections is vital to the success of the State Bar legislative program," said Tom Boller. "Their expertise gives us tremendous credibility as we present the State Bar's views to the Legislature."

Conclusion

Thanks to the efforts of many within the State Bar and with the support of friends from both sides of the aisle in the Legislature, this has been another successful legislative session for the State Bar. The State Bar is grateful to Gov. Sonny Perdue for his support of State Bar initiatives. The State Bar thanks Speaker Terry Coleman, Speaker Pro Tem Dubose Porter, Rules Chairman Calvin Smyre, D-Columbus, and the House Republican leaders Glenn Richardson, R-Sharpsburg, and Jerry Keen, R- St. Simons, for their support as well.

In the Senate, President Pro Tem Eric Johnson, R-Savannah; Lt. Governor Mark Taylor; Majority Leader Bill Stephens, R-Canton; Minority Leader Michael Meyer Von Bremen, D-Albany; and Rules Chairman Don Balfour, R-Snellville, all worked to ensure that the State Bar's bills were fairly debated and passed.

As usual, we also owe special debts of gratitude to old friends like the chairs of the House and Senate Judiciary Committees, Rep. Tom Bordeaux, D-Savannah, Rep. Mary Margaret Oliver and Sen. Charlie Tanksley, and Special Judiciary Committee Chairs, Sen. Rene Kemp, D-Hinesville, and Rep. Curtis Jenkins, D-Forsyth.

In 2004 the State Bar once again passed many important bills affecting the practice of law. With a continued commitment to our bipartisan approach and with the ongoing support of the many participating lawyers, the State Bar looks to build upon this success in the future. GBJ

The State Bar legislative representatives are Tom Boller, Rusty Sewell, Wanda Segars and Mark Middleton. Contact them at (404) 872-2373 for further legislative information, or visit the State Bar's Web site at www.gabar.org.

In a special session compromise bill agreed to by the governor, chief justice and legislative leaders, the Legislature agreed to fund the newly created Georgia Indigent Defense Standards Council. The bill, which increases civil filing fees and fines, was a legislative priority of the State Bar of Georgia.

Last year the Legislature created the new indigent defense system, with local public defender systems to become effective in the 49 Judicial Circuits beginning Jan. 1, 2005. The bill is expected to raise the $22 million dollars needed in 2005, and the sums needed in the years to follow.

This bill passed in an extraordinary session of the General Assembly after the legislative report was submitted for publication. A complete account of this important matter will be forthcoming in a future issue.

"And Justice for All"

2004 State Bar Campaign for the Georgia Legal Services Program, Inc. (GLSP)

Did You know that…

…the Georgia Legal Services Program helps kids in crisis.

Your campaign gift helps low-income families and children find hope for a better life. GLSP provides critical legal assistance to low-income Georgians in 154 counties outside the metro Atlanta area.

The State Bar of Georgia and GLSP are partners in this campaign to achieve "Justice for All." Give because you care! Contribute on your State Bar Dues Notice, or use this coupon to mail your gift today!

YES, I would like to support the State Bar of Georgia Campaign for the Georgia Legal Services Program. I understand my tax–deductible gift will provide legal assistance to low-income Georgians.

Please include me in the following giving circle:

☐ Benefactor's Circle	$2,500 or more	☐ Sustainer's Circle	$ 250 - $ 499
☐ President's Circle	$1,500 - $2,499	☐ Donor's Circle	$ 125 - $ 249
☐ Executive's Circle	$ 750 - $1,499	☐ or, I'd like to be billed on (date): _____	
☐ Leadership Circle	$ 500 - $ 749	for a pledge of $ _____	

Pledge payments are due by December 31. Pledges of $500 or more may be paid in installments with the final installment fulfilling the pledge to be paid by December 31. Gifts of $125 or more will be included in the Honor Role of Contributors in the Georgia Bar Journal.

Donor Information:

NAME: _____

BUSINESS ADDRESS: _____

CITY/STATE/ZIP: _____

Please check one: ☐ Personal Gift ☐ Firm Gift

GLSP is a non-profit law firm recognized as a 501(c) (3) by the IRS.

Please mail your check to: State Bar of Georgia Campaign for Georgia Legal Services • PO Box 999 • Atlanta, GA 30301

Thank you for your generosity!

Keeping Prior Commitments to Money and Special Interests Out of Judicial Races:

A Citizens' Committee For Ethical Judicial Campaigns

By R. William Ide

"The Judges, therefore, should always be (people) of learning and experience in the laws, of exemplary morals, great patience, calmness and attention; their minds should not be distracted with jarring interests; they should not be dependent upon any (person), or body of (people)."

– Thomas Jefferson, *Letter to George Wythe (June 1776)*

Not withstanding Thomas Jefferson's contrary hope, the impact of "jarring interests" on judicial elections in this country has been significant. Some of the most striking examples of this are television commercials suggesting that judges' rulings are affected by contribution records. One such ad, aired in another state, featured miniature robed figures tucked inside a contributor's jacket—with the punch line that a particular special interest group had the judges "in its pocket."

Other examples—including more subtle charges of favoritism, as well as character attacks on particular candidates—abound. With the increasing involvement of Madison Avenue advertising executives and inside-the-beltway consultants in judicial elections, things may only get worse. One by-product of all this, of course, is a message to the public that judges, and the judicial election process, are unsavory and biased.

I became particularly concerned with these issues while serving as president of the American Bar Association in 1993-94, and learned more about the problem (and possible solutions) when I attended a conference on judicial elections sponsored by the National Center for State Courts two years ago. The problem is rooted in the indisputable fact that conducting a campaign for elected office requires funds. In the case of judicial elections, the fund-raising process introduces the possibility that special interest groups—fearful that their victories in the legislature might be negated in court—may attempt to obtain commitments from candidates in exchange for their contributions.

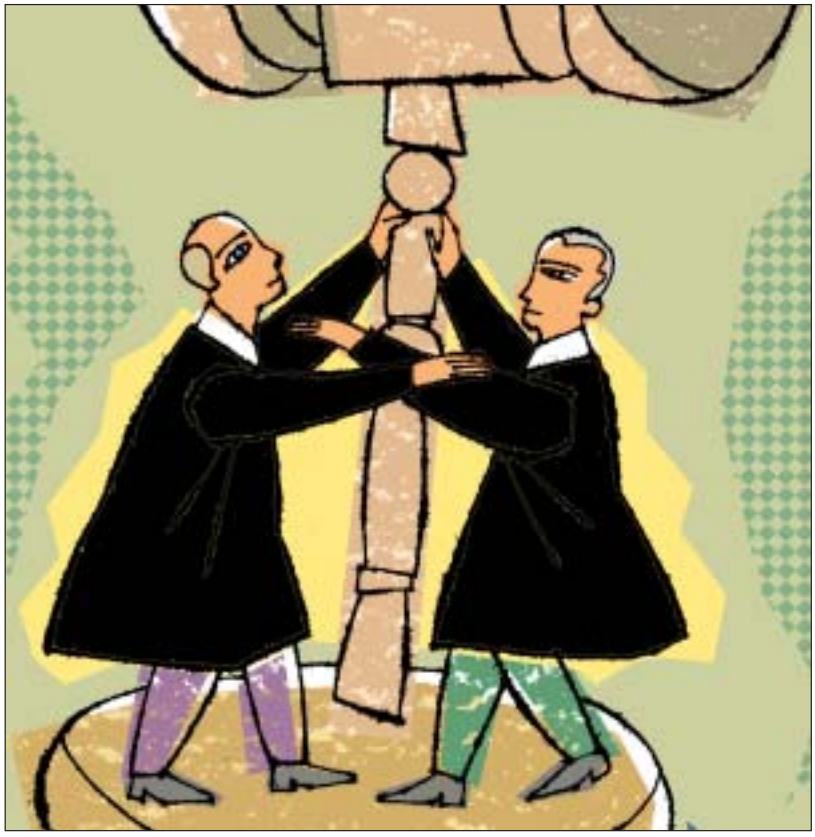
Of course, once that culture is set, justice is for sale. This blurs the lines between the legislative, executive and judicial branches of government, flies in the face of separation of powers, and destroys the concept of impartial justice. Simply put, back door lobbying has no place for front door advocacy in the justice system.

Until the summer of 2002, state courts (or their designated agencies) generally promulgated and enforced rules and standards for judicial elections. In June 2002, however, the landscape changed dramatically with the U.S. Supreme Court's holding in

Republican Party v. White[1] that the state of Minnesota's "announce clause," which prohibited a candidate for judicial office from announcing his or her views on "disputed legal and political issues," violated the First Amendment.[2] A 2002 article by Roy A. Schotland, a professor of law at Georgetown University and a leading commentator on judicial elections, summed up the consequences of the *White* decision: "The decision will make a change in judicial election campaigns that will downgrade the pool of candidates for the bench, reduce the willingness of good judges to seek reelection, add to the cynical view that judges are merely 'another group of politicians,' and thus directly hurt state courts and indirectly hurt all our courts."[3] Schotland also predicted that, although the particular "announce clause" at issue in *White* had been law in only nine states, the Supreme Court's decision would impact all but one of the 39 states with judicial elections—because all of them had canons limiting what candidates could say during judicial elections.[4]

In Georgia, the prediction became reality just a few months after *White* was decided. In *Weaver v. Bonner*[5], the Eleventh Circuit held that the Canon of the Georgia Code of Judicial Conduct prohibiting public communication "which the candidate knows or reasonably should know is false, fraudulent, misleading, deceptive, or which contains a material misrepresentation of fact or law or omits a fact necessary to make the communication considered as a whole not materially misleading or which is likely to create an unjustified expectation about results the candidate can achieve" was unconstitutionally overbroad.[6] The *Weaver* court also struck down the Georgia Canon prohibiting judicial candidates from personally soliciting campaign contributions.[7]

White and *Weaver* profoundly impacted state regulation of judicial elections. This is evidenced by (among other things) the Supreme Court of Georgia's recent decision to adopt recommendations from the Judicial Qualifications Commission relaxing the rules governing judicial elections (and in particular allowing candidates to state their views on controversial issues that could come before the court and to personally solicit campaign contributions). *White* and *Weaver* did not, however, impair private individuals' ability to exer-



cise their own First Amendment rights to speak out and educate the public about judicial elections. A group of about 50 Georgia citizens has formed to do just that.

