

# Putting the Law to Work in Our Communities

A Citizen's Guide to Environmental Protection and Justice in Georgia

Written by

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GreenLaw is dedicated to preventing air and water pollution that endangers human health and degrades Georgia's natural resources. GreenLaw achieves these goals by providing free high quality legal and technical assistance to environmental organizations and community groups throughout Georgia. Through these services, GreenLaw compels government and industry to take the steps necessary to protect Georgia's citizens and the environment. GreenLaw champions the belief that every Georgian - young and old, rich and poor - has the right to breathe clean air, drink clean water, live in healthy communities, and enjoy our state's natural beauty.

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Established in 1998 with a Turner Foundation grant, the Turner Environmental Law Clinic at Emory University School of Law offers a practical clinical education to the aspiring environmental attorney. By providing free legal assistance to individuals, community groups, and non-profit organizations that seek to protect and restore the natural environment for the benefit of the public, the Clinic trains law students to be effective environmental attorneys with high ethical standards and a sensitivity to the natural environment. The Clinic provides intellectually stimulating, professionally challenging, and personally rewarding instruction by granting students a "real world" look at the practice of environmental law.

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## Preface

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The development of extensive environmental regulation over the last three decades has afforded many Americans a sense of security, a security born of the belief that environmental laws will effectively protect them from toxic chemicals and pollutants. Yet, the history of the U.S. and Georgia highlights the truth that such protection from toxic pollution does not accrue equally to all Americans. People of color and low-income Americans often suffer disproportionately from the effects of toxic pollution.

In the last thirty years, more and more evidence has emerged relating to the placement of landfills, truck depots, incinerators, power plants, and other polluting industries in communities of color and low-income neighborhoods. In light of the inequitable siting of these facilities, these communities end up suffering disproportionately from the human health risks associated with the toxic pollution emitted from these facilities.

GreenLaw (formerly known as the Georgia Center for Law in the Public Interest) and the Turner Environmental Law Clinic (Turner Clinic) at Emory University School of Law have joined together to provide communities with legal and technical resources to remedy these inequities. This handbook contains an introduction to environmental justice, background on laws that were enacted to protect our communities, and tools to understand how citizen participation can work to clean up Georgia's neighborhoods. We hope it will prove useful to those working to create healthy communities for all of Georgia's citizens.

Understanding the laws that impact your community will give you the tools to better protect your community. However, the area of environmental law is complex. Before relying on any of the advice in this handbook, you should consult an expert. This handbook is no substitute for the knowledge and experience of professionals, such as lawyers and engineers, with training in environmental issues.

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GreenLaw archives 2003  
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## A Note on Legal References

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Throughout this handbook, we refer repeatedly to four primary sources of environmental laws:

1. The United States Code (U.S.C.) contains federal statutes, or laws enacted by Congress that apply throughout the country. A typical reference to this Code is 42 U.S.C. § 7401, which happens to be the first section of the Clean Air Act. The “42” signifies that the law is in Title 42, the grouping of laws that relates to “Public Health and Welfare” and includes most of the major environmental laws; the “7401” identifies the specific section. Sections can be further divided into subsections, sub-subsections, and so on, so you might see references like this: 42 U.S.C. § 7604(b)(1)(A).
2. The Code of Federal Regulations (C.F.R.) contains regulations created by federal agencies such as the Environmental Protection Agency, which provide more detail in administering the laws Congress has passed. They are referred to in a similar fashion as federal statutes; thus, a typical regulation is 40 C.F.R. § 51.166(a)(6)(iii).
3. The equivalent of the U.S.C. for Georgia statutes is called the Official Code of Georgia Annotated (O.C.G.A.). It is structured somewhat differently than the federal laws, and a typical reference might be O.C.G.A. § 12-5-30(a). In this case, “12” refers to Title 12, “Conservation and Natural Resources”; “5” refers to Chapter 5, “Water Resources”; “30” is the specific section (relating to permits for discharge of pollutants into waters); and “(a)” is the subsection, here setting out the basic requirement for a permit.
4. Like the federal government, Georgia has agencies that develop rules to guide implementation of the laws. The official citation form for these rules is, for example, Ga. Comp. R. & Regs. r. 391-3-6, but for simplicity’s sake this handbook will refer to them simply as Georgia Rule 391-3-6.

This handbook also sometimes refers to “cases,” or decisions in lawsuits that tell people what the law is. A typical case citation is *Bean v. Southwestern Waste Management Corp.*, 482 F. Supp. 673 (S.D. Texas 1979). The names identify the parties involved in the suit; “482 F. Supp. 673” tells where the case was first published, in this case page 673 of volume 482 of the Federal Supplement (although cases are most often accessed through online sources such as LEXIS or Westlaw); “S.D. Texas” identifies the court making the decision—here, the United States District Court for the Southern District of Texas, a federal court in Houston, Texas; and 1979 is the year the case was decided.

Internet resources to help you locate many of these laws are listed in Appendix A to this handbook.

## 1. How Where You Live Affects Your Health

What is the environment? **The environment includes everything from the rainforests in Brazil, to the Chattahoochee River, to the land down the street from you where plans are underway to build a shopping mall.** The environment does not just refer to oceans and forests. The environment includes the neighborhood where you live, the streets that you drive on every day, and the playground where your children play. Your environment is what you see when you look outside your window.

Just as the environment is not simply the faraway places we see on television and in magazines, its importance to each of us extends beyond the joy that natural beauty may give. The quality of our environment directly affects our own health. For example, when wastewater is dumped into streams and rivers, or landfills leak into underground water, it can affect the cleanliness of the water that comes into our homes; many of these pollutants can have serious health effects, as shown in Table 1.1. Similarly, power plants and other polluters emit a host of different air pollutants that, when breathed in, can harm or even kill humans, as shown in Table 1.2.

Simply put, **a clean environment is important because it affects the health of you and your neighbors as well as affecting the picture outside your window.**

We believe that **everybody has the right to a clean environment**, but the truth is that many Georgians do not have the opportunity to live, work, play, and breathe in a healthy environment. In Georgia, as elsewhere, pollution sources like landfills, power plants, and waste treatment facilities are frequently placed in communities of color and lower income neighborhoods, rather than distributed equally throughout the state.

The statistics are staggering: African Americans represent 12.7 percent of the U.S. population, yet account for 26 percent of asthma-related deaths;<sup>1</sup> African Americans are hospitalized for asthma at three to four times, and die of asthma at two to five times, the rate of whites;<sup>2</sup> 68 percent

of African Americans live within 30 miles of a coal-fired power plant (the distance within which the maximum effects of the smokestack plume are expected to occur), compared to about 56 percent of the white population;<sup>3</sup> three out of five African and Latino Americans live in communities with abandoned toxic waste sites;<sup>4</sup> and the average percentage of people of color in areas with toxic waste sites is three times higher than in areas without toxic waste sites.<sup>5</sup>

For years, local and state governments have sited undesirable facilities such as factories, landfills, and incinerators—also known as Locally Undesirable Land Uses (or LULUs)—in poor and minority neighborhoods, exploiting these communities because of their perceived political powerlessness. Now these communities are surrounded disproportionately by polluting facilities, meaning that not only is the air and water quality worse, but so is the quality of life. Polluting facilities do not just sit in isolation—they often carry with them the traffic of noisy, noxious trucks. Further, many facilities that people deem desirable in society, such as recycling centers and public transportation depots, emit some of the worst pollutants, and are almost always located in poor neighborhoods and communities of color.

**The hardest hit in these communities are the elderly and young children.** For example, impoverished children typically live in low-income housing and attend older schools, which increases exposure to lead paint and pesticides used to control infestations; parents often are forced to work dirty, undesirable jobs, which increases “take home” exposure of pollutants; many suffer from malnutrition, which renders the body less able to combat environmental pollutants. Compounding these problems is the fact that many of the communities that are overburdened with pollution are home to residents who are less likely to be insured, and thus have less access to adequate healthcare. Declining property values and failing businesses illustrate that there are also economic consequences to living near a disproportionate amount of pollution and waste.

In response to a growing awareness of the inequitable siting of dirty industries, the disparate burden of pollution and waste felt by communities of color and low-income commu-

nities, and the links between the health of an individual and the health of the surrounding environment, the environmental justice movement was born.

Table 1.1 SAMPLING OF COMMON WATER POLLUTANTS

Pollutant	Where It Comes From	Health Effects
Heavy metals	Water run-off from major highways, underground fuel storage tanks	Cause damage to the nervous system and kidneys, and other metabolic disruptions
Lead	Old pipes and a few industrial facilities	Causes damage to the brain and other parts of the body's nervous system, particularly in children
Mercury	Primarily from air emissions from burning of coal; mercury settles in water and is consumed by fish, where it is then eaten by humans	Can severely and permanently damage the human nervous system and kidneys Groups most at-risk include fetuses and breast fed babies (exposed through their mothers) Adults may experience blurred vision as well as numbness of lips, tongue, fingers, and toes and may be at higher risk for cardiovascular disease and infertility
Nitrates	Excessive use of fertilizers causes nitrate contamination of groundwater	Restricts the amount of oxygen reaching the brain, causing the "blue baby" syndrome Also linked to digestive tract cancers
Pesticides	Runoff from farms, backyards, and golf courses	Pesticides containing organophosphates and carbonates affect and damage the nervous system and can cause cancer Some pesticides contain carcinogens that exceed recommended levels and chlorides that cause reproductive and endocrinal damage
Petrochemicals	Gas stations, major gasoline spills, refineries, fuel storage facilities, industrial facilities	Carcinogens
Sewage	Leaking sewer pipes or sewage treatment facilities	Pathogens, including viruses, bacteria, protozoa, and parasitic worms, are disease-producing agents found in feces
Solvents	Dry cleaners, industrial facilities, degreasing operations	Carcinogens

Table 1.2 SAMPLING OF COMMON AIR POLLUTANTS

Pollutant	Where It Comes From	Health Effects
Air toxics	Automobiles, power plants, oil refineries, many industrial facilities	Refers to a suite of 188 listed chemicals ranging from mercury to benzene to dioxin Air toxics have a broad range of health effects: cancer; immune system, neurological, or respiratory damage; developmental delays; reproductive harm
Carbon dioxide	Non-natural sources include the combustion of fossil fuels such as in coal-fired power plants and automobiles	Primary contributor to climate change, which has also been linked to increased rates of asthma Climate change can cause severe weather conditions which can, in turn, cause drought, flooding, and other events that impact public health
Carbon monoxide	Primarily from motor vehicles, but also from incomplete burning of any fuel	Weakens the heart's contractions and lowers the amount of oxygen carried by the blood Can cause nausea, dizziness, headaches, and when very concentrated, even death. When carbon monoxide reaches unhealthy levels, people with heart disease are most at risk
Lead	Mostly from a few industrial facilities, but also from the sanding or wearing away of old lead-based paint	Causes damage to the brain and other parts of the body's nervous system; children are most susceptible to the effects of lead
Nitrogen dioxide	Power plants, large industrial facilities, and motor vehicles	Irritates the nose and throat, especially in people with asthma Increases susceptibility to respiratory infections
Ozone	Forms in the air from other pollutants —volatile organic compounds (VOCs) and nitrogen oxides (like nitrogen dioxide, above); ozone does not come directly from tailpipes or smokestacks	Irritates the lungs and breathing passages, causing coughing and pain in the chest and throat Increases susceptibility to respiratory infections Effects are more severe in people with asthma and other respiratory ailments Long-term exposure may lead to scarring of lung tissue and lowered lung efficiency

chart continues on page 4

Table 1.2 SAMPLING OF COMMON AIR POLLUTANTS<sub>continued</sub>

Pollutant	Where It Comes From	Health Effects
Particulates	Diesel cars, trucks and buses, power plants, industry, and many other sources	Aggravates existing heart and lung diseases Changes the body's defenses against inhaled materials Damages lung tissue Chemicals in and on particulates can also be toxic Very fine particulates (called PM <sub>2.5</sub> , for particulate matter smaller than 2.5 microns) can be inhaled deeply into the lungs
Sulfur dioxide	Power plants, large industrial facilities, diesel vehicles, oil-burning home heaters	Aggravates existing lung diseases, especially bronchitis Constricts the breathing passages, especially in asthmatic people and people doing moderate to heavy exercise Causes wheezing, shortness of breath, and coughing High levels of particulates appear to worsen the effect of sulfur dioxide, and long-term exposures to both pollutants leads to higher rates of respiratory illness

- American Lung Association, *Lung Disease Data in Culturally Diverse Communities 2005* at 39, available at [www.lungusa2.org/embargo/1ddcdc/LDD.pdf](http://www.lungusa2.org/embargo/1ddcdc/LDD.pdf) (last visited October 27, 2007).
- Black Leadership Forum, Clear The Air, Georgia Coalition for the Peoples' Agenda, and The Southern Organizing Committee for Economic and Social Justice, *Air of Injustice: African Americans & Power Plant Pollution* (hereafter, "*Air of Injustice*") 10 (October 2002), available at [www.cleartheair.org/fact/injustice.pdf](http://www.cleartheair.org/fact/injustice.pdf) (last visited October 27, 2007); American Academy of Allergy, Asthma and Immunology, "Asthma Disparity Research Highlighted in February JACI" (Feb. 9, 2006), available at [www.newswise.com/p/articles/view/517942](http://www.newswise.com/p/articles/view/517942) (last visited October 27, 2007).
- Air of Injustice* at 3.
- Dr. Robert D. Bullard, The Environmental Justice Resource Center at Clark Atlanta University, *More Blacks Overburdened with Dangerous Pollution: AP Study of EPA Risk Scores Confirms Two Decades of EJ Findings* (December 19, 2005), available at [www.ejrc.cau.edu/BullardAPEJ.html](http://www.ejrc.cau.edu/BullardAPEJ.html) (last visited October 27, 2007).
- American Lung Association, *Lung Disease Data in Culturally Diverse Communities 2005* at 29.