The Georgia Judicial Election Oversight Committee is an unofficial, nonpartisan committee, including lawyers, retired judges, educators, business executives and other professionals from across Georgia. I am pleased to serve as the committee's chair. Other members include Senior Judge Dorothy Toth Beasley; Dr. Walter D. Broadnax, president of Clark Atlanta University; Felker W. Ward Jr., president of Pinnacle Investment Advisors and Atlanta Rotary; Ruth A. Knox, president of Wesleyan College; David Balser, a partner with McKenna, Long & Aldridge in Atlanta; Evans J. Plowden Jr., former State Bar president and a partner with Watson, Spence, Lowe and Chambless in Albany; Frank J. Belatti, chairman and CEO of AFC Enterprises; and Senior Judge Marion T. Pope Jr. The group is diverse in every respect but one: its members share a concern that candidates for judicial office run on integrity and impartiality, not precommitments to special interests.

The driving principle for the committee is that candidate conduct that does not meet or aspire to the highest ethical standard undermines public trust and confidence in the judiciary and damages the appearance and goal of a fair, impartial, open-minded and independent judiciary. The committee's specific goals include (1) asking candidates to pledge that they will abide by certain ethical standards in conducting their campaigns; (2) providing information to, and inviting dialogue with, candidates regarding the ethical standards governing their campaigns; (3) providing a forum for the resolution of complaints and issues regarding fund raising, campaign conduct, campaign literature, and advertising; and (4) offering information and comment to the press and public about judicial campaign conduct.

The committee's first order of business will be to send each candidate for statewide judicial office a notice explaining the purpose and function of the committee. The committee will ask each candidate to sign a pledge that he or she will abide by specific standards, including that the candidate will not issue or approve false or misleading advertisements about the candidate or an opponent; that the candidate will not announce positions on issues likely to come before the court; and that the candidate will not personally solicit (or personally accept) campaign contributions. If a candidate refuses to sign the pledge, that decision will be reported to the public in a manner the committee deems appropriate.

The committee will also monitor campaigns and provide a forum for settling disputes or complaints regarding fund raising, campaign conduct, and campaign advertising and literature. Complaints filed with the committee initially will be considered by an ad hoc special committee.

After considering the complaint and any response (and, in the discretion of the ad hoc committee, with the participation of the complainant and the candidate about whose campaign the complaint has been filed), the ad hoc committee will make a recommendation as to whether any private or public response is appropriate. The committee will then either take whatever action it deems appropriate (*e.g.*, issue a public statement) or will advise the parties, in writing, of its decision that no action or comment is appropriate.

The committee will also join with other citizens' groups and voluntary bar associations in working to help educate the electorate. In that connection, the committee will provide information to the press and public about distinctions between judicial and other elections and about judicial campaign conduct by candidates and advocacy groups.

The committee hopes and believes that adherence to its proposed standards will increase the public's confidence in the judiciary, and encourages all candidates for judicial office in Georgia to follow the guidelines. For the 2004 elections, however, the committee's oversight will be limited to statewide races, that is, for positions on the court of appeals or the Supreme Court. Any readers who have questions or would like to become involved may contact the committee by e-mail to bide@mckennalong.com. GBJ

Bill Ide, a partner at McKenna Long & Aldridge, focuses his practice on special investigations, corporate governance and crisis management. He is a member of the ABA Task Force on Corporate Responsibility.

Endnotes

1. 536 U.S. 765 (2002).
2. *See id.* at 788.
3. Roy A. Schotland, *Should Judges Be More Like Politicians?*, 39 COURT REV. 8, 8 (Spring 2002).
4. *See id.*
5. 309 F.3d 1312 (11th Cir. 2002).
6. *See id.* at 1315, 1320-21.
7. *See id.*

Spring 2004 Board of Governors Meeting Summary

By C. Tyler Jones

State Bar President William D. Barwick presided over the 195th meeting of the Board of Governors, which took place March 27 at the King and Prince Beach Resort, St. Simons Island, Ga. Following is an abbreviated overview of the meeting.

Casemaker

Following a presentation by Jay Cook and representatives of Casemaker, Joe Shea, Keith Ashmus, Heather Sowald and Denny Ramey, the Board took the following actions concerning the online research service designed to be the primary law library for most Georgia attorneys:

- Approved providing Casemaker as a member benefit; and
- Approved a $9 dues increase to fund Casemaker.

Finance Committee

James B. Durham provided an update on the third floor renovation, which is expected to cost approximately $4.1 million. The Bar has received $2.1 million in grants for the educational facilities of this renovation of which $1 million will be withdrawn if full funding is not obtained in 2004. The building's $9 million cost has already been paid in full and the new parking deck is funded and scheduled to open on July 15.

Photos by C. Tyler Jones

Representatives from the Ohio State Bar Association discuss the benefits of adding Casemaker, an online research service, as a member benefit.

Following that, the Board approved transferring $800,000 from unrestricted operating reserves to the Bar Center budget to fund the completion of the third floor conference center as follows:

$1,100,000 Cy Pres Grant
$1,000,000 Foundation Grant
$1,200,000 Draw on Existing Loan
$ 800,000 Transfer
$4,100,000 Total

Following a discussion on the 2004-05 Bar dues, the Board took the following actions:

- Approved a $9 dues increase for the 2004-05 Bar year, based on dues indexing at 4.5 percent, which, along with the $9

increase for Casemaker, sets the 2004-05 dues level at $208 for active members;

- Approved section dues ranging from $5 to $40;
- Approved assessments for the Bar Facility and Clients' Security Fund for new members; and
- Approved a $20 negative (opt out) check-off for legislation, and a positive (opt in) check-off for Georgia Legal Services with a suggested contribution amount of $150.

Immigration Law Section

The Board also approved the creation of an Immigration Law Section.

YLD Report

Andrew Jones reported on the various activities of the YLD, including the Great Day of Service on May 5, 2004, the Spring YLD meeting April 16-19, 2004, next Midyear Meeting's suit drive, and the creation of a Truancy Intervention Program in Cobb County.

Legislation

Tom Boller provided an update on tort reform issues, indigent defense funding, and other pending legislation in the Georgia General Assembly. Thereafter, the Board recognized Boller for his efforts on behalf of the Bar.

2004 Annual Meeting

Barwick provided an update on the 2004 Annual Meeting, June 17-20, 2004, at the Portofino Bay Hotel in Orlando, Fla.

2004 Judicial Poll – Appellate Courts

Additionally, Barwick announced that the Bar will conduct a judicial poll for contested appellate races.

(Left to right) Bar Treasurer Jay Vincent Cook, Board Member Huey W. Spearman and his wife Brenda, Board Member Thomas G. Sampson and his wife Jacquelyn, and Board Member A. Thomas Stubbs attend Saturday's BOG reception and dinner.

(Above) Margaret Chasteen, Board Member David S. Lipscomb, Past President Robert W. Chasteen Jr., and Thomas R. Burnside Jr. and his wife Dianne attend Friday's reception honoring past Bar presidents.

(Left) Board Member Larry M. Melnick discusses the benefits of making Casemaker a member benefit.

Tom Boller gives a legislative update.

Georgia Legal Services Program

Phyllis Holmen provided a report on the activities of Georgia Legal Services and announced that, thanks to the generosity of Georgia lawyers, GLS raised $350,000 during the 2003-04 campaign drive.

New Business

As the meeting drew to a close, Barwick recognized the following corporate sponsors: LexisNexis, The Georgia Fund, Georgia Lawyers Insurance Company, ABA Members Retirement Program, Keeley & Associates, Thomson West, Brown Reporting, Esquire Deposition Services, Insurance Specialists Inc., Real Property Section, Legalink, Minnesota Lawyers Mutual and SecureImpact.

After opening the floor and addressing some Board member's questions and concerns, Barwick adjourned the meeting at 12 p.m. GBJ

C. Tyler Jones is the director of communications for the State Bar of Georgia.

BOARD OF GOVERNORS APPROVES A NEW MAJOR MEMBER BENEFIT

At the spring 2004 meeting, the Board of Governors approved adding Casemaker, an online research service, as a member benefit. The service is designed to be the primary law library for most Georgia attorneys and should be available by the end of 2004. Attorneys in other states, where the service is offered as a member benefit, have found the system's search engine to be user friendly, powerful and a simple transition from existing legal research services.

Federal Existing Library

- U.S. Supreme Court Cases (1935 to current plus selected important cases from 1790 to 1935)
- Practice Rules for the U.S. Supreme Court
- U.S. Courts of Appeal Cases (2nd and 6th Circuits from 1989 to current, 1st Circuit from 1992 to current, all circuits from 1995 to current)
- Federal Rules of Appellate Procedure
- Circuit Appellate Rules
- District Court Rules
- U.S. Constitution
- U.S. Code
- Federal Rules of Civil Procedure
- Federal Rules of Criminal Procedure
- Federal Rules of Evidence
- Federal Rules of Bankruptcy
- U.S. Code of Federal Regulations

Georgia's Federal Library

- 11th Circuit Court of Appeals Cases (inception in 1981 to current)
- Georgia's Federal District Court Cases (1960 to current)
- Georgia's Federal District Courts' Local Rules

Georgia's State Library

- Supreme Court of Georgia Cases (1939 to current)
- Supreme Court of Georgia Rules
- Court of Appeals of Georgia Cases (1939 to current)
- Court of Appeals of Georgia Rules
- Georgia Constitution
- Georgia Code
- Georgia Attorney General Opinions
- Uniform Superior Court Rules
- Pattern Jury Charges (if permitted)
- Law Reviews (Emory, Georgia, Georgia State, Mercer) (if permitted)
- *Georgia Bar Journal* articles
- ICLE seminar articles (if permitted)
- Georgia Code of Judicial Conduct
- Georgia Federal Bankruptcy Local Court Rules

Other States' Libraries

- All states' Supreme Court Cases (2003 to current)
- State Library of the following Bars: Connecticut, Michigan, Oregon, Idaho, Nebraska, Rhode Island, Indiana, New Hampshire, South Carolina, Maine, North Carolina, Texas, Massachusetts, Ohio and Vermont.

The DeKalb County Courthouse at Decatur

The Grand Old Courthouses of Georgia

By Wilber W. Caldwell

Decatur has not lived all of its life in the shadow of Atlanta. In 1829, Adiel Sherwood's *Gazetteer of Georgia* relates that Decatur had about 40 houses and stores. About 10 years later, in a subsequent edition, he states that the town was much improved. The Georgia Railroad arrived here in 1845 just four years before the publication of George White's *Statistics of Georgia*, in which White describes Decatur as a pleasant little village of about 600 with two schools, two churches, two hotels and "several stores."

Indeed, Decatur was a model town of the upper Piedmont, a modest and comfortable community on the edge of the frontier. Nowhere in any of this is Decatur linked to Atlanta, for in early decades of the 19th century Atlanta was a nameless, virtually uninhabited tract of rolling woods and farmland. This all changed in a historical blink, and by 1860, Sherwood's description of Decatur would include the tell-tail phrase, "since the rapid growth of Atlanta, the town has ceased to improve." By 1880, Decatur's population was only 900. The railroad's power to turn obscure places into cities proved impotent here. This must have been especially disappointing for Decatur, for neighboring Atlanta at the railhead of the newly completed Western and Atlantic Railroad was the New South myth come to life. Despite its proximity

Photo by Wilber W. Caldwell

Built in 1898-1900, James W. Golucke, architect.

to Atlanta, DeKalb County remained primarily a rural place. As late as 1900, the county was eleventh among Georgia's 137 counties in cotton production. This state of affairs would, of course, slowly change as Atlanta grew and as links with Decatur were established.

The first DeKalb County Courthouse was a log structure built around 1824. It was replaced in 1829 by a brick building that burned in 1842. In 1847, a quaint brick courthouse was fashioned vaguely in the Greek mold. This building was demolished in 1898 to make way for James Wingfield Golucke's massive 1900 DeKalb County Courthouse, perhaps the most influential public building of its era in Georgia.

Except for Atlanta architect, Andrew J. Bryan's less influential rather Neo-Georgian 1895 Stewart County Courthouse at Lumpkin and Bryan's 1896 remodeling of the old Muscogee County Courthouse at Columbus, Golucke's creation in Decatur was the first courthouse in the state to voice the passion of the American Neoclassical Revival. The new Classicism had swept the county after the success of the "Florentine Renaissance" architecture of Chicago's "White City" at the 1893 Columbian Exposition.

A careful combination of modern American Neoclassical trends and the familiar Classicism of the Old South, Golucke's granite centerpiece in DeKalb was Georgia's most imitated public building in the first decade of the new century. Less than a year after its completion, Golucke designed a brick court building in Hart County based on a nearly identical plan, and only a year later he followed that structure with his 1903 Meriwether County Courthouse at Greenville. By this time, county officials were flocking to Decatur to view Golucke's work, and newspaper reports in Eatonton and in Newnan confirm that Golucke's commissions for courthouses in those towns were awarded on the strength of the architect's work in DeKalb County. James Golucke would expand on his ideas in Putnam and Coweta Counties, adding more Beaux-Arts ornament and more expressive details. In all, he would design seven court buildings in Georgia modeled after the general form found in Decatur. In addition, Columbia's Frank Milburn, Eastman's Ed C. Hosford, Macon's Alexander Blair III, Columbus' T. F. Lockwood, Augusta's Lewis Goodrich and Atlanta's Morgan and Dillon would all create court buildings in Georgia following Golucke's general "Decatur" plan.

Part of the success of the design turned on four more or less equal portico entrances, one at each of the four points of the compass. Elsewhere in America, the new Classicism reflected a grasping commercialism and the aggressive nation's growing industrial might. To temper these uniquely un-Southern images, Golucke was careful to retain, at the center of each elevation, a bold Greek temple form, a grand portico topped with a Classical pediment supported by imposing columns. Golucke thus balanced powerful duel symbols that spoke to a deeply troubled region teetering on the razor's edge between the Old South and the New. Here, despite its granite monumentality, was a fundamentally Georgian Classical form, not much different from courthouse designs that appeared in simple builder's guides of the early years of the nineteenth century.

Sadly the original building burned in 1916 and was rebuilt along similar lines, but without Golucke's great lantern. The addition of wings in the 1930's erased two of the grand entranceways, but the divided mind of the American South at the turn of the century still radiates from the square in Decatur.

The absence of other granite or marble courthouses in Georgia before 1910 is puzzlement. Many early courthouses had been wooden, but after 1884 there were only five wooden courthouses built in the state. Even counties that boasted huge quarries, like Elbert and Pickens, built brick courthouses. Early in the twentieth century, a few concrete court buildings would rise, but with these few exceptions, along with the limestone walls of the 1907 Appling County Courthouse at Baxley, all of Georgia's courthouses constructed between 1883 and 1910 were brick. GBJ

Excerpted by **Wilber W. Caldwell**, author of *The Courthouse and the Depot, The Architecture of Hope in an Age of Despair, A Narrative Guide to Railroad Expansion and its Impact on Public Architecture in Georgia*, 1833-1910, (Macon: Mercer University Press, 2001). Hardback, 624 pages, 300 photos, 33 maps, 3 Appendices, complete Index. This book is available for $50 from book sellers or for $40 from the Mercer University Press at www.mupress.org or call the Mercer Press at (800) 342-0841 inside Georgia or (800) 637-2378.

KUDOS

Juvenile Court **Judge Steven C. Teske** of Jonesboro recently addressed the **Third International Multisystemic Therapy Conference** in Charleston, S.C. Teske, who heads the Clayton County Fast Start initiative to reduce youth days spent in detention and out-of-home placements, highlighted the program's successes before an audience of more than 300 attendees. Multisystemic therapy is a community-based high-intensity treatment model that focuses on helping court-involved youth by strengthening their families and increasing their ties to positive elements in their environment.

Thomas, Kayden, Horstemeyer & Risley announced that partner **Todd Deveau** has been selected as a **Georgia Super Lawyer** for 2004 by *Atlanta* Magazine. Selections for this annual listing are based on a survey by peers and extensive background research.

The **National Republican Congressional Committee** announced that **Richard W. Wolfe** has been appointed to serve on the committee's **Business Advisory Council**. Wolfe will serve as honorary chairman from Georgia. Honorary state chairmen are recognized for their business and professional success, the leadership they are already providing in their communities, and for their willingness to provide leadership as part of the BAC process. Wolfe has 30 years experience as a health care professional and owner of Subacute Services, Inc. He is a former director of the Georgia Health Care Association and a member of the American Bar Association.

The **American Cancer Society** announced that **Kilpatrick Stockton LLP** has raised over $325,000 to establish the **David M. Zacks Patient Resource Navigation Center**. Zacks, a partner with Kilpatrick Stockton's litigation practice group, was honored at a recent board of directors meeting of the American Cancer Society's South Atlantic division for his lifelong commitment in the fight against cancer. The Center will serve cancer patients in Georgia; South Carolina; North Carolina; West Virginia; Virginia; Washington D.C.; Maryland and Delaware. Zacks has been an American Cancer Society volunteer since 1968; he has served in numerous leadership roles, including his most recent position as chair of the national board of the American Cancer Society.

Griffin Bell was recently honored with the **Atlanta Bar Association's** highest accolade, the **Leadership Award**. He was recognized in a letter from Jimmy Carter and a videotaped tribute from George H. W. Bush. Bell is a former federal appeals court judge; at 84, he still maintains his office at **King & Spalding**.

Miles Alexander of **Kilpatrick Stockton** was named one of Georgia's **Top Ten Super Lawyers** in a list published in the March issue of *Atlanta* Magazine. Twelve other KS attorneys joined Miles in the Top 50 Super Lawyers, and nine KS attorneys were named to the **Top 50 Female Georgia Super Lawyers** list. The Georgia Super Lawyers supplement is a comprehensive listing of outstanding lawyers in more than 50 areas of practice. All the lawyers were chosen by their peers through surveys and research done by Law & Politics media.

(Left to right) Al Adams of Holland & Knight, a GJP board member; Jeff Lewis, Holland & Knight's executive partner for Atlanta; Angie Marshall; Jack Dalton, a partner with Troutman Sanders and GJP board chair; and Doug Ammar, executive director of the Georgia Justice Project.

Angie Marshall, widow of **Justice Thomas O. Marshall**, donated $5,000 to the **Georgia Justice Project** because her late husband had been a strong supporter of the project's work. Attorneys at Justice Marshall's law firm, **Holland & Knight**, matched the donation on a challenge from the project's board, bringing the total gift to $10,000. Georgia Justice Project then named an office at its Edgewood Avenue headquarters in honor of the late chief justice, and the plaque and office were unveiled by Executive Director Doug Ammar and Marshall in a ceremony attended by about 30 Atlanta attorneys, staff and supporters of GJP.

The Pro Bono Committee of the **American Bar Association** Section of Business Law presented the **National Public Service Award** to **Sutherland Asbill & Brennan LLP** at the section's spring meeting luncheon in Seattle. The award is presented annually to individuals, firms or corporate legal departments that have demonstrated a commitment to providing free legal services to the poor in a business context. Sutherland Asbill & Brennan LLP has a policy of a minimum goal of an average of 50 hours per attorney per year to be spent on pro bono work.

Kilpatrick Stockton LLP announced their new **Security Deposit Project** in conjunction with BellSouth, Atlanta Legal Aid and the Atlanta Volunteer Lawyers Foundation. In this program, lawyers will represent low-income tenants seeking the return of deposits unlawfully withheld by landlords. Any amount awarded in the form of attor-

ney's fees in these cases will be donated back to Atlanta Legal Aid and the AVLF. In 2003, Kilpatrick Stockton provided over 24,000 hours of pro bono representation to low income individuals and non-profit organizations at a value of $5.7 million.