## 2. The Modern Environmental Justice Movement

The modern environmental justice movement was born as a response to a growing awareness of the inequitable siting of hazardous waste sites and dirty industries. Before environmental, community, and civil rights groups embraced the idea of environmental justice, Dr. Martin Luther King, Jr. understood the concept. In 1968, garbage workers in Memphis, Tennessee, were striking for equal pay and better work conditions. Recognizing that African Americans suffered disproportionately from unhealthy environmental conditions, Dr. King organized and led the very first environmental justice mission to support the workers and bring the disparate environmental conditions between the races to light.

In 1979, still before the concept of environmental justice took root, the first environmental civil rights case was filed in Houston, Texas. A group of African-American homeowners brought a lawsuit under the Civil Rights Act, challenging the siting of a sanitary landfill in their suburban middle-income neighborhood.

Three years later, the environmental justice movement was cast into the national limelight when citizens in rural, and mostly African-American, Warren County, North Carolina, gained national recognition for their fight against the siting of a hazardous waste landfill in their neighborhood. The landfill would be used to dispose of soils contaminated with PCBs (a type of highly toxic chemical) and ignited numerous protests and more than 500 arrests. The protests provided the impetus for a 1983 U.S. General Accounting Office study, *Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities*. The study surveyed eight southern states, Georgia among them, and revealed **that three out of every four commercial hazardous waste landfills were in predominantly African-American communities.**

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The goal of this handbook is to provide legal tools for community organizers and individual citizens...

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In 1987, environmental injustice issues again got national attention when the United Church of Christ's Commission for Racial Justice published a landmark report, *Toxic Waste and Race*. The report conclusively documented the disproportionate burden of pollution and waste that communities of color face. It was the first national study to correlate waste facility sites and demographic characteristics. The

results of the study indicated that **race was the most potent variable in predicting where these polluting facilities were located—more powerful than poverty, land values, and home ownership.**

*Toxic Waste and Race*, and the information it uncovered, contributed to the coining of the term “environmental racism” and provided ammunition for the environmental justice movement. **Environmental racism refers to any environmental policy, practice, or directive that differ-**

**entially affects or disadvantages (whether intentionally or unintentionally) individuals, groups, or communities based on race or color.** Environmental racism combines with public policies and industry practices to provide benefits for whites while shifting costs to people of color. As a result, **there is a direct correlation between the exploitation of people and the exploitation of land.**

In 1990, Dr. Robert Bullard published *Dumping on Dixie: Race, Class, and Environmental Quality*, which chronicled the convergence of the social justice and environmental movements into the environmental justice movement. Then, in 1991, the First National People of Color Environmental Leadership Summit, a defining moment in the environmental justice movement's history, was held in Washington, D.C. The Summit was attended by 650 national and grassroots leaders from around the world. Delegates broadened the mission of environmental justice advocates to go beyond

the early anti-toxics focus to include issues of public health, worker safety, land use, transportation, housing, resource allocation, land use, and community empowerment. Delegates also adopted 17 “Principles of Environmental Justice” (reprinted in Appendix D) as a guide for grassroots organizers, non-governmental organizations, and government officials seeking to secure environmental justice.

In 1992, the United States Environmental Protection Agency (EPA) also became involved in the environmental justice movement. The EPA established an Environmental Equity Workshop to study the allegations of disproportionate waste siting and general environmental inequities. This workgroup confirmed the findings of earlier organizations: that racial minorities and low-income people were disproportionately exposed to lead, selected air pollutants, hazardous waste facilities, contaminated fish, and agricultural pesticides in the workplace. Also in 1992, as a result of the working group’s findings, the EPA created the Office of Environmental Justice (OEJ) to coordinate EPA’s efforts to address environmental justice issues.

Environmental justice continued to get attention at the federal level as President Clinton issued an Executive Order (No. 12,898) in 1994 requiring that federal agencies identify and address disproportionate, adverse human health and environmental effects on communities of color and low-income populations. Unfortunately, executive orders are not legally enforceable and are often construed by federal agencies as mere recommendations.

In addition, many environmental justice advocates have attempted to use civil rights laws, such as the Civil Rights Act of 1964, to remedy situations where communities have been subjected to disproportionate levels of pollution. Unfortunately, attempts to use this law have been largely unsuccessful for two main reasons: high evidentiary burdens and lack of a private right of action. The key component of the Civil Rights Act, known as “Title VI,” has two main provi-

sions. The first, Section 601, requires parties bringing suit to prove *intentional* discrimination in order to be successful. This requirement places the burden on a party bringing suit to provide evidence that the opposing party intended to discriminate—a burden that is nearly impossible to meet. The second provision, Section 602, carries a lower evidentiary hurdle: one need only establish that a disparate impact exists (that is, that some action *resulted* in discrimination), not that the discrimination was intentional, to be successful. However, a recent United States Supreme Court decision, *Alexander v. Sandoval*, 532 U.S. 275 (2001), severely limited the usefulness of this provision by holding that only government agencies can bring disparate impact claims under Section 602. Thus, private citizens and community groups cannot use this section to challenge discriminatory actions in court.

While civil rights laws have not provided citizens the leverage needed to remedy environmental injustice, many laws passed by Congress that address environmental issues have. The Clean Air Act, the Clean Water Act, and other federal environmental laws have proven to be very powerful tools in protecting public health and the environment. In addition, Georgia has many environmental laws that have also provided communities with the leverage needed to alleviate discriminatory practices. While the law does not always provide a solution, communities throughout Georgia will be well-served to understand how the law can help them protect their communities. Thus, **the goal of this handbook is to provide legal tools for community organizers and individual citizens to aid in their efforts to see that industry is sited equitably, laws are equitably enforced, and proper remediation takes place at polluted sites.** This movement hinges on citizen participation and action, and GreenLaw and the Turner Clinic hope to be valuable resources to those willing to work towards achieving social justice and an environment healthy enough to sustain it.

## 3. Environmental Justice in Georgia

### THE CHALLENGES

Despite significant efforts by citizens, community organizations and public entities, environmental injustice still predominates in Georgia. This injustice is evidenced by pollution to land, water, and air occurring in and around communities of color and low-income communities.

Landfills, hazardous dumps, and industrial sites that have housed polluting industries are a significant cause of inequitable pollution in Georgia. Toxic landfills and dirty industries are often sited near minority and low-income communities around the State. It only takes looking at a few of the sites in Georgia that are known to contain hazardous wastes to illustrate this point:

- Nearly all (95.29%) of the people living in the census tract containing the Woolfolk Chemical Works, Inc. hazardous waste site in Peach County are people of color.<sup>1</sup> This site was added to the National Priority List (NPL), a list of the most hazardous contaminated sites in the country, in 1990 as a result of contamination resulting from the production and handling of pesticides, insecticides, and herbicides.<sup>2</sup> While there were 48 contaminants of potential concern at this site, the majority of the risk stemmed from arsenic contamination.<sup>3</sup> The same year that this site was added to the NPL, contamination was found to have spread to surrounding residential properties.<sup>4</sup> Concerns over contamination at this site were addressed by significant cleanup efforts including the removal of contamination from 26 residential properties.<sup>5</sup>
- Similarly, 63.10 percent of the people living in the census tract containing the LCP Chemicals site in Glynn County are people of color.<sup>6</sup> Over the past 70 years, this site has been home to an oil refinery, paint manufacturing company, power plant, and chlor-alkali plant, all of which have contributed to it being placed on the NPL in 1996.<sup>7</sup> Contaminants present at this site included mercury, polychlorinated biphenyls (PCBs), metals, and semi-volatile compounds.<sup>8</sup>

- Over half the population (50.53%) of the census tract containing the Terry Creek Dredge Spoil/Hercules Outfall site in Glynn County are people of color.<sup>9</sup> This site was an outfall area for a former pesticide manufacturer in Brunswick, Georgia.<sup>10</sup>
- Likewise, over half (53.29%) of the census tract containing the Camilla Wood Preserving Company in Mitchell County consists of people of color.<sup>11</sup> This site was added to the NPL in 1998 when EPA conducted an emergency response action because soil and groundwater were contaminated with wood preserving materials.<sup>12</sup>

Further evidence of environmental injustice can be found at the Savannah River Site (SRS) in southern South Carolina, directly across the river from Georgia. The SRS produced more than one-third of the plutonium for U.S. nuclear bombs and almost all of the tritium and other nuclear materials for the U.S. weapons program.<sup>13</sup> Past waste dumping and a failure to implement a sound cleanup plan have created extensive water pollution beneath SRS as well as serious risks for water resources in the region.<sup>14</sup> Tritium, a radioactive isotope of hydrogen, is one of the most common water pollutants at SRS.<sup>15</sup> Research indicates that tritium may cause adverse health effects in developing fetuses.<sup>16</sup>

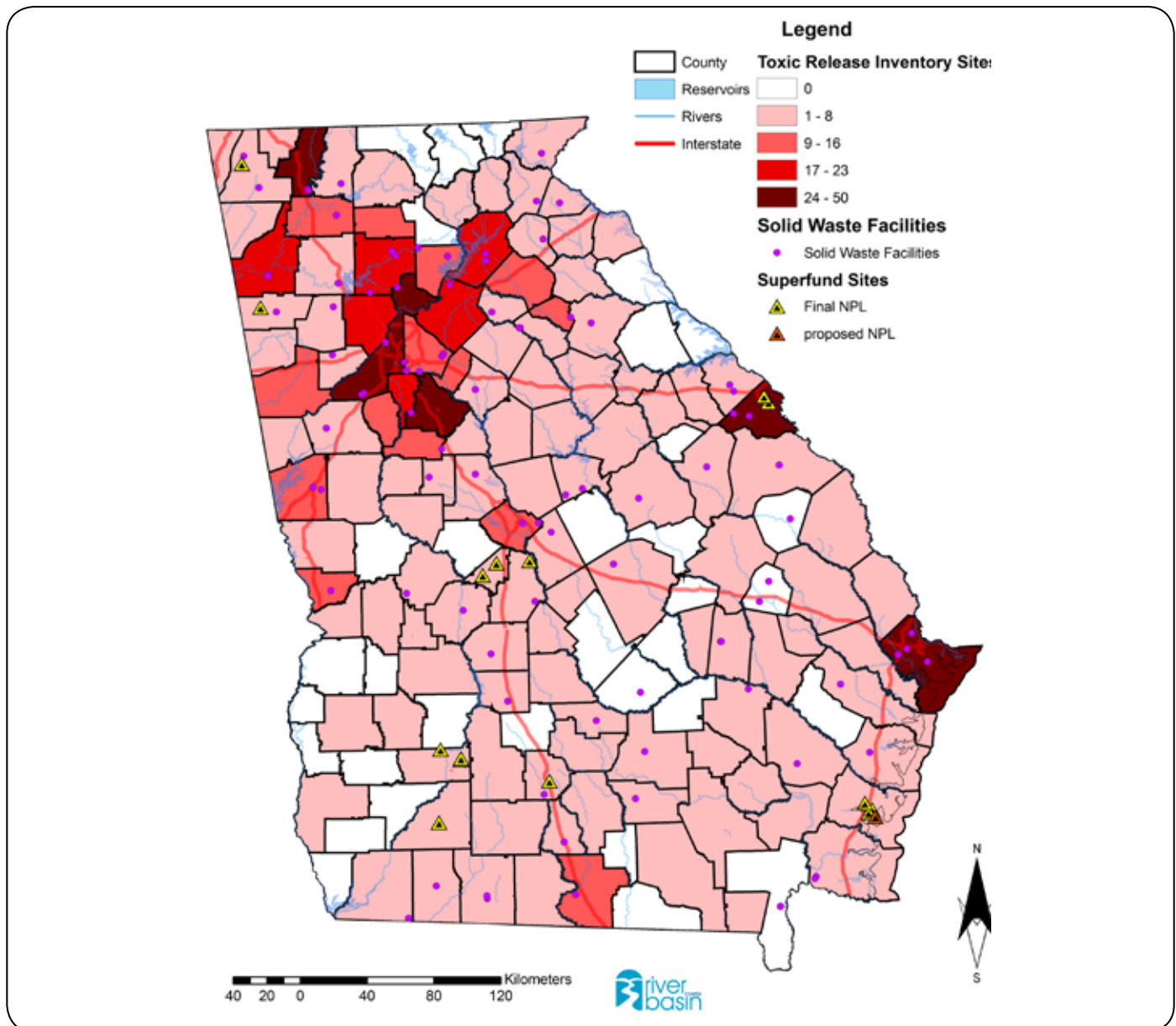
Pollution in the Savannah River is a major concern as the River is an important resource to people living in the area who depend upon it for drinking, agriculture, industry, recreation, and fishing. Many people use the Savannah River for subsistence fishing—that is, as a primary source of food—and this practice is more common among African Americans. Thus, pollution at the site may have a disparate impact on African Americans in the area.