Shelby R. Grubbs was recognized by his firm, **Miller & Martin PLLC**, for his work as general editor of *International Civil Procedure*, a text recently published by Kluwer Law. The book, which compares civil procedure across 32 countries and the European Union, will familiarize lawyers with principal procedural concepts governing proceedings in covered jurisdictions.


Barnes


Taylor


Karesh

The **Atlanta Father's Day Council** will honor three prominent Atlanta attorneys for their exemplary commitment to family, citizenship, charity and responsibility. **Hon. Roy E. Barnes** of **The Barnes Law Group, LLC**, and former governor of Georgia; **Bernard Taylor**, a partner with **Alston & Bird LLP**; and **Sanford R. Karesh** of **Seacrest, Karesh, Tate & Bicknese, LLP,** will each be honored as **"Father Of The Year."** An awards dinner presentation is planned for June 17, at the Fox Theatre in Atlanta, coinciding with the Fathers' Day holiday. Proceeds from this event will benefit the American Diabetes Association's education, advocacy and research programs.

Amy A. Perry of Pleat & Perry, P.A., in Destin, Fla., recently completed requirements for certification as a **Supreme Court Certified Mediator** for Florida. She will serve as a mediator in a variety of county and circuit court litigation matters throughout the Panhandle counties.

The **American Society for the Prevention of Cruelty to Animals** (ASPCA) recently announced the winner of the 2003 ASPCA/Chase Pet Protectors Award. The contest was designed with the goal of learning more about progressive and innovative techniques that animal welfare organizations are using to protect our nation's pets against animal cruelty and neglect. Over 120 entries were submitted, and the $10,000 grand prize went to **Georgia Legal Professionals for Animals**, a volunteer group based in Atlanta and comprised of legal professionals who utilize a number of methods to fight animal cruelty in Georgia. By offering pro bono legal services for animals and their guardians, creating a manual entitled "How to Prosecute Animal Cruelty From Start to Finish" and presenting its content to animal control officers across Georgia. GLPA works tirelessly to promote increased awareness of the humane treatment of animals. Their goal is to reach greater numbers of law enforcement officials, veterinarians, court officers and attorneys to help catch and prosecute as many animal abuse offenders as possible.

Powell, Goldstein, Frazer & Murphy LLP announced that seven of the firm's practices and six attorneys are ranked in the Georgia listing in the **2004-05 Chambers USA Guide to America's Leading Business Lawyers**. The six attorneys recognized include **John T. Marshall**, who was honored twice; he shared a second place ranking in general commercial litigation and third place in antitrust litigation. **E. Penn Nicholson** shared third place in banking and finance. **Jay J. Levin** shared third place in the real estate listing; **John R. Parks** shared third place with Levin in the real estate listing. **Rick Miller** shared fourth place in the corporate/M&A listing. **Frank A. Crisafi** shared fourth place ranking in tax.

ON THE MOVE

In Albany

David W. Orlowski has joined the firm of **Langley & Lee, LLC**. His practice includes corporate and real estate transactions and municipal and health care law. Orlowski obtained his bachelor's degree from Wake Forest University and his law degree from the University of Georgia. The office is located at 323 Pine Ave., Suite 300, Albany, GA 31701; (229) 431-3036; Fax (229) 431-2249.

In Atlanta

Cohen, Cooper & Estep named **Steve Mudder** a partner and changed the name of the firm to **Cohen, Cooper, Estep & Mudder**. Mudder specializes in corporate law, sports and entertainment law and estate planning; he joined the firm in 2002. The office is located at 3350 Riverwood Parkway, Suite 2220, Atlanta, GA 30339; (404) 814-0000; Fax (404) 816-8900.

Troutman Sanders LLP announced that **Marlon F. Starr, David W. Ghegan** and **Patrick W. Macken** joined the firm's corporate and securities practice group. All three attorneys came from Smith, Gambrell & Russell, LLP. Starr, who joined the firm as a partner, brings 15 years of securities law experience; his practice includes representing

issuers and investment banking firms in securities and corporate finance transactions. Ghegan has significant experience with securities, mergers and acquisitions as well as general corporate and banking law. Macken is an associate practicing securities regulation, general corporate and banking law. Troutman Sanders' Atlanta office is located at 600 Peachtree St. NE, Suite 5200, Atlanta, GA 30308-2216; (404) 885-3000; Fax (404) 885-3900.

Reta J. Peery has been named vice president-legal and deputy general counsel at **The Weather Channel, Inc.** She previously held the same positions with Turner Entertainment Group, Inc. Before joining Turner, Peery was an associate with Alston & Bird in Atlanta, and she was a law clerk for the Hon. Duross Fitzpatrick. Peery is also a member of the American Academy of Television Arts and Sciences. Her office is located at 300 Interstate North Parkway, Atlanta, GA 30339; (770) 226-2535; Fax (770) 226-2632.

Merchant & Gould announced that **Christopher Leonard**, managing partner of the firm's Atlanta office, accepted an expanded leadership role in the area of software, telecommunications, electronics and computer law. He will lead the national initiative to grow the practice into new industries as the scope of intellectual property law expands. **Leonard Hope** will assume the managing partner responsibilities. Leonard's practice focuses on matters relating to software, e-commerce, telecommunications and traditional electrical and mechanical technologies. He has extensive litigation experience in all areas of intellectual property law, including patent, trademark, unfair competition and copyright. Hope's practice focuses on electrical, computer, and software technologies. His work includes counseling clients on patent, copyrights, and trademark matters, litigation, licensing, and due diligence. Merchant & Gould's Atlanta office is located at 133 Peachtree St. NE, Suite 4900, Atlanta, GA 30303; (404) 954-5100; Fax (404) 954-5099.

The CDC Foundation named **Laura J. Lester** associate vice president for programs. She will serve as the chief operating officer for the program department. Lester's responsibilities will include developing policies and procedures for the smooth implementation of programs funded by donors, as well as guiding the internal operations of the program department. The Foundation is located at 50 Hurt Plaza, Suite 765, Atlanta, GA 30303; (404) 653-0790; Fax (404) 653-0330.

Gov. Sonny Perdue recently appointed **Jeff Kuester** to the **Georgia Technology Authority**. Kuester is a founding partner in the firm of **Thomas, Kayden, Horstemeyer & Risley**. He is also an adjunct professor of intellectual property law at Georgia State University College of Law, and he serves on the advisory board for the Bureau of National Affairs' Electronic Commerce and Law Report. Kuester is also the creator of Kuester Law, a technology law resource. The Georgia Technology Authority is located at 100 Peachtree St., Suite 2300, Atlanta, GA 30303-3404; (404) 463-2300.

Mitchell A. Katz was appointed to the Georgia chapter of the **American Chemical Society** as a member at large. Katz is a shareholder at **Needle & Rosenberg**; he manages the firm's chemical patent practice. In his two-year position with ACS, he will serve as the direct liaison between the ACS board and its 1,000-plus Georgia members. ACS is a self-governing membership organization that provides a broad range of opportunities for peers in all fields of chemistry. Katz has worked in the chemical industry for both E.I. DuPont De Nemours & Co. Inc. and The Dow Chemical Company. Needle & Rosenberg's Atlanta office is located at 999 Peachtree St., Suite 1000, Atlanta, GA 30309-3915; (678) 420-9300; Fax (678) 420-9301.

Lisa Harlander Lemke was recently named **recruiting director** of the Atlanta office of **Counsel On Call**. She brings over four years of labor and employment legal experience to the company. Lemke previously practiced with Troutman Sanders LLP, as well as the firm of Jackson, Lewis, Schnitzler & Krupman. Counsel On Call's Atlanta office is located at 1230 Peachtree St. NE, Promenade II, Suite 1800, Atlanta, GA 30309; (404) 942-3525; Fax (404) 942-3780.

Bodker, Ramsey & Andrews announced the addition of existing shareholders **Harry Winograd** and **Robert Wildstein** to the firm name to become **Bodker, Ramsey, Andrews, Winograd & Wildstein, P.C.** In addition to the name change, the firm launched a new logo to embody its focus on quality, client service and balance promoted within the firm. The office is located at 1800 Peachtree St., Suite 615, Atlanta, GA 30309-2507; (404) 351-1615; Fax (404) 352-1285.

Richard A. Gordon, P.C., announced that **Cammi R. Jones** has become a partner in the firm, which will continue its general and trial practice and representation of corporate and other business entities as **Gordon & Jones, LLP**. The office is located at 400 Interstate North Parkway, Suite 890, Atlanta, GA 30339; (770) 952-2900; Fax (770) 952-2901.


Golden


Hollis


Zacks

Hunton & Williams LLP announced the election of 12 new partners, including **Peter G. Golden**, **Charles F. Hollis III** and **Leslie B. Zacks** in the Atlanta office. Golden is a member of the labor & employment law team; his practice focuses on labor and employment related matters, including counseling clients in all aspects of the employment relationship as well as the litigation of claims under various federal statutes and state laws. Hollis is a member of the global capital markets and mergers and acquisitions team. His practice focuses on a wide range of issues facing technology users and developers, and his capital markets practice focuses on public and private securities offerings, mergers and acquisitions and corporate governance. Zacks is a member of the litigation, intellectual property and antitrust team; his practice focuses on intellectual property litigation with an emphasis on patent and trade secrets litigation. Hunton & Williams' Atlanta office is located at Bank of America Plaza, Suite 4100, 600 Peachtree St. NE, Atlanta, GA 30308-2216; (404) 888-4000; Fax (404) 888-4190.

In Columbus

Hatcher, Stubbs, Land, Hollis & Rothschild, LLP, announced that **Dustin T. Brown** has become an associate of the firm. The office is located at 233 12th St., Suite 500 Corporate Center, Columbus, GA 31901; (706) 324-0201; Fax (706) 322-7747.

In Marietta

Maziar Mazloom has left the Cobb County District Attorney's Office and opened his own firm, **Maziar Mazloom, L.L.C.**, specializing in criminal defense, immigration and personal injury. The office is located at 244 Roswell St., Suite 100, Marietta, GA 30060; (770) 590-9837; Fax (770) 590-9839.

In New York, N.Y.

Ford & Harrison recently opened a new office in New York City to meet growing client demand for the firm's services there. The office is located at 100 Park Ave., Suite 2500, New York, NY 10017; (212) 453-5900; Fax (212) 453-5959.

Fensterstock & Partners announced that **Robert A. Enholm** has become of counsel to the firm. He will provide independent representation to officers and directors of corporations in meeting their responsibilities and avoiding liability. Enholm was previously a partner at Troutman Sanders, and he has served as general counsel to two Atlanta companies, Crown Crafts, Inc. and Melita International Corporation. The office is located at 30 Wall St., New York, NY 10005; (212) 785-4100; Fax (212) 785-4040.

In Greenville, S.C.

Jackson Lewis LLP relocated its Greenville, S.C., office. The new office is located at One Liberty Square, 55 Beattie Place, Suite 800, Greenville, SC 29601; (864) 232-7000; Fax (864) 235-1381.

In Chattanooga, Tenn.

Schumacher Witt Gaither & Whitaker, P.C., has consolidated its downtown Chattanooga offices. The firm maintains a second office at the CBL Center, 2030 Hamilton Place Blvd., Suite 210, Chattanooga, TN, and their headquarters are located at 1100 SunTrust Building, 736 Market St., Chattanooga, TN 37402; (423) 265-8881; Fax (423) 266-4138.

Diversity CLE luncheon

The State Bar's Diversity Program recently hosted a CLE conference and luncheon in Atlanta. At the conference, a discussion between the attendees and panelists examined the issue of diversity from the classroom to the boardroom. The panelists were Hon. Marvin S. Arrington Sr., Charlie Lester, Jim Hatcher, Jennifer Schumacher, Gordon Alphonso and Joia Johnson. At the luncheon, keynote speaker Peter Bye, former corporate diversity director of AT&T, addressed those in attendance on how diversity and inclusion are essential contributors to continued business success. In addition, Arrington and Lester were recognized for their efforts as co-founders of the Georgia Diversity Program.

Panelists from the State Bar's Diversity Program Luncheon.

Accepting Referral Fees From Other Lawyers?

By Paula Frederick

"This is great!" your buddy Judi yells from her office across the hall. "I sent Mindy Stanton some business—you know, when my neighbor Pam was in that car accident. Mindy just called to say she's taking the case. She says she'll thank me for the referral by giving me 10 percent of whatever she makes off Pam's case!"

"She even said she'd pay for future referrals," Judi adds. "If I can send her a couple of cases a month, I'll be able to afford that Mercedes Benz CL500 by the end of the year."

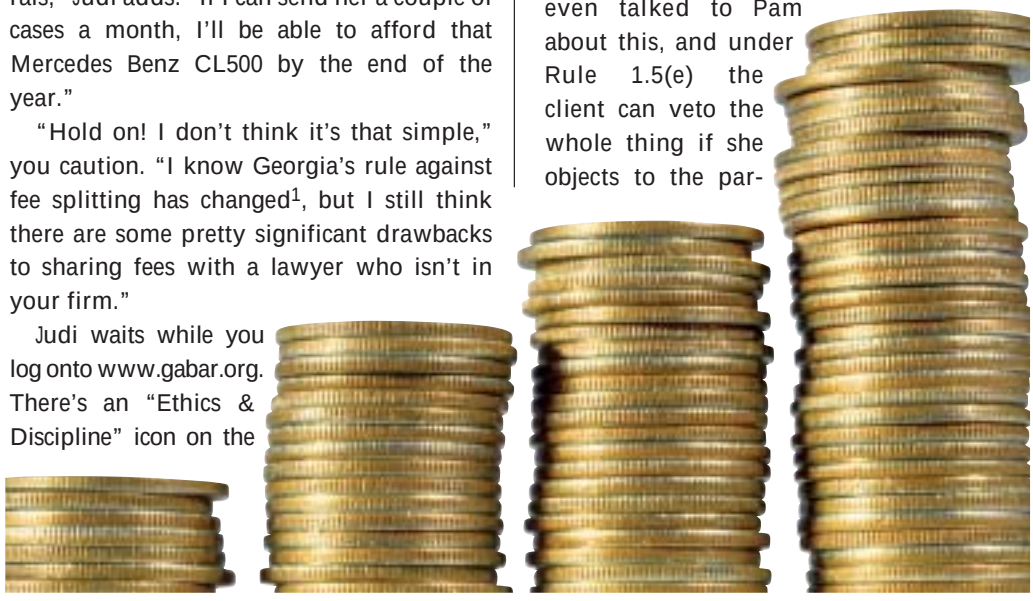
"Hold on! I don't think it's that simple," you caution. "I know Georgia's rule against fee splitting has changed[1], but I still think there are some pretty significant drawbacks to sharing fees with a lawyer who isn't in your firm."

Judi waits while you log onto www.gabar.org. There's an "Ethics & Discipline" icon on the home page from which you go straight to the Ethics and Discipline Rules.

"It's right here in Rule 1.5—'Fees'" you say[2]. "Part (e) does allow you to take a portion of the fee from Mindy, but you have to jump through some hoops first. Looks like you have to have a written agreement with the client stating that you are jointly liable for the representation."

Judi's excitement wanes. "Oh no! That means that if Mindy screws up I'm as liable as she is. I wonder if she has malpractice insurance?"

"That's just the first question you need to ask her," you advise. "I'll bet she hasn't even talked to Pam about this, and under Rule 1.5(e) the client can veto the whole thing if she objects to the par-



ticipation of the lawyers involved."

"You're right," Judi moans. "And I don't even know what amount she's charging, so I can't tell whether the total fee is reasonable. Guess I need to have a long talk with Mindy."

The potential pitfalls of accepting referral fees from other lawyers may outweigh the benefits. If she is prudent, Judi will certainly conduct a due diligence inquiry when referring business to a lawyer she doesn't know well.

Call the Ethics Hotline at (404) 527-8720 with all of your ethics questions. GBJ

Paula Frederick is the deputy general counsel of the State Bar of Georgia.

Endnotes

1. Georgia's old disciplinary standards prohibited lawyers in different firms from sharing fees unless the fee split was in proportion to the work performed and responsibility assumed by each lawyer. Rules and Regulations for the Organization and Government of the State Bar of Georgia, Standard 20, Bar Rule 4-102 (subsequently amended).
2. Rule 1.5(e) went into effect January 1, 2001 when Georgia adopted rules based upon the American Bar Association Model Rules of Professional Conduct. The rule provides:
   (e) A division of a fee between lawyers who are not in the same firm may be made only if:
   (1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;
   (2) the client is advised of the share that each lawyer is to receive and does not object to the participation of all the lawyers involved; and
   (3) the total fee is reasonable.

Clarke Central High School Wins '04 State Title

The Clarke Central Mock Trial team from Athens is the 2004 Georgia State Champion. The two finalists in the state competition were Clarke Central and Jonesboro High School. The four semi-finalists were Clarke Central, Jonesboro, Grady and Lee County High Schools.

Special thanks to those who donated to the mock trial program during the 2004 season, including:

Georgia Bar Foundation
Council of State Court Judges
Young Lawyers Division
Georgia Civil Justice Foundation
Criminal Law Section
General Practice and Trial Law Section
Bankruptcy Law Section

A full list of donors will be published in our 2004 Annual Report, Fall, 2004.

JOIN THE MOCK TRIAL COMMITTEE

Visit our Web site, www.gabar.org/mocktrial.asp, or contact the mock trial office for a registration form (404) 527-8779 or mocktrial@gabar.org.

GEORGIA MOCK TRIAL COMPETITION

Make an impact in your community!

Discipline Notices

(Feb. 12, 2004 through April 9, 2004)

By Connie P. Henry

DISBARMENTS/VOLUNTARY SURRENDER

Joyce Marie Griggs

Savannah, Ga.

Joyce Marie Griggs (State Bar No. 312109) has been disbarred from the practice of law in Georgia by Supreme Court order dated Feb. 16, 2004. Griggs was barred from practicing in the U.S. District Court for the Southern District of Georgia on May 9, 2001. Griggs made false representations to the federal district court about her actions as counsel, about her filing on behalf of her clients in various cases, abandoned her clients, and made unwarranted or vexatious claims or defenses.

Bobby Glenn Adkins

Marietta, Ga.

Bobby Glenn Adkins (State Bar No. 005321) has been disbarred from the practice of law in Georgia by Supreme Court order dated March 1, 2004. In one case Adkins sent his clients threatening letters after they disputed the amount of his attorney fees, stating he would sue them and seek to foreclose on their home. After the couple's son filed a grievance with the Bar, Adkins continued to send threatening letters and filed a lawsuit against the son for defamation. Adkins sent another invoice to the clients for $370 for his time in responding to the grievance and in drafting the lawsuit against the son.

In another case a client fired Adkins, and Adkins filed a lien against the client for $1,500 for unpaid legal services. An earlier statement showed a balance due of only $532.50 and Adkins did not perform any work for the client after that invoice. The client paid Adkins $712.50 to cancel the lien. After the client filed a grievance, Adkins invoiced the client for $600 for his time in responding to the grievance and in filing the attorneys' lien.

In a third case a client terminated Adkins and Adkins refused to refund any of the $1,000 he had been paid. The client filed a grievance and then Adkins sent the client a bill for $555 although he had not performed any additional services. Adkins also filed an attorneys' lien for $2,500 against the client for unpaid fees and a lawsuit seeking damages in excess of $2,500. Adkins later invoiced the client for $655 for his time in responding to the grievance and for drafting and filing the lawsuit. The client paid another attorney $1,500 to get the lien removed.