Similarly, air pollution affects a disproportionate number of minority and low-income Georgians. For instance, increased exposure to air pollution is related to rising asthma rates and can lead to a host of respiratory and cardiovascular illnesses. In Georgia, a 1994 CDC-sponsored study showed

that pediatric emergency department visits at Atlanta Grady Memorial Hospital increased by one-third following peak ozone levels.<sup>17</sup> The study also found that the asthma rate among African-American children is 26 percent higher than the asthma rate among whites.<sup>18</sup> Statewide, African Americans are hospitalized for asthma at higher rates than Caucasians: African-American males are hospitalized 2.3 times more frequently than Caucasian males (155 to 69 per 100,000) and African-American females are hospitalized 1.8 times more frequently than Caucasian females (216 to 118 per 100,000).<sup>19</sup> A recent study found that nationally, African Americans are four times more likely to be hospitalized and five times more likely to die from asthma than non-African Americans.<sup>20</sup> For low-income Georgians, unhealthy exposure to air pollution is often exacerbated by inadequate access to health care. Without proper care, asthma and other respiratory problems can lead to terrible and sometimes fatal

consequences. Thus, while air pollution poses a threat to all of us, studies show that communities of color and lower income communities often face a greater risk of exposure to the negative environmental and public health effects of decreased air quality.

While counties across Georgia face issues of environmental injustice, certain areas are particularly overburdened with concentrations of dirty industries, toxic waste, and/or environmental hazards. The following map depicts the locations of sites reporting emissions of hazardous chemicals, solid waste facilities, and NPL sites throughout the state, and clearly illustrates the concentrations of environmental burdens. Moreover, although it is less clear from the map, even in a large county with great wealth such as Fulton County, these hazards are concentrated in the western part of the county, historically the home to many of Atlanta's communities of color and low-income communities.



## THE SUCCESSES

The situation is not hopeless, however. Many communities faced with these inequities have fought back, and many are winning! With the right strategy, perseverance, and the law on your side, a committed group of individuals can accomplish a great deal.

Many Georgia communities have already used the law to reduce pollution levels from landfills, industrial facilities, and other facilities. For example, the Newtown community in Gainesville, Georgia, literally sits in the shadow of industries that cause noise and light pollution, as well as routinely emit dangerous and foul-smelling substances. With perseverance, and a little help from GreenLaw, this community has been able to prevent diesel trucks from idling just yards from homes, reduced levels of harmful airborne pollutants from neighboring factories, and brought their plight to the attention of the public. While Newtown still faces many challenges, its story demonstrates how citizens can come together and create positive change in their community.

Other communities throughout Georgia have also had successes using community will and the law to protect public health and the environment. The South DeKalb Neighbor-

hoods Coalition, working with GreenLaw, successfully closed the largest landfill in Georgia, which had been a blight on the community for years. Their success can be attributed to the Coalition's tireless efforts to raise the issue with the public, combined with lawyers who were willing to bring their stories to an impartial judge. Similarly, the citizens of Taliaferro (pronounced "To-li-ver") County successfully stopped an almost 1000-acre landfill from being sited in their community. Early attempts to dissuade the company from siting the landfill failed, and even resulted in a brief period of incarceration of County Commissioners who were willing to risk criminal proceedings to stop the landfill. These efforts were not in vain, however, when the Georgia Supreme Court issued its final ruling and the landfill proposal was stopped. Likewise, residents of Emerson, in Bartow County, worked with the Turner Clinic to prevent a landfill from being located in their neighborhood. Because of their persistence in raising the issue in many forums, the Emerson citizens were able to stop the landfill without having to file a lawsuit. While the law may not provide a solution to every crisis or problem facing a community, the successes of these communities teach an important lesson that the law can be a powerful tool in creating positive change.

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  2. Environmental Protection Agency Region 4, *NPL Site Summary: Woolfolk Chemical Works, Inc.*, available at [www.epa.gov/Region4/waste/npl/nplga/wofolkga.htm](http://www.epa.gov/Region4/waste/npl/nplga/wofolkga.htm) (last visited October 27, 2007); see also *The Toll of Superfund Neglect* at 149.
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  4. *Id.*
  5. *Id.*
  6. *Id.* at 144.
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  8. *The Toll of Superfund Neglect* at 145.
  9. *Id.* at 146.
  10. Environmental Protection Agency Region 4, *NPL Site Summary: Terry Creek Dredge Spoil/Heracles Outfall*, available at [www.epa.gov/region4/waste/npl/nplga/tercrkpr.htm](http://www.epa.gov/region4/waste/npl/nplga/tercrkpr.htm) (last visited October 27, 2007); see also *The Toll of Superfund Neglect* at 147.
  11. *The Toll of Superfund Neglect* at 142.
  12. Environmental Protection Agency Region 4, *NPL Site Summary: Camilla Wood Preserving*, available at [www.epa.gov/region04/waste/npl/nplga/camilaga.htm](http://www.epa.gov/region04/waste/npl/nplga/camilaga.htm) (last visited October 27, 2007); see also *The Toll of Superfund Neglect* at 143.
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## 4. Cleaning Up Your Community – Getting Started

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At first blush, the idea of taking on a polluting facility or industry may conjure up ideas of the battle between David and Goliath. However, while it may seem daunting, you do have the power to make your voice heard. And, you do have the right to live in a clean and healthy environment. While you may not be able to stop every polluter, you can make a big difference in your community by participating in the various processes that are designed to facilitate community involvement.

While fighting big polluters is a daunting task, the reward is priceless—the health of you, your neighbors, and your environment. It is important to know that you can do it! And, there are many people that are eager to help you.

In this chapter, we have provided a road map to help you get started in your efforts to clean up your community. If, at any time, you become overwhelmed, confused, encounter roadblocks, or just need some advice, you can always pick up the phone and call us. We are happy to help you in your efforts to create environmental justice in your community. In addition to the resources offered by GreenLaw and the Turner Environmental Law Clinic, there is a list of resource groups printed in the back of this handbook (see Appendix B).

If you are concerned about pollution in your community, you can take the following steps to encourage polluting facilities to be better neighbors. Sometimes, developing this information and presenting it to the facility can be enough to make it change its behavior. Often, however, a more active approach, up to and including litigation, is necessary.

### IDENTIFY POLLUTION SOURCES

You may already know the industrial facilities operating in and around your neighborhood, but if not, take the time to identify these facilities. Walk or drive around the neighborhood and take note of industrial and municipal facilities.

You should also speak with your neighbors about potential pollution sources and ask them what they have seen, heard, smelled, felt, or observed in the area. Talk with long-term residents about their past experiences with industry in the area. Take notes as you are speaking with people so that you can notice any patterns that may arise.

Several Internet sources can also help you discover sources of pollution in your area. For more detailed information about how to locate the source of the pollution of concern, see “Knowing What’s In Your Neighborhood,” Chapter 5 of this handbook.

Finally, you can contact local regulating authorities. The Georgia Environmental Protection Division (EPD) has several different branches, each dealing with different types of pollution (air, water, land, hazardous waste, etc.). Contact the appropriate branch and inquire as to possible sources of the pollution you are concerned with. For more information about regulating authorities, see “Understanding the Players in Georgia,” Chapter 9 of this handbook.

### DETERMINE WHETHER OTHER ORGANIZATIONS ARE WORKING ON SIMILAR ISSUES

There may already be a group working to remedy the source of pollution in your community. Before attacking a pollution issue on your own, find out if others have already begun the fight and see if you can join forces. These other groups may be obvious: local organizations may have put up signs, sent out flyers, or brought the issue to the public through newspapers and/or public meetings.

Otherwise, community groups such as gardening clubs, churches, youth leagues, and homeowners’ associations often serve as the basis to galvanize groups with similar interests and concerns into action for a common cause. Talk with the members of a local community group to see if others have begun attempts to address pollution issues in your community.

Similarly, state or regional organizations that are committed to environmental work may already know of other citizens with similar concerns. Call environmental organizations, especially those committed to environmental justice work, and see if they can put you in touch with others in your community who have concerns about pollution issues. For a list of many these organizations, see “Contact Information,” Appendix B of this handbook.

If there is a river or stream in the area, there may be a Riverkeeper group in place patrolling the waterway for sources of pollution. The Waterkeeper website provides a directory of local Riverkeeper organizations nationwide: [www.waterkeeper.org/maincontact.aspx](http://www.waterkeeper.org/maincontact.aspx). Check the website to find out if there is a Riverkeeper group in your area.

## ORGANIZE YOUR NEIGHBORS

Talk to your neighbors—if you are concerned, it is likely that others are as well! Even if there is not yet a group that is already addressing the pollution issues in your community, there are probably others like you that wish there was. Take the initiative and speak to your neighbors and other community members to find other concerned residents. For instance, you can:

- Knock on doors and speak with your neighbors;
- Attend community association meetings and discuss the issue; or
- Create a flyer asking people to meet at a local coffee shop, recreation center, church, or other meeting space to discuss pollution issues in your community.

Remember that there is POWER in numbers. For more detailed information and ideas about organizing your neighbors, see “Understanding Grassroots Organizing,” Chapter 6 of this handbook.

## DOCUMENT THE POLLUTION

It will be much easier to get the attention of permitting authorities, facility managers, and media if you have detailed information about specific instances of pollution. Because our memory has limits, it is important to document instances of pollution so that you don’t need to rely on your memory to describe them.

As you get farther along in the process of addressing environmental issues in your community, you may find yourself looking through information about a facility’s compliance with pollution limits that are set by the local permitting authority. If you have documentation about specific instances of pollution, you will have a better idea of what to look for when reviewing a facility’s compliance information or other reports.

Documenting incidents of pollution will also help you notice trends in episodes of pollution. By keeping a thorough record of instances of pollution, you may find that

a trend has developed (e.g., every time it rains really hard, pollution occurs; every time it is really hot, specific smells are at their worst, etc.). Noting these trends may help you, or permitting and compliance officials, discover some of the causes of the pollution.

Unfortunately, when trying to motivate agency officials to demand that a facility comply with pollution limits, the citizen often bears the burden

of proof. You may have to convince agency officials that the problem is worthy of their attention. It will be much easier for you to accomplish this if you have thorough documentation of pollution incidents.

There are several ways to document pollution:

First, **keep pollution logs and records of occurrences of pollution**. Distribute your pollution log to neighbors and ask them to document episodes of pollution as well. Your pollution log should, at a minimum, address the following questions:

1. what kind of pollution,
2. how much pollution,
3. when the incident of pollution occurred (what time?),
4. where the pollution is, and
5. the name of the person recording the incident.

Other helpful information may include:

1. the weather,
2. intensity of the pollution as compared to other incidents,
3. how long the incident of pollution lasted, and
4. action you took to address the pollution, such as agency officials you contacted or reports that were filed.

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Take the initiative  
and speak to your  
neighbors and other  
community members  
to find other  
concerned residents.

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Observer	Date & Time	Location	Visible	Amount	Duration	Notes	Action Taken
Example: Ela	Jan 29 1:00 pm	Outside the Newtown Florist Club	Y / N	Light dust Med. dust Heavy dust		The dust has been there since this morning and seems to be continuing  There is dust on the playground and children are playing—it is a warm day and sunny	Called Georgia EPD Air Protection Branch and filed a verbal complaint—Spoke with Dan Smith
			Y / N	Light dust Med. dust Heavy dust			

For other sample pollution logs, see Appendix C-4.

Second, **take photos**: Nothing speaks louder than a good picture of the problems faced by your community. If the problem is excessive garbage, runoff of chemicals, or a



facility spewing dirty air over your community, it will be easier to convince others of the problems that you are facing if you have documented them through photographs. After you take the photo, make note of who took the picture, what day, what time and the precise location of the object photographed. This information will be important if the photos are given to the press, agencies responsible for enforcing the laws, or a court.

Third, if you are experiencing health problems that you believe may be related to pollution in your community, **contact your doctor** immediately and discuss your con-

cerns. It may also be helpful to contact your local community health center or county health department to see if others have registered similar concerns. For a list of health based organizations, see “Contact Information,” Appendix B of this handbook.

Finally, **file a complaint** with the appropriate regulating authority. This will place your documentation into an official file, giving it added credibility and exposure. A sample complaint form is included in Appendix C-3 of this handbook. For a list of regulating authorities, see “Contact Information,” Appendix B.

## GATHER INFORMATION

By this time, you should know the nature of the pollution and some possible pollution sources. To get a better understanding of the possible causes of the pollution, and the possible remedies, it will be useful to 1) understand the players and the laws that regulate the pollution of concern and 2) identify what public information is available about the facilities that may be responsible for the pollution or agency efforts to control the pollution.

To find out which agency may be responsible for regulating the pollution of concern, see “Understanding the Players” and “Understanding the Players in Georgia,” Chapters 8 and 9 of this handbook. For general information about the laws that regulate different types of pollution, see “Understanding the Laws,” Part II of this handbook.

The best way to find out what is going on at a given facility is to review the facility's records that are kept on file with the regulating authority. You have a right to review this information! For more information about accessing public records, see "Accessing Public Records and Meetings," Chapter 15 of this handbook. For sample records requests, see Appendices C-1 and C-2.

Remember, if you have any trouble accessing public information, or figuring out where to look for public information, you can always call us for help!

## **START AT THE LOCAL AND STATE LEVEL**

Local leaders may have more control than you think! New facilities often have to get permission from local leaders like a Board of Commissioners before moving forward with a project. Similarly, local ordinances can be very useful in fighting dirty industry. Contact the local "power players" in your neighborhood and those that are supposed to be representing your interests. Try to garner their support in fighting dirty industries! Some of these power players may include your Neighborhood Planning Unit (NPU), City Councilperson, County Commissioners, the local environmental permitting authority, or state legislators.

## **GET YOUR VOICE HEARD! SUBMIT COMMENTS ON NEW PERMITS AND PERMIT CHANGES**

Most environmental laws that provide for permitting of polluting facilities also provide the public an opportunity to comment on those permits before they are given to a facility. Regulating authorities like the Georgia EPD, which issues

permits to most major pollution sources, must issue a public notice and provide an opportunity for public comment for most new permits and major changes to existing permits. Often, EPD will host a public hearing on major permits as well. The public comment period generally lasts 30 days and if you plan to launch a campaign against a given pollution source, it is very important that you submit public comments. For detailed information about the importance of public comments, and about how to respond to draft permits, see "Submitting Public Comments," Chapter 16 of this handbook. This chapter also provides information about requesting a public hearing. Again, don't be afraid to pick up the phone and call the staff of the Turner Environmental Law Clinic or GreenLaw to help you navigate the public comment period. If you think you may want help with drafting your comments, be sure to contact resource groups early as you only have a limited window in which to submit your comments!

## **CONTACT A LAWYER OR OTHER RESOURCE GROUP**

Experienced professionals and advocates often have knowledge that can help you navigate the process. Contact GreenLaw or the Turner Clinic to help you find resources that you may need to address pollution problems in your neighborhood.

## **CONTACT LOCAL PRESS**

Get your story out there! Nothing is more effective than shining the light of public opinion on illegal activities.

# Getting Started—Checklist

## IDENTIFY POLLUTION SOURCES:

- Walk your neighborhood.
- Talk to neighbors.
- Research the Internet.
- Review the “Knowing What’s in Your Neighborhood” chapter of this handbook to discover pollution sources.
- Contact the appropriate regulating authority. See the “Understanding the Players” and “Understanding the Players” chapters and the “Contact Information” appendix of this handbook.

## DETERMINE WHETHER OTHER ORGANIZATIONS ARE WORKING ON SIMILAR ISSUES

- Talk with:
  - A local Homeowners’ Association;
  - Church groups;
  - Other community groups;
  - Local Riverkeepers.
- Contact organizations committed to environmental justice work.
- For a list of organizations that may be able to provide assistance, support, resources, or additional information, see the “Contact Information” appendix.

## ORGANIZE YOUR NEIGHBORS

- Knock on doors.
- Talk with neighbors.
- Attend community meetings.
- Create a flyer asking neighbors to meet and discuss pollution issues.
- Review the “Understanding Grassroots Organizing” chapter of this handbook.

## DOCUMENT THE POLLUTION

- Create a pollution log.
- Document incidents of pollution on your log sheet, EVERY TIME the pollution occurs!
- Distribute your pollution log to neighbors and encourage them to record all incidents of pollution.
- Take photos of the pollution.
- Contact a health professional to document health problems that may be associated with the pollution.
- File a complaint with the appropriate regulating authority.

## GATHER INFORMATION

- Identify the permitting agency.
- Identify the laws that may apply.
- Search public records.
- Contact local “power players” to get their support or to gather additional information.

## GET YOUR VOICE HEARD!

- Submit public comments.
- Be aware of deadlines!
- Contact a local resource group for assistance and support in drafting your comments.
- Contact a lawyer or resource group to help you navigate the process!
- Contact local press to get your story out.

## 5. Knowing What's in Your Neighborhood

There is a wealth of information on the Internet that can tell you about the environmental burdens on your neighborhood. Below, we list a few websites that have information for the entire nation or the state of Georgia. This is just a sampling of the publicly-and privately-developed sites out there. In addition, there may well be websites dedicated to documenting the environmental condition of your particular region, city, or even neighborhood.

- EPA's Envirofacts website, [www.epa.gov/enviro/index.html](http://www.epa.gov/enviro/index.html), has a comprehensive database of facilities in the United States.
  - From the initial page, you can click on the particular type of information you want, such as water or air, or you can do a comprehensive search by clicking on “Queries” on the right-hand side of the graphic in the middle of the page, then clicking “Multisystem.”
  - On the next page, enter your zip code or county for information about facilities in your area. This database tends to be summary in nature, so, after identifying a facility, you may need to go to some of the other resources described in this handbook for more detailed information.
- If you would like to learn if there has been **atoxic chemical release** in your neighborhood, go to [www.epa.gov/tri](http://www.epa.gov/tri).
  - Enter your zip code in the box on the middle, right of the page. This will allow you to view reports of all toxic releases in your zip code, listing what chemical was released, in what amount, and where the substance is being disposed of.

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There is a wealth of information on the Internet that can tell you about the environmental burdens on your neighborhood.

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- If you have specific questions about a release, you can call the Georgia TRI Contact: Christina Walls—Georgia Environmental Protection Division (404) 656-6905, or email at [Christina\\_walls@dnr.state.ga.us](mailto:Christina_walls@dnr.state.ga.us).

- If you want to determine whether there is a **“Superfund” site** in your area, you should check the National Priorities List (NPL), which is the list of national priorities among the known releases of hazardous substances, pollutants, or contaminants throughout the US.

- Go to [www.epa.gov/superfund/sites/npl/npl.htm](http://www.epa.gov/superfund/sites/npl/npl.htm) and click on the state of Georgia.

- You will then see all of the NPL sites in Georgia, and can click on each one to learn the name of the company, the substances released, disposed of, or stored there, and the status of the cleanup.

- **For similar information about hazardous sites regulated by the state of Georgia**, go to [www.gaepd.org/Documents/hazsiteinv.html](http://www.gaepd.org/Documents/hazsiteinv.html) and click on the “Sites Listed

by County” link about halfway down the page. When you find a site you are interested in, note the “HSI ID” in the left-hand column, go back to the original page, and go down to the bottom of the page, where you can click the link for the appropriate range of numbers, which leads you to more information about the status of the site.

- **To learn about what chemicals are being discharged into rivers and streams in your area**, you may go to [www.epa.gov/npdes](http://www.epa.gov/npdes).

- On the left hand side, go down to NPDES INFORMATION, and click on “NPDES Permit Program Basics.”

About halfway down the text, click on “View Individual and General NPDES Permits.” Scroll to the bottom, enter your state and county, and you’ll get a list of permits with links to the actual permits. The list, however, is not comprehensive—just because you don’t see something on the list doesn’t mean there isn’t a permit.

- You can click on each item in the list to read the permits and see what the companies in your county are permitted to discharge.
- Another option is to go to [www.gaepd.org](http://www.gaepd.org).
  - Click on the “Water” tab on the left, then about halfway down the page of text, click on “Permitted Facilities.”
  - From here, you can click on a list of wastewater permittees and view a spreadsheet, which lists municipal and industrial wastewater permittees and can be sorted by county and city.
- EPA’s “**Surf Your Watershed**” site—[www.epa.gov/surf](http://www.epa.gov/surf)—contains useful information on water quality, land use trends, threats, and links to other sources of information.
- Georgia EPD’s Air Protection Branch provides lists of, and links to, **air emissions permits** for the entire state at [www.georgiaair.org/airpermit](http://www.georgiaair.org/airpermit). Unfortunately, they are only sortable by facility name, not by county or zip, but you can use the Envirofacts website described above to find the facilities in your area first. To use the lists, click the “Permits and Title V Applications” box at the left of the page, then “PSD/112(g)/NAA-NSR/PCP Permits,” “SIP Permits Issued,” or “Title V Permits Issued” to find the specific facility’s permits—any particular facility might have any or all of these permits, so you may need to look under all three links.
- Additionally, there is an **online guide to pollution in your community** at [www.scorecard.org](http://www.scorecard.org). Enter your zip code to find information on who’s polluting in your community and how your community compares to other US cities. You can also do searches for a particular company or chemical.

## 6. Understanding Grassroots Organizing

In our experience working with community groups opposing polluting facilities, we have found that there is a specific organizing formula that elicits the most successful results. Even when the law is on your side, it often can only get you part of the way to where you ultimately want to go. Thus, we have found that the formula for success includes the following:

- A Good Lawyer
- A Good Expert
- A Good Organizer
- A Dedicated Community Group with Effective Leadership

Naturally, when bringing a legal action, you want to have a lawyer that is knowledgeable in the area of law that governs the kind of pollution causing concern in your neighborhood. However, even if you don't intend to bring a lawsuit, it is helpful to be in touch with a lawyer when you are challenging polluting facilities. A lawyer can help make sure you are aware of key deadlines; answer questions about the permitting process; and assist you in developing your public comments, requesting a public hearing, or completing an open records request. Thus, even if you don't think your group is likely to sue anyone, a lawyer can still be a valuable tool in the battle against polluting facilities.

Because a lawyer's expertise is the law and not biology, geology, or other sciences, it can also be very important to have a good expert that can answer questions and help you understand the full impact that a given facility or development may be imposing on the environment. In drafting

comments or waging a good media campaign, it will be important to know the facts and have specific information about the environmental or public health consequences of

increased pollution or a new facility. A good expert should be able to offer this information and may also be able to offer information on possible alternatives to the proposal that you are challenging.

While a good lawyer and a good expert are important parts of the equation, they are by no means the MOST important part of the campaign! The most successful campaigns against polluting facilities are rarely won strictly in the courts. Generally, the persuasive power of a dedicated community that employs traditional grassroots organizing techniques, media campaigns, educational campaigns, and outreach to local leaders, in addition to a legal strategy, elicits the most remarkable results.

Because grassroots organizing is an important part of any campaign to stop pollution, this chapter will focus on grassroots organizing techniques. We hope that this chapter will help you get your neighbors and concerned

community members to join you in your battle against polluting facilities. Remember, there is power in numbers!

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Generally, the persuasive power of a dedicated community that employs traditional grassroots organizing techniques, media campaigns, educational campaigns, and outreach to local leaders, in addition to a legal strategy, elicits the most remarkable results.

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### STEP ONE: GATHER A CORE GROUP

Taking on a polluting facility can be a lot of work and you will be well-served to start off by finding a few people who share your concerns and can help you get your campaign off the ground. It will be helpful to have some people to

help you brainstorm and strategize about how to grow your support base and get your message out to the broader public and local regulators.

Look around to see if there is some group in your area that is already working on environmental issues. If there is, you may not want to reinvent the wheel. Consider joining an existing group and proposing that they help develop and adopt your campaign (see below).

## STEP TWO: CHOOSE A CAMPAIGN

Before trying to organize the people around you, it is important that you be able to articulate exactly what the goals of your campaign are. When defining your campaign, you need to be specific about the relief you are requesting. People may not be able to understand exactly what it is you are hoping to achieve if you state your campaign goals too broadly. So, instead of picking a campaign to “clean up Pine Hills neighborhood” you would be better served to pick a specific goal: “bring the Pine Hill facility into compliance with air quality laws.”