In aggravation of discipline, the Court noted Adkins' pattern of misconduct, the multiple offenses involved, his deceit, and refusal to acknowledge the wrongful nature of the conduct.

SUSPENSIONS

Harold Michael Harvey

Atlanta, Ga.

Harold Michael Harvey (State Bar No. 335425) has been suspended from the practice of law in Georgia for two additional years by Supreme Court order dated Feb. 16, 2004. Harvey was suspended on Feb. 21, 2002, for a period of two years. While under suspension, Harvey continued to practice law. The Court found Harvey to be in contempt of Court and suspended him for an additional two years, for a total of four consecutive years.

John H. Armwood

Marietta, Ga.

John H. Armwood (State Bar No. 022545) has been suspended from the practice of law in Georgia for one year by Supreme Court

order dated Feb. 16, 2004. Armwood was hired to represent one company against another company. He was paid $750 but never filed a lawsuit on behalf of his client. Armwood subsequently accepted employment in a law firm after which he had no control over the legal matters on which he worked. He never advised the client and failed to insure that someone was handling the case. In aggravation of discipline, the Court found that Armwood has prior disciplinary action, has shown a pattern of misconduct and has committed multiple offenses.

Christine M. Stadler
Savannah, Ga.

Christine M. Stadler (State Bar No. 673978) has been suspended from the practice of law in Georgia for three months by Supreme Court order dated Feb. 16, 2004. Stadler filed pleadings on a client's behalf claiming the client had insufficient assets to post a supersedeas bond. Stadler was aware that at the time her client was claiming indigence in that case, he was making efforts to purchase residential property priced between $1.6 and $2.5 million.

INTERIM SUSPENSIONS

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since Feb. 12, 2004, five lawyers have been suspended for violating this rule and four have been reinstated. GBJ

Connie P. Henry is the clerk of the State Disciplinary Board.

New LPM Library Resources

By Natalie R. Thornwell

The Law Practice Management Program's Resource Library is one of the most popular member services. The checkout library consists of over 700 items in various mediums that can be checked out to law students, lawyers and their staff. The checkout policy is two items at a time and the checkout period is two weeks. If mailed, patrons are invoiced for the cost of shipping. Otherwise, materials are available at the Bar Center during normal operating hours for checkout.

Some of the latest acquisitions in the library are:

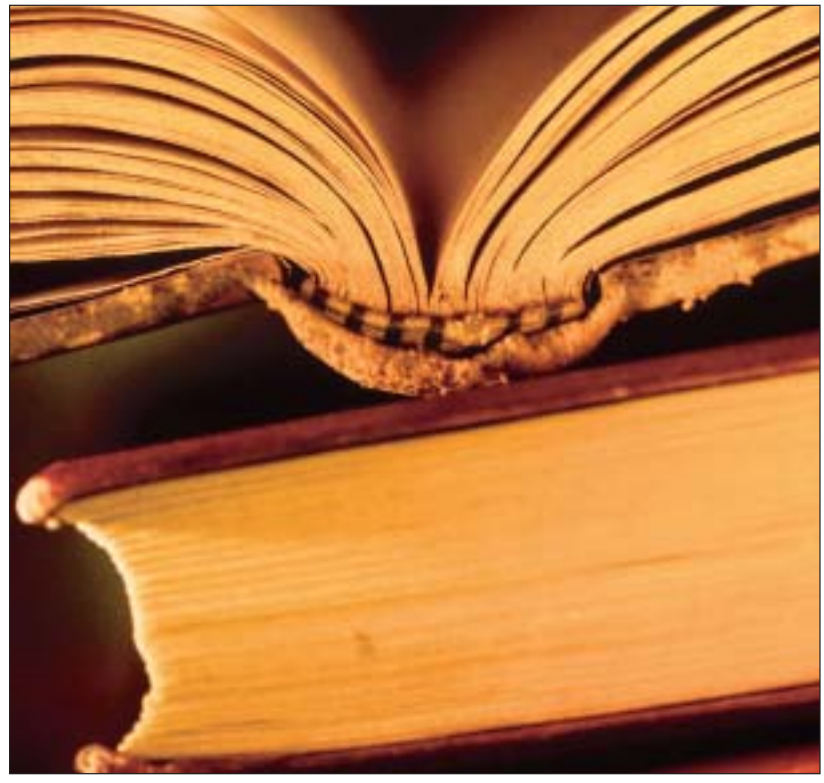
- *Employment Law Answer Book, 5th Edition* (An updated comprehensive question and answer guide to the latest developments in employment law and related legislation and judicial issues to help professionals identify and resolve their employment problems.)
- *Employment Law Answer Book, 2004 Cumulative Summary* (As relates to the 5th Edition above.)
- *Lawyer's Guide to Extranets – Breaking Down Walls, Building Client Connections* (This is not a technical "how-to" manual; rather, a focus on issues that face law firms and their clients in making well-informed decisions about whether to create or join an extranet.)
- *Lawyer's Guide to Fact Finding on the Internet, The 2nd Edition* (Written to help you save time and money, and avoid frustration when researching on the Internet.)
- *Lawyer's Guide to Marketing Your Practice, The (with CD), 2nd Edition* (A MUST for practicing attorneys and busy law firm managers who are interested in revitalizing the timeless marketing concept of "learning what clients want and delivering it.")
- *Lawyer's Guide to Palm Powered Handhelds, The* (Everybody is using them; should you get one?)
- *Lawyer's Guide to Retirement and Lifetime Planning* (Estate and lifetime planning strategies and testamentary planning for clients.)
- *Letters for Litigators* (Essential communications for opposing counsel, witnesses, clients and others.)
- *Mediation, A Path Back for the Lost Lawyer* (Learn why the art and technique of mediation and alternate dispute resolution skills are becoming more and more important to the modern attorney.)
- *Model Witness Examinations, 2nd Edition* (How to offer testimony on direct examination, how to cross-examine and impeach various types of witnesses, and how to use discovery in the examination of witnesses.)
- *Paralegals, Profitability, and the Future of Your Law Practice* (Using qualified paralegals helps lawyers to provide better service and delivery, and to increase profits.)
- *Results-Oriented Financial Management, 2nd Edition* (Learn how to use advances in tech-

nology to better utilize your resources and improve profitability.)

- *Winning Argument, The* (Learn about the fundamental tools of advocacy, mediation and the use of goal-directed argument in the courtroom.)
- *Women Rainmakers' Best Marketing Tips, 2nd Edition* (The very best ideas for rainmaking – for men or women.)

To check out materials, go to the Law Practice Management Program's webpage at www.gabar.org/lpm.asp or contact the program's administrative assistant, Pam Myers at (404) 527-8772 or pam@gabar.org. GBJ

Natalie R. Thornwell is the director of the Law Practice Management Program of the State Bar of Georgia.



Tifton Satellite Office Stays Involved in the Community

By Bonne Cella

Rotary International Program

The State Bar of Georgia's satellite office arranged for Rotary Club visitors from Chile to meet with their counterparts. The Rotary International program is designed to foster friendships and professional development. Tifton Judicial Circuit attorneys Bob Richbourg, Fred W. Rigdon and Lisa Gibbs explained their area of law practice with attorney Christian Prado and teacher Paola Jara. Many similarities in the practice of law in the United States and Chile were noted and new ideas were exchanged.

Career Day

Sherry Gatewood, an employee of the State Bar of Georgia satellite office in Tifton, assisted with Career Day at Berrien County High School by setting up a booth with law-related career pamphlets and materials. Attorney William Waugh Turner III, of Nashville, Ga., was on hand to answer questions from the students.

District Attorney Paul Bowden of the Tifton Judicial Circuit discusses the issue of child abuse at the Tifton courthouse.

Child Abuse Awareness Month

District Attorney Paul Bowden of the Tifton Judicial Circuit addressed citizens who gathered at the courthouse for *Child Abuse Prevention Awareness Month*. Pinwheels dotted the lawn of the courthouse representing the number of reported cases of abuse and neglect for the year.

South Georgia BOG Meeting

Board of Governors members from the South Georgia area were asked to meet at the satellite office. Rob Reinhardt, president-elect of the State Bar of Georgia, told those in attendance that he wanted their ideas. "What I want to focus on is improving the State Bar's function as a trade organization," he said. "I am looking for ways that we can better utilize our formidable resources to provide better support for the practicing lawyer in the trenches. Lawyers with better practice support deliver better legal services to the consuming public."