To be effective, it is not enough to state a problem; you must also be able to offer a solution. Thus, instead of focusing your campaign around a polluting facility being a bad neighbor, you will want to focus your campaign on demanding the cleanup of a polluting facility. It will be much easier for you to get exactly what you are looking for if you are able to define it early in your campaign.

## STEP THREE: CHOOSE A SPOKESPERSON

You will want to pick a spokesperson so that your group is offering up a consistent message. The last thing you want is for different people to be representing your interests differently. If people are confused about your message, they will lose interest. Thus, it is helpful if in the very beginning, you pick one person who is willing to be the spokesperson for the group. This does not mean that this person has control over the message—only that they will consistently be the one to deliver the message. The message itself should be created by the entire group.

## STEP FOUR: DO YOUR HOMEWORK

Before you begin organizing around an issue, it is very important that you be well-informed on the issues. For some reason, there is a natural tendency to trust that big facilities are obeying the law and trying to be good neighbors.

Similarly, there is skepticism about the goals of people who oppose polluting facilities. You don't want to fuel that skepticism. Thus, it is important that you have the facts and are always speaking truthfully so you don't get trapped in a situation where you are spending more time defending yourself and your group's credibility than you are advocating for the change you hope to see.

It is also important that you get all the information you can about the relevant laws and regulations and that you

have an understanding of the regulatory framework that the facility is operating under. This handbook contains several chapters that offer valuable information about specific permitting regimes. This is an excellent place to start. Once you have a general understanding of the regulations, it will be helpful to speak with someone involved in the permitting or planning process to help you fill in the blanks. For this, it will be helpful to review “Accessing Public Records and Meetings,” Chapter 15 of this handbook. When trying to gather information from an agency, you don't have to state your position on a project—you will likely get more information if you don't put your feelings about the project on the table. However, you do always want to be honest and if asked, be forthright about your concerns. When trying to get information from agency employees, it is important that you approach them in a friendly and respectful way. Remember, they have information you want and you are not likely to get it by being rude or too demanding.

Do not fail to take appropriate action! It is very important that you stay aware of deadlines and opportunities for public comments or public hearings. You will want to discover all the approval, permitting, or other decision-making processes that an agency or developer must go through. Pay special attention to opportunities for public involvement. Seize these opportunities when you find them and be sure to take



appropriate action by submitting public comments or attending public hearings. Often, in order to lodge a formal lawsuit or other complaint, you will have to show a vested interest in the matter. This is easily established if you have been actively involved in the process. The vast majority of bad projects proceed successfully only because no one shows up to object at key points in the permit process where projects are the most vulnerable. Don't let this happen in your neighborhood... stay abreast of opportunities for public involvement and get your voice heard!

## **STEP FIVE: FRAME YOUR ISSUE IN A WAY THAT GETS PEOPLE MOTIVATED TO TAKE ACTION**

Decide what makes your campaign important and reduce that to a powerful slogan or image that people will remember. If you are concerned about a facility's air pollution, you will be more likely to inspire someone to take action by framing the issue in terms of the negative effects air pollution has on children than you will by just telling people that air pollution is bad. When considering how to frame your issue, it is helpful to consider your audience. When talking to mothers about air pollution, you can frame your issue in terms of the impact to children. When talking to business leaders, you may want to frame your issue in terms of the negative impacts that pollution has on your local economy.

## **STEP SIX: CALL A GENERAL MEETING**

In the beginning, much of your work will be educating your neighbors and concerned community members. Often the best way to do this is to call a general meeting. Once you have gathered people, you can introduce them to the issues of concern and elicit their help and support. To get people to your meeting, you are going to have to do a little work to make sure people that need to know of the meeting get the word. You may want to make flyers and pass them out. You can put flyers on cars at local establishments and hang them around your neighborhood. You may also want to consider knocking on doors and speaking to people directly.

When you are making your first contacts with community members, be sure you frame your issue in a compelling and persuasive way. Let them know that by attending the meeting, they will learn about things that they can do to protect themselves and their community from the dangers and negative impacts caused by excess pollution. People will be much more likely to attend your meeting if they think they are going to hear information that will equip them to take action.

Once you have your meeting, it is important that you give attendees concrete action items so they feel they are participating in the solution to the pollution problems. You don't want people to leave the meeting wondering what they should be doing. Be sure and get the name and contact information for every person that attends so that you can keep a running list of your supporters. This list may come in handy when you need people to turn out for events.

## **STEP SEVEN: DEVELOP AN ACTION PLAN**

Many well-intentioned groups fall apart after only a few meetings because people start to lose sight of what they should be doing. The best way to keep people involved is to give them clear action items that will advance the goals of your campaign. You should start developing this action plan at your very first meeting, so your campaign stays organized and on track. If the members of your group stay busy, they will stay motivated and are less likely to feel that they are not needed. Action items need not be overly complex and involved. They may be as simple as typing up the minutes from the meeting, getting two people to call local leaders, gathering contact information for key officials, designing a flyer, brainstorming fundraising ideas, etc. After drafting your action plan, look it over and start delegating tasks to help advance your goals.

By developing an action plan, you will be better able to delegate tasks effectively. Remember, it is important that you don't try and take everything on yourself! DELEGATE!!! This not only takes some of the load off your shoulders, but also allows others to feel that they are an essential part of the group.

Campaigns fail or succeed based upon how much action takes place. While it may be comforting to get together and discuss the problems in your neighborhood, it is not an effective means of cleaning things up. The key to a successful campaign is getting out there and taking action. For a sample action plan, see the end of this chapter.

## **STEP EIGHT: TAKE ACTION**

Here are some possible action items. This list is not exhaustive, and we encourage you to be creative!

- Flyer local establishments
- Canvass your neighborhood
- Organize a letter writing campaign—send letters to local leaders expressing your message

- Demand a public hearing
- Attend local planning meetings
- Join groups with similar missions and get them on board with your campaign
- Write letters to the editor of local newspapers
- Host a non-violent public demonstration
- Do a banner drop—paint a giant banner and drop it in a visible place (where it is legal to do so) to raise awareness around the issues of concern
- Hold a press conference
- Sponsor a lobby day and speak with legislators and regulators
- Schedule radio and television interviews
- Contact local schools and get their environmental clubs to help in your efforts
- Create a petition and get neighbors to sign it—then send it in to local leaders
- Conduct a postcard campaign—create postcards with your message and have all your neighbors send them to local leaders
- Submit public comments

- Bring a legal challenge to a permit
- Host a pot-luck or some other community event to raise awareness and gather support from concerned neighbors
- Call for a private meeting with local leaders or regulators or both

## **STEP NINE: BE PATIENT**

Remember, Rome was not built in a day. You will not be able to defeat a proposed facility or bring a facility into compliance with controlling regulations overnight. It will take time: sometimes months, sometimes years. So, be patient and be sure to celebrate all the victories you have along the way! Celebrate getting new people on board or celebrate a successful action. Each day that you are still in the game is a day to celebrate... you haven't been defeated!

## **STEP TEN: BE PERSISTENT—DON'T GIVE UP**

Don't take "no" for an answer. Polluting facilities are counting on you running out of steam. You must be persistent and show them that you are not going anywhere until you are satisfied with the environmental protections afforded your community.

Always remember that you can call GreenLaw or the Turner Environmental Law Clinic if you need help, support, or even just a little motivation!

# Sample Action Plan:

- I. Issue:
    - a. Our neighborhood is being scoped by landfill developers who are looking to site a landfill in our community
  - II. Goals:
    - a. Keep the landfill out
    - b. Conduct research on what laws and regulations govern landfills
    - c. Participate in the regulatory process so that our opposition is heard
      - i. Find out about opportunities for public comments and public hearings
      - ii. Be aware of deadlines that may apply
    - d. Convince county and city officials to object to landfill proposals
    - e. Go to county and city planning meetings to get our voices heard
    - f. Canvass the neighborhood to gather support from community members
  - III. Strengths:
    - a. One Commissioner is against siting landfills in our neighborhood
    - b. Local Homeowners' Association is active and willing to be involved
    - c. Group member is very computer savvy and can design e-mail action alerts and develop a list serve
    - d. Group member is very creative and will help develop a logo/image that we can use to broaden public awareness of the existence of our group
  - IV. Weaknesses:
    - a. Not much money
    - b. New to environmental activism
    - c. Small numbers
  - V. Allies:
    - a. One County Commissioner
    - b. Local business owners
    - c. Homeowners' Association
  - VI. Opponents:
    - a. Two Commissioners
    - b. Landfill company
  - VII. Strategy:
    - a. Conduct necessary research (see goals section)
    - b. Contact all commissioners and decision makers with letters and e-mails
    - c. Lobby the permitting authority for strict controls
  - d. Pass protective land use ordinance that would prevent landfills from being sited in critical areas (Contact GreenLaw or Turner Clinic regarding model ordinances that could protect your community)
  - e. Prevent zoning changes that would be necessary to support the landfill
  - f. Mobilize Homeowners' Association and other residents
  - g. Educate community members about the dangers of landfills
  - h. Enlist the services of larger environmental and social justice groups
  - i. Contact a lawyer regarding possible legal strategies
  - j. Get media coverage regarding the amount of pollution that already exists in the community—we are already overburdened!
- VIII. Tactics and Timeline:
- a. August
    - i. Research laws
    - ii. Attend planning meetings
    - iii. Contact Homeowners' Association
    - iv. Contact lawyers
  - b. September
    - i. Canvass neighborhood to educate residents
    - ii. Petition campaign—get residents to sign petition opposing the new landfill
    - iii. Write letter to the editor to get published in local paper
    - iv. Contact other environmental groups
  - c. October
    - i. PUBLIC COMMENTS DUE on October 12, 200\_\_
    - ii. Attend public hearing on October 8, 200\_\_
    - iii. Deliver petition to local leaders
    - iv. Letter writing campaign
    - v. Public non-violent demonstration opposing new landfill
  - d. November
    - i. Public radio interview
    - ii. Host community event to raise awareness
    - iii. Publish update/newsletter highlighting our efforts
  - e. December
    - i. Defeat landfill proposal!!!

## 7. How Environmental Laws Can Help You to Protect Your Community

*This chapter was originally published as a portion of Chapter 2 of the Environmental Law Institute’s A Citizen’s Guide to Using Federal Environmental Laws to Secure Environmental Justice (2002), available at [www.eli.org](http://www.eli.org). Permission to reprint the chapter is gratefully acknowledged.*

Environmental laws are technical and complex. But with some research and effort, anyone can understand the most important ideas in those laws and how to use them—along with civil rights laws, community organizing, and other methods—to address community health concerns and exposure to environmental harms and risks. Environmental laws give you opportunities for evaluating proposed projects and tools to ensure that decisions affecting your community are made properly—tools such as access to information, public hearings, review of decisions by higher-level officials, and legal action in court if the rules have not been followed. Although some environmental problems will be highly technical and complex (requiring the assistance of lawyers and technical experts), knowing the basic opportunities and tools provided in environmental laws can help you make sure that government decisions consider environmental justice issues. Understanding these opportunities and tools can also help you to get other community members involved, and to work more effectively with lawyers and other experts.

Some of the general legal rules and tools provided in environmental laws can be extremely useful to promote environmental justice issues. For example:

- **Public notice and comment requirements:** In almost all of the cases in which the government gives someone permission (a “permit”) to conduct a polluting activity, the public has a right to learn about those permits before they are issued (“notice”) and to offer information and ideas about whether the permit should be issued, and if so, on what terms (“right to comment”). In some cases, the government must hold a public meeting at which people can speak about their views on the issue and submit more information. Citizens can provide information, for instance, about the high levels of pollution and illness

already faced by their community or about their higher-than-average level of fish consumption that may affect government estimates of the risk posed by a polluting facility.

- **Environmental impact statements:** In some cases, the federal government must prepare a detailed “environmental impact statement” or “EIS” before issuing pollution permits or taking other “major” actions that may affect your health and safety. Those statements must describe fully all of the harmful effects of the proposed actions, and evaluate whether there are other, less harmful, ways of accomplishing the same goal (“alternatives”), including doing nothing (the “no action” alternative). The public also has the right to comment in this process. For example, citizens can comment about the failure of an EIS to examine fully the impacts of siting the proposed project in a community that already hosts a high percentage of the area’s polluting facilities.
- **Citizen suits:** If you believe that either the government or a private party is breaking an environmental law, you have the right to bring a lawsuit to stop them. You may also be able to bring a lawsuit to require the government to take an action that is required under the environmental laws. Congress has made citizen suits a part of every major environmental law.

In addition, environmental laws contain various requirements and opportunities that can be applied to address cumulative impacts, sensitive populations, and other issues of concern to many communities of color and low-income communities. For example:

- **Air:** There is a provision in the Clean Air Act designed to make sure that city residents who already face serious air pollution problems do not have to breathe even dirtier air, and that requires air pollution to be reduced over time.
- **Superfund:** The Superfund law has a section that allows communities to get money from EPA to hire their own scientists to help them participate effectively in decisions about the best way to clean up contaminated property.

- **Water:** Some elements of the Clean Water Act (as well as other laws such as the Clean Air Act) require the government to consider combined health effects of different sources of pollution. In some circumstances, the government must consider the fact that pollution levels are already high in your community before allowing even more pollution to occur.

Federal and state government agencies can apply environmental laws to address environmental justice issues, but you may have to help make sure that they use the opportunities to do so. Community residents are in the perfect position to identify their concerns to the government, and to provide the facts that can support government action to address those concerns.

## HOW THIS HANDBOOK CAN HELP YOU TO USE ENVIRONMENTAL LAWS TO YOUR ADVANTAGE

This handbook is designed to introduce you to some of the ways in which the major environmental protection laws administered by the federal EPA and state environmental agencies can be used to address environmental justice issues. The handbook will not cover all the issues that you may face, but it can help you know what questions to ask, and what information to collect to provide government officials with the information necessary to do the right thing, even without the help of lawyers and technical experts.

Environmental statutes, or laws, address a wide range of environmental harms and risks that may be faced by your community. While it would be easier if a single statute addressed all environmental threats, different laws address different types of environmental issues (such as the Clean

Air Act for air pollution, or the Clean Water Act for river and lake pollution). Other laws—or sometimes combinations of laws—may apply to drinking water issues, groundwater contamination, hazardous waste sites, exposure to pesticides and other toxic chemicals, or contaminated food sources.

Similarly, while it would be easier if a single government agency administered and enforced all of these environmental laws, that is not the case. In the federal (national) government, most environmental laws are implemented by EPA. Other federal agencies (such as the U.S. Army Corps of Engineers, the Department of Agriculture, and the Department of Health and Human Services) also have

some role to play in implementing and enforcing all or parts of other environmental laws. Those agencies all have offices in Washington, D.C., but also in different parts of the country (regional offices). In addition, many of the environmental laws are administered jointly by federal, state, and sometimes local government agencies, and the roles played by each can vary depending on the law in question. Those state and local agencies, in turn, may operate under both the federal statute and a similar state law or local ordinance.

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## USING ENVIRONMENTAL LAWS TO PROMOTE ENVIRONMENTAL JUSTICE

- Identify fully the impacts of agency actions and decisions on environmentally burdened communities
  - Advocate for agency decisions that are aimed at remedying and preventing disproportionate impacts
  - Ensure that communities have meaningful input in identifying impacts, making decisions, and implementing environmental programs
-

## 8. Understanding the Players

*This chapter is an edited version of a chapter that was originally published as Chapter 3 of the Environmental Law Institute's A Citizen's Guide to Using Federal Environmental Laws to Secure Environmental Justice (2002), available at [www.eli.org](http://www.eli.org). The original chapter included information about the special concerns and role of federally recognized Native American Tribes in securing environmental justice, which was omitted because there are no federally recognized Tribes in Georgia. Permission to reprint the chapter is gratefully acknowledged.*

You first need to answer two important questions to understand how the law can be helpful:

- Which agencies are responsible for the key decisions that will affect the environmental risks you are facing?
- Which of the various environmental statutes apply?

Do not assume that one agency will be able to address your concerns. In some cases, multiple agencies at different levels of government will be involved in different decisions about a particular issue or project, or multiple statutes may come into play. In other situations, one agency may have the responsibility or authority to review, and possibly to change or reverse, the decision of another.

### IDENTIFYING THE PLAYERS

It is essential that you make your case to the correct government officials, and that you take advantage of available

options to get help from all people that may influence a decision. It also can be very important to know which other people are likely to be involved in your issue, and whether they are potential supporters or opponents. The following is a list of the main governmental and other entities that are likely to be involved in environmental decisions.

### Key Players

#### DECISION-MAKERS

- U.S. Environmental Protection Agency (EPA)
- State environmental agencies
- U.S. Army Corps of Engineers
- Agency for Toxic Substances and Disease Registry (ATSDR)
- Federal Food and Drug Administration
- Natural Resources Conservation Service (NRCS)
- U.S. Fish and Wildlife Service (FWS)

#### OTHER INTERESTED PARTIES

- Business groups
- Local governments
- Emergency planning or response officials
- Environmental groups
- Citizen groups

### THE U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)

EPA is an agency of the federal government charged with administering and enforcing most of the environmental statutes addressed in this handbook. EPA plays many different roles under these laws, depending on the statute or situation. It is often important to determine EPA's responsibilities in a particular state. Some of EPA's major roles and responsibilities include:

- Issuing environmental rules and regulations that apply throughout the country.
- Issuing guidance (recommendations) on how the environmental laws should be put into action at both the national and state levels.
- Issuing or denying environmental permits and other approvals in states that choose not to do so for themselves (see state discussion below).

- Overseeing regulations, permits, and other actions taken by state environmental agencies and in some cases vetoing or amending state actions EPA believes are

inconsistent with, or inadequate under, federal environmental laws.

- Enforcing environmental laws against polluters in all states.
- Conducting environmental research, monitoring, analysis, and other information collection, and providing the information obtained to Congress, states, other agencies, and the general public.
- Administering grant programs that provide resources to states, citizens, and other groups.
- Planning for and supervising cleanups of hazardous waste sites.
- Ensuring that environmental justice is integrated into all agency programs, policies, and activities, and is considered in the decisionmaking process.

While EPA's national headquarters are in Washington, D.C., it has regional offices located in ten major cities around the country (Boston, New York, Philadelphia, Atlanta, Chicago, Kansas City, Dallas, Denver, San Francisco, and Seattle). EPA also maintains special facilities, such as laboratories and research centers, in other locations. Most of the major program decisions involving the entire country are done at headquarters. Most decisions involving individual projects or facilities are handled from the regional offices.

## STATE ENVIRONMENTAL AGENCIES

Every state has one or more environmental agency charged with administration, at the state level, of many of the environmental laws dealt with by EPA nationally. Because the names and authorities of these agencies vary considerably from state to state, it is important for you to learn which agency or agencies in your state are responsible for which laws and programs. For example, in some states, a single agency is in charge of all environmental programs (such as air pollution, water pollution, hazardous waste regulation and cleanup). In other states, different agencies—such as a state water pollution control board and a separate air quality control board—can be in charge of different statutes and programs.

An important initial piece of information is whether your state has received authority to administer any or all programs under the national environmental laws. Some statutes (such as the law governing pesticides use) allow only EPA to make decisions. Others (such as laws governing air, water, and solid and hazardous wastes) allow for states to operate the programs.

Your state may have decisionmaking authority under some environmental laws, but not all. If a state chooses to have EPA administer an environmental program, key decisions about permits and approvals under that statute are made at the EPA regional office. This does not necessarily mean that you should ignore your state environmental agency. The state may be able to influence EPA's decision, or the state may have separate state legal authority to address your concerns, even if it does not have authority under the relevant federal program. Under the Clean Water Act, for example, states have the authority to amend or reverse an EPA permitting decision, if the state believes it would violate state water quality requirements. Since water quality standards can be an important tool to address environmental justice issues (such as localized contamination of fish, shellfish, or drinking water), this state authority can be important, even when the state does not issue the permits.

States can also elect, however, to seek "primacy" or program "delegation" for many environmental programs. Primacy or delegation means, for most purposes, that the state will have the lead role in running the program. To do so, they must meet certain minimum requirements. For example, to receive program authority, states typically must adopt adequate laws and regulations, and prove that they have the funding and other resources necessary to administer and enforce the laws properly. When a state applies for program delegation, it is a key moment for citizens to ensure that state environmental programs are strict enough to meet their needs, and that environmental justice issues are considered properly in the state program. Because EPA must approve each state's program as adequate, citizens have an opportunity to identify program weaknesses when the state asks for delegation. Citizens can also challenge an EPA decision to approve an inadequate state program. Even after initial program approval, EPA is supposed to monitor the state program on an ongoing basis. Thus, citizens who believe that a state is not administering or enforcing an environmental statute properly—for example, by failing to consider or address environmental justice concerns—can bring those issues to EPA's attention. They may even file petitions for state programs to be withdrawn or modified and returned to EPA for administration and enforcement.

Short of state program withdrawal, however, EPA has a continuing obligation to review state permitting and other program decisions, and often has the authority to veto individual state decisions. For example, under the Clean Water Act, EPA has the authority to review, veto, and reissue state water pollution permits. Thus, while in states with delegated authority to administer environmental laws, your primary attention should be on the responsible state agency, you can also bring important environmental justice and other

concerns to the attention of the EPA regional office, and ask EPA to intervene if states are ignoring those issues.

Regardless of whether EPA or the state has the authority to issue environmental permits and approvals for a particular program, both EPA and the state have legal authority to bring enforcement actions against polluters (those who release pollutants or conduct other activities without the required permits, or in violation of those permits). Some recent court decisions have ruled that states cannot sue a polluter after EPA has done so, and vice versa. But until some environmental agency has taken action against illegal pollution, you should raise your concerns at both the state and federal levels. As noted below and in Chapter 19, if neither government brings adequate enforcement action, you can also take matters into your own hands through citizen suits.

Chapter 9 of this handbook describes the relevant agencies in Georgia in more detail.

## OTHER FEDERAL AGENCIES

While EPA and its state counterparts are the principal government agencies implementing most of the environmental pollution laws, a number of other federal and state agencies can be important players as well, either because they administer parts of the major environmental laws, or because they have major influence over decisions that are made. While you will have to identify which other state agencies may be helpful or involved in your own state, some of the many important federal agencies include the following:

- **Army Corps of Engineers** of the Department of Defense, issues permits to discharge dredged or fill material into wetlands and other waters under the Clean Water Act.
- **Agency for Toxic Substances and Disease Registry (ATSDR)**, within the Department of Health and Human Services' Centers for Disease Control, conducts health assessments at Superfund sites.
- **Federal Food and Drug Administration** of the Department of Health and Human Services, administers food safety programs under the Federal Food, Drug and Cosmetics Act.
- **Natural Resources Conservation Service** and other agencies within the Department of Agriculture administer programs to prevent agricultural chemicals and other pollutants from running off into surface and groundwater, and provide grant and technical assistance to help farmers comply with environmental requirements.
- **U.S. Fish and Wildlife Service**, within the Department of the Interior, must be consulted by other federal agencies whenever an action may jeopardize the existence of a threatened or endangered species, and has the authority to veto or impose conditions on other federal actions that would have such effects.

While some of these agencies have no direct regulatory authority over environmental justice issues, they may share your concern and may be able to help you.

## OTHER INTERESTED PARTIES

Community residents are not likely to be the only non-governmental group interested or involved in a particular environmental issue. Often one or more private or governmental organization is pushing for the development of a project your group may think is harmful, or is seeking weaker or less expensive cleanup requirements for existing polluted sites. A surprising array of organizations may line up for or against a particular proposal—including business groups who may be affected indirectly by the decision, local governments, or other citizen groups. One reason to attend public meetings and hearings is to identify all of the other groups involved in key decisions, and to learn what their positions are. It is useful to obtain copies of attendance sheets or lists of witnesses, which may provide names, organizations, and contact information (address, phone, e-mail addresses, etc).

The following is a list of some other players who may be involved in environmental issues and decisions:

- **Business groups** can be involved through individual companies or through trade associations. These groups may represent businesses involved directly in the decisions at hand (such as permit applicants or owners or operators of contaminated sites). They may also stand to gain from a particular government action, such as the construction companies who are likely to benefit from a new road project, or potential users of energy from a new power plant. Be aware, however, that business interests are not always contrary to those of environmental justice groups. For example, firms that build mass transit systems might agree with your concerns about building a new freeway through an urban neighborhood, and may be able to help you think of better alternatives.
- **Government agencies** other than those that make the actual environmental decision may be involved, including state, regional, or local governments. Sometimes they are the main project supporter (such as a state or local department of transportation, which may be applying for

environmental permits to build a new road), and sometimes they have less direct interests. The state parks or wildlife department, for example, may be concerned if a proposed road will pass too close to an important wildlife area. Because different government agencies address so many different interests and issues, it is wise to think carefully about which agencies may be on which side of a given issue, and how you may be able to influence agencies that are not yet sure which positions to take.