State Bar Speakers Bureau

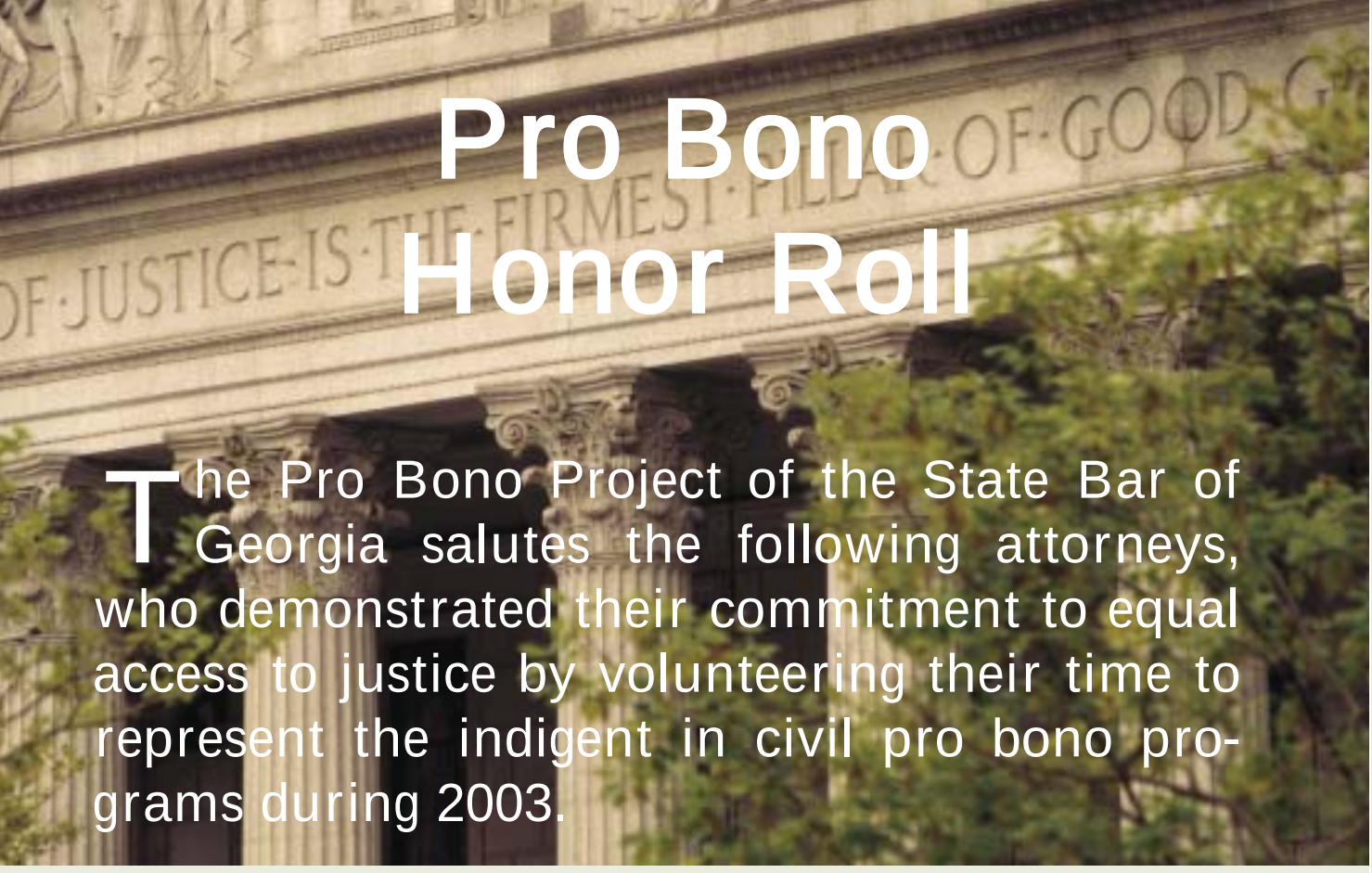
The State Bar of Georgia's Speakers Bureau recently arranged for speakers in Cairo, Cobb County, La Grange, Douglasville and Columbus. If interested in speaking to civic clubs or school groups on behalf of the State Bar of Georgia, call the Satellite Office at (800) 330-0446 or e-mail bonne@gabar.org or sherry@gabar.org. A speaker's packet containing speeches on several different subjects will be sent to you. GBJ

Bonne Cella is the administrator of the State Bar's South Georgia office.

Sherry Gatewood, administrative assistant at the State Bar of Georgia Satellite Office, provides information for a Career Day attendee.

(Left to right) Leon Benefield, rotary district governor; Paola Jara, teacher from Chile; Fred W. Rigdon, attorney; Christian Prado, attorney from Chile; and Lisa Gibbs, attorney.

Board of Governors members from the South Georgia area gather at the Bar's satellite office.



Pro Bono Honor Roll

The Pro Bono Project of the State Bar of Georgia salutes the following attorneys, who demonstrated their commitment to equal access to justice by volunteering their time to represent the indigent in civil pro bono programs during 2003.

Georgia Legal Services Program

Abbeville
David G. Morgan

Albany
(Sponsored by The Dougherty Circuit Bar Association)
Valerie Brown Williams
Cawthon Custer
Gail Drake
B. Samuel Engram, Jr.
William Erwin
James Finkelstein
Gregory Fullerton
Johnnie Graham
William Gregory, II
Kevin Hall
Rodney M. Keys
Rudolph Patterson
Randolph Phillips
Herbie Solomon
Willie Weaver

Alpharetta
Daniel Mitnick

Americus
William NeSmith

Ashburn
Stephen L. Ivie

Athens
Thomas A. Camp
Brian Carney
Tony D. Coy
Stan Durden
Sherry L. Jackson
William R. Sotter

Atlanta
David M. Bessho
Karen D. Fultz
Robert S. Huestis
Jefferson C. McConnaughey
Vicky L. Norrid

Augusta
Benjamin Allen
David B. Bell
Jean M. Colohan
William J. Cooney
Stanley C. House
William J. Marcum
Catherine V. Ryan
Terrance Sommers
Charles C. Stebbins, III

Bainbridge
Josh Bell
W. Paul Fryer
Bruce Kirbo

Blackshear
Teresa G. Bowen

Blairsville
Diana Reif
Robbie Colwell Weaver

Brunswick
Doree Avera
Grant Buckley
Denise S. Esserman
Carlton D. Gibson
Eugene Highsmith
Richard H. Simpson, Jr.
Richard H. Taylor

Carrollton
James J. Hopkins
Allen M. Trapp, Jr.

Cartersville
Kelley A. Dial

Cedartown
James S. Astin
Michael D. McRae
Robert T. Monroe

Chattanooga, TN
Albert L. Watson, III
Charles G. Wright, Jr.

Clarkesville
Douglas L. Henry

Clayton
Janet A. Sossomon

Cohutta
Cynthia Noles Johnson
Todd Mitchell Johnson

Colquitt
Danny Griffin

Columbus
(Sponsored by The Columbus Bar Association)
Ed L. Albright
William Arey
Jacob Beil
Robert C. Brand, Jr.
Richard A. Childs
James C. Clark, Jr.
Leslie L. Cohn
Pete Daughtery
Darrell Dowdell
Michael Eddings
William Edwards
Gregory S. Ellington
Judson Grantham
William B. Hardegree
Morton Harris
Kenneth Henson
Russell Hinds
Ronald S. Iddins
Paul Kilpatrick
Elizabeth S. Morgan
Nancy Miller
Bemon McBride
Elizabeth McBride
William Nash
John H. Nix, III
John P. Partin
Pedro Quezada
Lee R. Redmond, Jr.
Alan F. Rothschild, Jr.
Alan F. Rothschild, Sr.
William Rumer
Ronald W. Self
Joseph A. Sillitto
W. James Sizemore, Jr.
Virgil Ted Theus
William L. Tucker
J. Barrington Vaught
Robert L. Wadkins
Dorothy Williams
Mark Youmans
Richard Zimmerman

Conyers
(Sponsored by The Rockdale County Bar Association)
Nancy N. Bills

Cordele
Clifford Harpe

Covington
John B. Degonia, Jr.
Kimberly D. Degonia
Shannon D. Sneed
John L. Strauss

Cumming
Kathy Hedden
Thomas P. Knox
Christopher S. Thurman

Dallas
Jana L. Evans

Dalton
(Sponsored by The Conasauga Bar Association)
J. Raymond Bates, Jr.
Fred Steven Bolding
Dianne Cook
Robert A. Cowan
Tommy D. Goddard
J. Allen Hammontree
Michael Hurtt
Robert D. Jenkins
Joel P. Thames
Matthew A. Thames
J. Tracy Ward
James E. Wilbanks

Dawson
W. T. Gamble

Decatur
Frederick R. J. Jackson
Stephanie R. Lindsey

Donaldsonville
William M. Shingler

Douglasville
Christopher A. Bennett
Andrea R. Moldovan

Dublin
Rocky Adams
Eric Jones

Ellenwood
Betty J. Williams-Kirby

Fayetteville
Michael J. Hofritcher
Sharon I. Pierce

Fitzgerald
Robert Chasteen

Gainesville
Palmer H. Ansley, Jr.
Susan D. Brown
Thomas D. Calkins
Raymond L. Crowell
Charles N. Kelley
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Sections Close Out Bar Year in Style

By Johanna B. Merrill

As the 2003-04 Bar year winds down, sections gear up. The spring was filled with CLE functions, social events, lunch meetings and elections. Several of the sections produced newsletters and they all worked hard to retain and grow their memberships heading into a new Bar year.

The section department as a whole grew when the Board of Governors approved the Bar's 36th section at their spring meeting in St. Simons Island. According to the section's bylaws, the **Immigration Law Section** will "provide education, advise and disseminate information regarding current conditions relating to the practice before various government agencies including Department of Homeland Security, U.S. and state departments of labor, etc., to its members in the area of U.S. immigration law." Socheat Chea of Atlanta will act as chair for the upcoming Bar year.

Bar members will be able to join the Immigration Law Section section, as well as all 35 of the existing sections, when submitting dues payment for the 2004-05 Bar year. For an overview of the Bar's sections, visit www.gabar.org. (However, please remember that you are able to join any section throughout the Bar year by submitting a join form [found online] and check made payable to the State Bar of Georgia and sending it to the Membership Department.)

The **Entertainment & Sports Law Section's** calendar was full throughout the spring months. On March 18 they co-hosted a successful gallery crawl in the Castleberry Hill Arts District along with Georgia Lawyers for the Arts, and the entertainment law associations from Emory, Georgia State and John Marshall law schools. Five galleries participated: Marcia Wood, Skot Foreman, Ty Stokes, Wolf Fisher and 310 Haus, along with the restaurant Slice. Attendees enjoyed incredible art, including the Dali retrospective at Skot Foreman, before heading to Slice for complimentary cocktails and appetizers.

On April 7, section members gathered at the Clubhouse at Lenox Square for a lunch lecture led by Michael J. Egan III of King & Spalding LLP on representing professional sports teams. Egan represents the Atlanta Falcons, as well as the Atlanta Spirit LLC, the entity that purchased the Hawks and the Thrashers. Section members met again on May 7 at Maggiano's Little Italy Restaurant

It's finally June, which means that the Bar's 41st Annual Meeting is upon us! If you're attending please don't forget to check out the section-sponsored Opening Night Reception. Twenty-seven of the Bar's sections sponsored the event, and because of their generosity, the event will be one-of-a-kind.

in Buckhead for a lunch lecture on licensing issues in television with speaker James M. McGee of the Turner Entertainment Legal Department.

The **Intellectual Property Law Section** also had an event-filled end to an already successful year. The section's Copyright Committee, chaired by John R. Renaud, hosted a copyright and patent roundtable at the Bar Center on March 24. On April 1 the Trademark Committee held a Basics of Trademark and Internet Domain Name Law Seminar for non-attorneys at the Bar Center. On May 12 the Litigation Committee presented "Use of Experts in IP Litigation," with speakers Chris Arena, Ron Coleman, Mark Gallagher and Kenneth Massaroni, moderated by Alison Danaceau, which was also held at the Bar Center in Atlanta.

The **Technology Law Section** and the **Intellectual Property Law Section** co-sponsored a half-day CLE course along with I.C.L.E. on April 13 at Troutman Sanders LLP in Atlanta. The Technology Law Showcase awarded attendees three CLE hours, including one ethics hour. Suellen W. Bergman, of Powell, Goldstein, Frazer and Murphy LLP, Todd S. McClelland of Alston & Bird LLP and W. Charles Ross Sr., assistant district attorney of the Gwinnett Judicial Circuit in Lawrenceville, presided over the event.

On May 14 the **Creditors' Rights Section** held their annual awards luncheon at Maggiano's Little Italy Restaurant in Buckhead. Judge John J. Goger of the Fulton Country Superior Court was the guest speaker, and Section Co-Chair Jay Loeb was presented with the Morris W. Macey Lifetime Achievement Award for his dedication to the section and the practice of creditors' rights law.

The **Environmental Law Section** held one of their regular brown bag lunches on May 20 at Kilpatrick Stockton LLP in Atlanta, which was co-sponsored by the Georgia chapter of the Air and Waste Management Association. Speakers discussed opportunities and obstacles in urban development and smart growth.

It's finally June, which means that the Bar's 41st Annual Meeting is upon us! If you're attending please don't forget to check out the section-sponsored Opening Night Reception. Twenty-seven of the Bar's sections sponsored the event, and because of their generosity, the event will be one-of-a-kind. Four of the sections are hosting events during the Annual Meeting, such as the always-popular **General Practice & Trial Section's** annual Tradition of Excellence awards breakfast. The **Criminal Law**, **Tort & Insurance Law** and **School & College Law** sections are also hosting breakfast meetings on June 18. Also, don't forget to stop by the exhibit booth to receive more information on the Bar's sections.

NEWS FROM THE SECTIONS

Appellate Practice Section

By Christopher McFadden

White v. State, __ Ga. __, __ S.E.2d __, Case Number S03G1535, 2004 Fulton County D. Rep. 861 (March 8, 2004).

Reversing the Court of Appeals, the Supreme Court held, "a defendant seeking an out-of-time appeal following a jury trial need only show that the procedural deficiency was due to counsel's failure to perform his duties. ... He need not point to the record and set out the issues he would raise on appeal."

Hamilton Capital Group, Inc. v. Equifax Credit Information Services, __ Ga. App. __, __ S.E.2d __, Case Numbers A03A1676, A03A1677,

2004 Fulton County D. Rep. 867, 2004 Ga. App. LEXIS 286 (March 2, 2004).

The Court of Appeals decided to "allow direct appeals from contempt orders even if the contemnor is given the opportunity to purge the contempt before punishment is imposed." *Hamilton Capital* overturns a line of authority that had required applications for interlocutory appeal in such cases. GBJ

Johanna B. Merrill is the section liaison for the State Bar of Georgia.

In Memoriam

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First Publication of Proposed Formal Advisory Opinion No. 02-R1

Pursuant to Rule 4-403 (c) of the Rules and Regulations of the State Bar of Georgia, the Formal Advisory Opinion Board has made a preliminary determination that the following proposed opinion should be issued. State Bar members are invited to file comments to this proposed opinion with the Formal Advisory Opinion Board at the following address:

State Bar of Georgia
104 Marietta Street, N.W.
Suite 100
Atlanta, Georgia 30303
Attention: John J. Shiptenko

An original and eighteen copies of any comment to the proposed opinion must be filed with the Formal Advisory Opinion Board by July 15, 2004, in order for the comment to be considered by the Board. Any comment to a proposed opinion should make reference to the request number of the proposed opinion. After consideration of comments, the Formal Advisory Opinion Board will make a final determination of whether the opinion should be issued. If the Formal Advisory Opinion Board determines that an opinion should be issued, final drafts of the opinion will be published, and the opinion will be filed with the Supreme Court of Georgia.

Question Presented:

May a lawyer participate in a non-lawyer entity created by the lawyer for the purpose of conducting residential real estate closings where the closing proceeds received by the entity are deposited in a non-IOLTA interest bearing bank trust account rather than an IOLTA account?

Summary Answer:

The closing of a real estate transaction constitutes the practice of law. If an attorney supervises the closing conducted by the non-lawyer entity, then the attorney is a fiduciary with respect to the closing proceeds and closing proceeds must be deposited in an IOLTA account. If the attorney does not supervise the closings, then, under the facts set forth above, the lawyer is assisting a non-lawyer in the unauthorized practice of law.

Opinion:

The closing of a real estate transaction in the state of Georgia constitutes the practice of law. See, *In re UPL Advisory Opinion 2003-2*, 277 Ga. 472, 588 S.E. 2d 741 (Nov. 10, 2003), O.C.G.A. §15-19-50 and Formal Advisory Opinions Nos. 86-5 and 00-3. Thus, to the extent that a non-lawyer entity is conducting residential real estate closings not under the supervision of a lawyer, the non-lawyer entity is engaged in the practice of law. If an attorney supervises the residential closing[1], then that attorney is a fiduciary with respects to the closing proceeds. If the attorney participates in but does not supervise the closings, then the non-lawyer entity is engaged in the unauthorized practice of law. In such event, the attorney assisting the non-lawyer entity would be doing so in violation of Rule 5.5 of the Georgia Rules of Professional Conduct.[2]

When a lawyer is supervising a real estate closing, the lawyer is professionally responsible for such closings. Any closing funds received by the lawyer or by persons or entities supervised by the lawyer are held by the lawyer as a fiduciary. The lawyer's responsibility with regard to such funds is addressed by Rule 1.15 (II) of the Georgia Rules of Professional Conduct which states in relevant part:

SAFEKEEPING PROPERTY - GENERAL

(a) Every lawyer who practices law in Georgia, whether said lawyer practices as a sole practitioner, or as a member of a firm, association, or professional corporation, and who receives money or property on behalf of a client or in any other fiduciary capacity, shall maintain or have available a trust account as required by these Rules. All funds held by a lawyer for a client and all funds held by a lawyer in any other fiduciary capacity shall be deposited in and administered from such account.

(c) All client's funds shall be placed in either an interest-bearing account with the interest being paid to the client or an interest-bearing (IOLTA) account with the interest being paid to the Georgia Bar Foundation as hereinafter provided.

(1) With respect to funds which are not nominal in amount, or are not to be held for a short period of time, a lawyer shall, with notice to the clients, create and maintain an interest-bearing trust account in an approved institution as defined by Rule 1.15(III)(c)(1), with the interest to be paid to the client. No earnings from such an account shall be made available to a lawyer or law firm.

(2) With respect to funds which are nominal in amount or are to be held for a short period of time, a lawyer shall, with or without notice to the client, create and maintain an interest-bearing, government insured trust account (IOLTA) in compliance with the following provisions:

* * * * *

As set out in Subsection (c)(2) above, this Rule applies to all client funds which are nominal or are to be held for a short period of time. As closing proceeds are not nominal in amount, but are to be held for only a short period of time, they are subject to the IOLTA provisions. Therefore, the funds received in connection with the real estate closing conducted by the lawyer or the non-lawyer entity in the circumstances described above must be deposited into an IOLTA compliant account.

1. Adequate supervision would require the lawyer to be present at the closing. See FAO . . . .etc.

2. Rule 5.5 states in relevant part that:

UNAUTHORIZED PRACTICE OF LAW
A lawyer shall not:

* * * * * *

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

The maximum penalty for a violation of this Rule is disbarment.

Proposed Amendment to Uniform Superior Court Rules

Rule 45: Court Emergency Measures (first reading 1/29/2004)

Rule 45: Court Emergency Measures

Courts within a judicial circuit shall prepare for emergencies and disruptions in court business by adopting and periodically reviewing a consolidated plan addressing the safety and security of employees and the public, continuity of operations and their immediate response to crises.

a. Court Security and Facilities

In coordination with local and/or state public safety officials, courts shall develop and annually update court security policies and procedures and a short-term emergency response program that anticipates safeguarding lives and property.

b. Court Operations

At a minimum, each plan for the continuity of court operations shall identify:

i. Essential activities and functions to be performed;
ii. Vital records, systems and equipment, and provide for their protection;
iii. Automatic succession of leadership and delegation of authority;
iv. One or more relocation sites, and provide for their preparation;
v. Employees to perform essential activities and functions, and provide for their training;
vi. Means for warning employees, the public and the media of potential threats and recommended actions;
vii. Means for identifying the location and status of employees following an emergency;
viii. Means for communicating with employees and the public subsequent to an emergency;
ix. Means for restoring normal functions as soon as is feasible and prudent; and
x. Regular training for employees with specific emergency responsibilities and for all employees that may be affected by disruptions to operations.

c. Court Emergency Order

Upon his or her own motion or after consideration of a request by another judge or court official, the chief judge of a court experiencing an emergency or disruption in operations may issue an order authorizing relief from time deadlines imposed by statute or court rule until the restoration of normal court operations or as specified. The order shall contain (1) the identity and position of the judge, (2) the time, date and place executed, (3) the jurisdiction affected, (4) the nature of the emergency, (5) the period of duration, and (6) other information relevant to the suspension or restoration of court operations.

The duration of a court emergency order is limited to a maximum of thirty days. The order may be extended no more than twice by the issuing judge for additional thirty-day periods, and any extensions shall contain information required in the original order.

The court emergency order may designate one or more facilities as temporary courthouses which shall be suitable for court business and located as near as possible to the county seat.

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