- **Local government** may play a critical decisionmaking role. In some programs, federal or state environmental agencies are required to take special note of local government positions on an issue. In other cases, a project may require both federal or state environmental approval and local zoning permission, meaning there may be two separate avenues for stopping or changing a proposal. Your local elected officials may also be persuaded to champion environmental justice issues.
  - **Emergency planning or response officials**, at all levels of government (such as local fire departments), can be involved closely in the cleanup of existing contaminated sites and in the approval of new, potentially dangerous facilities. While often these agencies are concerned mainly with issues of coordination and access to the information they need to do their job, in some cases you may be able to persuade them to help you get your concerns addressed. For example, you may be able to convince them that it would be very difficult or impossible to evacuate an urban area, where residents rely heavily on mass transit, in the event of an accident at a new proposed chemical plant.
  - **Other environmental groups** are often involved in the same or related issues as environmental justice groups, either for similar or for very different reasons. Whenever two related groups are working on the same issue for different reasons, there is the potential for problems down the road if one group's issues can be resolved and another's are not. You may be able to educate other
- groups about your issues and to work cooperatively to meet shared objectives, even if you choose different methods to do so.
- **Other citizens groups** may be involved in environmental issues to address other types of concerns, some of which may help and some of which might hurt your position. For example, groups that represent physically disabled individuals may support mass transit over new roads for entirely different reasons than yours, but they may be allies in the issue nonetheless. On the other hand, a consumer group may actually support a proposed new power plant if it is convinced that power rates for consumers will be lower as a result. It is important to understand fully the reasons for their initial positions. If reasonable options can be presented that provide the same benefit to consumers, and if the group understands your environmental justice concerns better, it is possible that their initial position can be changed.
  - **Faith-based groups**, such as churches, may be interested in or already be involved in environmental issues in your community. Over the years, faith-based groups have played a leadership role in the environmental justice movement. At a local level, they may be powerful advocates for your position on an environmental issue and may be able to help find additional community members to work with you on a particular environmental problem.
  - **Academic institutions**, including universities and colleges, around your community may be able to provide resources and support that could help you work on environmental issues in your community. For example, some universities have special environmental justice resource centers and legal clinics. You should check with the academic institutions near your community to see if they have such programs. Even if your neighboring university does not have such a special program, they may be able to provide support, such as technical assistance, if you ask them.

## 9. Understanding the Players in Georgia

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In addition to the federal agencies discussed in the previous chapter, several agencies in Georgia address environmental issues at the state and local level.

### ENVIRONMENTAL PROTECTION DIVISION

In Georgia, the Environmental Protection Division of the Department of Natural Resources (EPD) is the principal government agency implementing most of the environmental pollution laws. It is charged with administration, at the state level, of many of the laws dealt with by the Environmental Protection Agency nationally. EPD is in charge of all environmental programs (such as air pollution control, water pollution control, and hazardous waste regulation and cleanup). This is because EPA has delegated authority under many statutes, such as the Clean Air Act and the Clean Water Act, to Georgia's EPD. This means that EPD has the

authority to issue or rescind water pollution and air pollution permits, as well as permits authorizing landfills.

Specifically, EPD:

- Issues and implements state laws, rules, and policies to protect human health and the environment in Georgia
  - Issues guidance on how the environmental rules and regulations should be put into action
  - Issues or denies environmental permits and other approvals
  - Enforces environmental laws and brings enforcement actions against polluters (entities who release pollutants without a permit, or in violation of their permits)
  - Responds to citizens' queries and complaints
- 

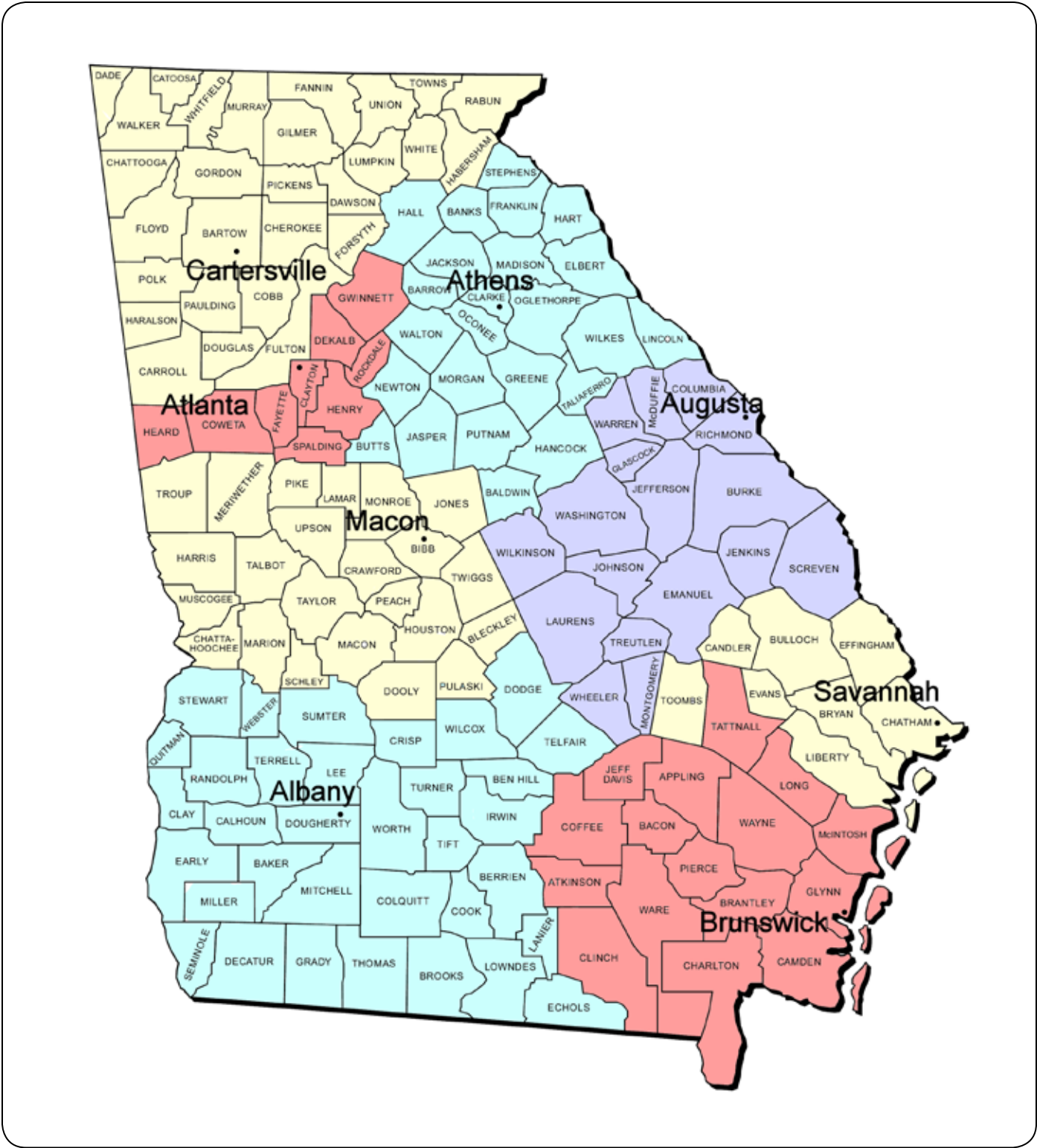
#### EPD'S STATE HEADQUARTERS ARE IN ATLANTA:

Georgia Department of Natural Resources  
 Environmental Protection Division  
 2 Martin Luther King Dr.  
 Suite 1152 East Tower  
 Atlanta, GA 30334  
 (404) 657-5947  
[www.gaepd.org](http://www.gaepd.org)

#### EPD ALSO HAS REGIONAL OFFICES LOCATED IN:

Brunswick (Coastal District) 912-264-7284  
 Savannah (Coastal District) 912-353-3225  
 Augusta (East Central District) 706-792-7744  
 Macon (West Central District) 478-751-6612  
 Atlanta (Mountain District) 404-362-2671  
 Cartersville (Mountain District) 770-387-4900  
 Athens (Northeast District) 706-369-6376  
 Albany (Southwest District) 229-430-4259

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The above map of the state of Georgia indicates which counties fall within each district.

Within EPD, there are several branches addressing different types of pollution. You will want to contact the appropriate branch.

### **Air Protection Branch:**

Georgia Department of Natural Resources  
Environmental Protection Division  
Air Protection Branch  
4244 International Parkway, Suite 120  
Atlanta, Georgia 30354  
Telephone: (404) 363-7000  
Fax: (404) 363-7100  
[www.georgiaair.org](http://www.georgiaair.org)

### **Watershed Protection Branch:**

Georgia Department of Natural Resources  
Environmental Protection Division  
Watershed Protection Branch  
4220 International Parkway, Suite 101  
Atlanta, Georgia 30354  
Telephone: (404) 675-6232  
Fax: (404) 675-6247  
[www.gaepd.org/Documents/wpb.html](http://www.gaepd.org/Documents/wpb.html)

### **Land Protection Branch:**

Georgia Department of Natural Resources  
Environmental Protection Division  
Land Protection Branch  
4244 International Parkway, Suite 104  
Atlanta, Georgia 30354  
Telephone: (404) 362-2537  
Fax: (404) 362-2580  
[www.gaepd.org/Documents/lpb.html](http://www.gaepd.org/Documents/lpb.html)

### **Hazardous Waste Management Branch:**

Georgia Department of Natural Resources  
Environmental Protection Division  
Hazardous Waste Management Branch  
2 Martin Luther King Jr. Drive SE,  
Suite 1154 East Tower  
Atlanta, Georgia 30334  
Telephone: (404) 656-7802  
Fax: (404) 651-9425  
[www.gaepd.org/Documents/hwb.html](http://www.gaepd.org/Documents/hwb.html)

## **OTHER AGENCIES**

In addition to EPD, a number of other state and local agencies can be important players as well, either because they administer parts of environmental laws or because they have major influence over decisions that are made. Some of these important agencies in Georgia are:

### **Coastal Resources Division**

The Coastal Resources Division (CRD) has primary responsibility for managing Georgia's marshes, beaches, and marine fishery resources. CRD is based in Brunswick, Georgia, and it administers permitting programs under the Coastal Marshlands Protection Act, Coastal Management Act, and Shore Protection Act; issues revocable licenses for use of state-owned water bottoms; monitors coastal water quality; and manages shellfish harvest areas. CRD also conducts research; sponsors management and development activities associated with recreational and commercial fishery resources; and builds boat ramps and fishing piers.

CRD is involved whenever the marshlands are potentially impacted. The scientists at CRD can also be consulted for permitting decisions if any fishery resources may be impacted. There is a wealth of scientific studies created by CRD that can be helpful.

Georgia Department of Natural Resources  
Coastal Resources Division  
One Conservation Way, Suite 300  
Brunswick, Georgia 31510  
(912) 262-3143  
[crd.dnr.state.ga.us](http://crd.dnr.state.ga.us)

### **Wildlife Resources Division**

The Wildlife Resources Division (WRD) regulates hunting, fishing, and the operation of watercraft in Georgia. Headquartered in Social Circle, Georgia, WRD also protects non-game and endangered wildlife and maintains public education and law enforcement programs to ensure that Georgia's natural resources will be conserved for present and future generations. WRD can weigh in on permitting decisions, depending on wildlife that may be impacted by a given permit or landfill, for example.

Georgia Department of Natural Resources  
Wildlife Resources Division  
2070 U.S. Hwy. 278 SE  
Social Circle, Georgia 30025  
(770) 918-6400  
[georgiawildlife.dnr.state.ga.us](http://georgiawildlife.dnr.state.ga.us)

## Department of Community Affairs

The Department of Community Affairs (DCA) has many programs and initiatives. One of DCA's charges is to promote sustainability, environmental protection, and enhanced quality of life by encouraging local implementation of generally accepted best growth and development practices. DCA is a particularly good resource for solid waste management issues. DCA gets involved when a landfill is proposed for a county or town, because the DCA's environmental management division assists local governments in planning to meet their solid waste management needs, offers technical assistance and training in waste management issues for Georgia's local governments, and works with counties on their solid waste management plans, which are required to be approved and in place before a landfill can be sited.

Georgia Department of Community Affairs  
60 Executive Park South NE  
Atlanta, Georgia 30329  
(404) 679-4940 / (800) 359-4663  
[www.dca.state.ga.us](http://www.dca.state.ga.us)

## Public Service Commission

The Georgia Public Service Commission (PSC) is made up of five elected commissioners whose job it is to regulate telecommunications, electric, transportation, and natural gas services in Georgia. The PSC helps ensure that rates for these services are fair to both Georgia consumers and the industry. For example, it is the PSC that decides rates for pay phones and sets prices for natural gas services and electrical power rates.

The PSC also makes decisions that can potentially impact our environment. While the PSC does not have direct control over environmental issues, many of the decisions that it makes may have an indirect impact on the amount of dirty air that we breathe. For example, the PSC may consider proposals by power companies, such as Georgia Power, to allocate profits to installing pollution control equipment on its power plants.

The PSC also works to educate consumers. The Commission publishes a brochure outlining consumers' rights and ways you can protect against overbilling and ensure quality services. The PSC accepts complaints and conducts investigations on behalf of consumers. To file a complaint online go to [www.psc.state.ga.us](http://www.psc.state.ga.us) and follow the directions for complaints regarding electric, telecommunications, or natural gas. The PSC does not have jurisdiction over MARTA, cable television, cellular phone services, water, or sewer.

Contact your service provider directly for concerns regarding these services.

Georgia Public Service Commission  
244 Washington Street, SW  
Atlanta, Georgia 30334  
Toll-free in Georgia: (800) 282-5813  
Metro Atlanta: (404) 656-4501  
Email: [gapscc@psc.state.ga.us](mailto:gapscc@psc.state.ga.us)  
[www.psc.state.ga.us](http://www.psc.state.ga.us)

## Georgia Historic Preservation Division

The Historic Preservation Division promotes the preservation and use of historic places for a better Georgia. This division works in partnership with federal and state agencies, local governments, preservation organizations, community groups, and individuals to achieve appreciation and use of historic resources (homes, forts, schools, other buildings/structures). The Historic Preservation Division reviews and comments on the thousands of construction projects every year in Georgia that may impact historic structures. This Division can be very helpful in protecting a special place or building in your neighborhood.

Georgia Department of Natural Resources  
Historic Preservation Division  
34 Peachtree Street NW, Suite 1600  
Atlanta, Georgia 30303-2316  
(404) 656-2840  
[www.gashpo.org](http://www.gashpo.org)

## City and County Government

Local governments can play a major role in the regulation of industry. City and county officials create zoning laws, which ultimately tell industry where they are allowed to site their facilities. Good zoning ordinances can help limit residential exposure to industrial pollution. Counties and cities also have local Solid Waste Management Plans that regulate landfills and other waste sites. These plans must be as restrictive as the state plan, but can contain additional regulations and siting restrictions. Many cities and counties also regulate wastewater. For more information about how your county or city regulates pollution, contact your local officials and start asking questions!

## 10. Land Use Planning and Zoning

Two major tools help decide how communities will use their land: land use planning and zoning. Land use planning deals with a community’s vision of its future “look and feel” and normally operates at a fairly general level. Zoning is the process that prescribes permitted uses for specific parcels of land. Both can be helpful tools to prevent unwanted uses in your community, but both have limitations.

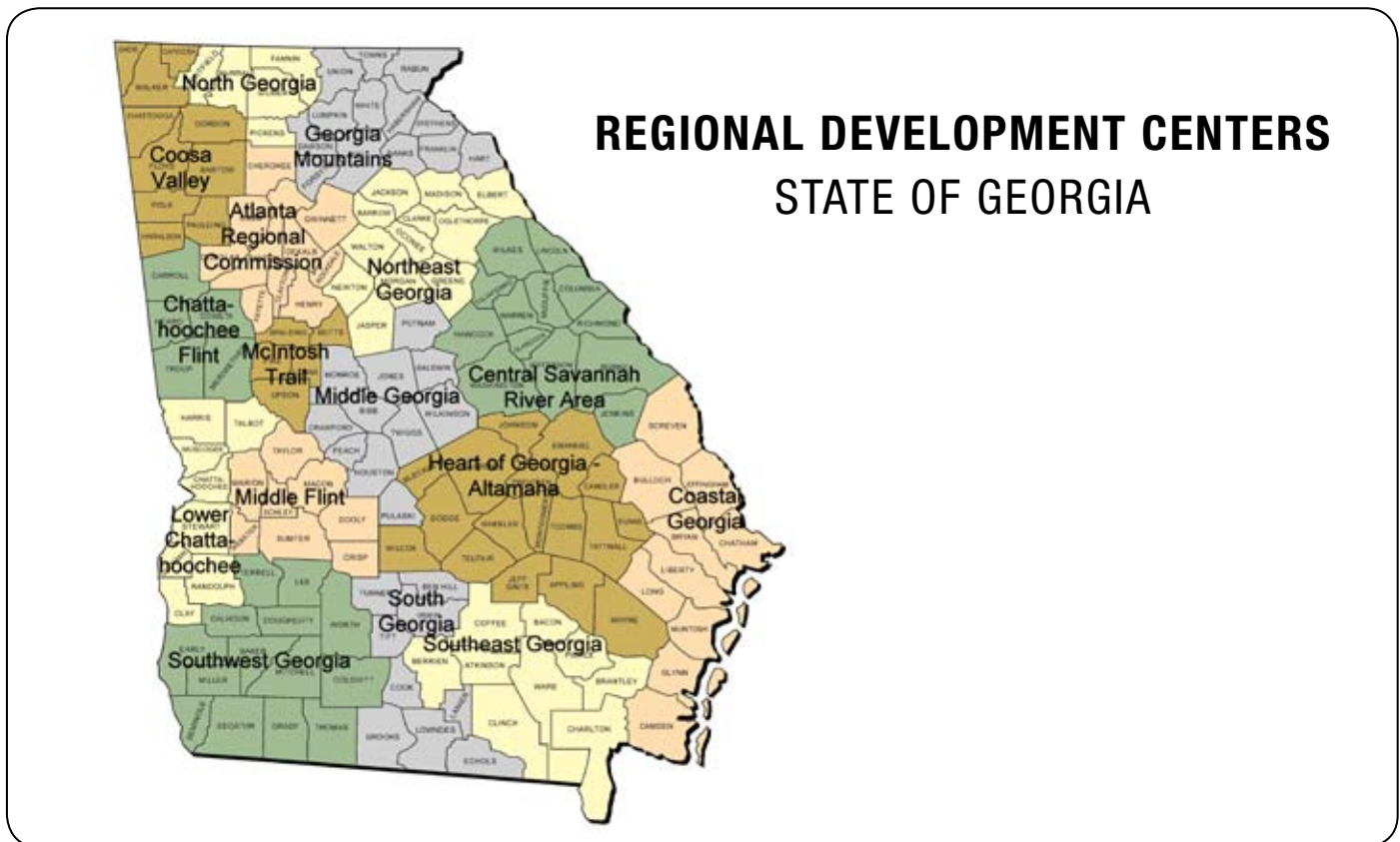
### LAND USE PLANNING

#### Overview

In Georgia, land use planning is part of a larger scheme called “comprehensive planning.” Each local government (county and municipality) in Georgia is required to develop a comprehensive plan that governs future land use; transpor-

tation, such as the development of roads; and other issues facing towns and cities as they grow and change.<sup>1</sup>

Georgia law gives the Georgia Department of Community Affairs (DCA) authority to establish standards and procedures for comprehensive planning, including land use planning, by all local governments in Georgia.<sup>2</sup> The law also establishes Regional Development Centers (RDCs) to assist local governments in the planning process and to ensure that local planning is coordinated and meets minimum standards.<sup>3</sup> Each RDC covers a region encompassing between five and seventeen counties. The RDCs are governed by a board made up of elected or appointed officials from the counties and municipalities served by the RDC.<sup>4</sup> The following map shows which RDCs work with which Georgia counties.<sup>5</sup>



In May 2005, the DCA promulgated rules entitled “Standards and Procedures for Local Comprehensive Planning: Local Planning Requirements,”<sup>6</sup> which provide local planning requirements and for the first time seek to involve the community in developing plans. Thus, they provide a powerful opportunity to help shape your community’s future.

## Plan Contents

To be consistent with the state rules, each local government must develop a comprehensive plan with three components:

1. *A Community Assessment*, which is an objective professional assessment of data and information about the community that is prepared without direct public participation.<sup>7</sup> It results in a concise informative report, such as an executive summary, which is used to inform decision making by stakeholders later in the comprehensive planning process.
2. *A Community Participation Program*, which describes the local government’s strategy for ensuring adequate public and stakeholder involvement in the preparation of the Community Agenda described below. The public may participate in the Community Participation Program by making comments or suggestions at a public hearing, which the local government is required to hold before the Community Participation Program and the Community Assessment are submitted to the RDC for review.<sup>8</sup>
3. *A Community Agenda*, which is the “most important” component because it sets out the community’s vision and strategy. This component offers the most opportunity for public participation, as “it must be prepared with adequate input from stakeholders and the general public.” Development of the Community Agenda may only be initiated after the RDC reviews the Community Assessment and Community Participation Program.<sup>9</sup>

The Community Agenda is the main set of documents setting out the future plan. It must contain three parts. The first part is a Community Vision, “intended to paint a picture of what the community desires to become.”<sup>10</sup> At a minimum, it must include a Future Development Map designating acceptable uses for land, such as residential, industrial, or commercial.<sup>11</sup> In Georgia, future development maps usually allow a variety of uses within each area; for instance, they may allow differing intensities of residential development, or they may allow both commercial and light industrial uses. The vision must also include a Defining Narrative to help interpret the map and set out the other goals of the plan.<sup>12</sup> The second required part of the Community Agenda is a list

of issues and opportunities identified by the community for further action.<sup>13</sup> Finally, the third part is an implementation program for achieving the vision.<sup>14</sup>

## Public Participation

The public’s most substantial opportunity to influence future land uses comes during public hearings that accompany the development of the Community Agenda. Although the Georgia rules provide that the public may participate in the development of the Community Participation Program, they only require that notice be provided to “interested parties,” which include only local governments in the development region, other local authorities, contiguous regional development centers, and affected state agencies.<sup>15</sup> Thus, members of the public may not know when a Community Participation Program is being developed. In contrast, the rules require local governments to provide broader notice, including notices in local newspapers, of the availability of the Community Assessment and Community Participation Program before the Community Agenda is prepared,<sup>16</sup> making it more likely people will know about it in advance.

The local government should solicit public participation in drafting the Community Agenda, but if it does not, the public has an opportunity to comment on the draft at a public hearing.<sup>17</sup> After the public hearing, the Community Agenda is submitted to the RDC and DCA for review and approval.<sup>18</sup> Review of comprehensive plans at the RDC and DCA level does not involve direct public participation, but the public may participate indirectly by encouraging their representatives on the RDC board to comment on the draft plan and suggest more restricted land uses to protect themselves and their communities against environmental justice issues.

After the RDC and DCA approve the comprehensive plan, the local government may finally adopt it; in doing so, it must publicize the passage of the plan and provide the public with a complete copy for review.<sup>19</sup> Having and understanding the plan can help you ensure that future uses remain consistent with it.

## ZONING

### Statutory Framework

The second major tool to shape a community’s future is zoning. In Georgia, local governments have the exclusive power to zone, and zoning decisions are not reviewable by any regional agency or the state. In Georgia, “zoning” is defined as:

the power of local governments to provide within their respective territorial boundaries for the zoning or districting of property for various uses and the prohibition of other or different uses within such zones or districts and for the regulation of development and the improvement of real estate within such zones or districts in accordance with the uses of property for which such zones or districts were established.<sup>20</sup>

Consistent with this definition, county and municipal governments zone property by passing an ordinance or resolution and a zoning map that together describe and display the allowed uses and development standards of property within the defined zones of the city or county.<sup>21</sup> For instance, a zoning map might show certain areas zoned as “R-2” and others zoned as “I-1,” with a corresponding ordinance explaining that R-2 zoning allows residential development at up to 1 single-family unit per acre and I-1 zoning allows light industrial development that does not cause adverse effects beyond the property boundaries.

Although Georgia statutes do not speak to whether zoning must comply with the land uses laid out in comprehensive plans, Georgia case law is firm in requiring that any rezoning of property in Georgia “must be consistent with the land use plan in [a city or county’s] Comprehensive Development Plan.”<sup>22</sup> The rationale behind this rule is that comprehensive development plans should take precedence over zoning ordinances because the plans are the result of more information, research, and planning than zoning ordinances are.

Once the local government passes a zoning ordinance allowing certain land uses in a particular area, landowners may not be denied permission to build those facilities within the zoned area (unless the proposal violates other requirements).<sup>23</sup> However, zoning ordinances can be changed in response to particular threats. Although “a local zoning ordinance must be free of discrimination both on its face and in its application ... a zoning amendment does not discriminate against a property owner merely because the amendment may have originated from complaints by neighbors of the property owner.”<sup>24</sup> If an amended land use ordinance is applicable to all property owners within property zoned for one particular use, a landowner is not being singled out. Rezoning property to prevent a particular landowner from

using the land in an environmentally risky way is not necessarily discriminatory even if some county officials are aware that a particular landowner cannot meet the requirements of a stricter ordinance.<sup>25</sup>

## Public Participation

Public notice is always necessary when a zoning decision (including a decision to rezone) is made, although notice requirements are more or less stringent depending on whether the local government itself or a private party initiates the

change in zoning.<sup>26</sup> At a minimum, the government must publicize and hold a public hearing on the proposed action. Failure to strictly comply with the notice and hearing requirements renders a zoning ordinance passed by a municipality or county void.<sup>27</sup>

In addition, local governments must adopt standards governing their exercise of the zoning power, including identification of factors relevant to making zoning decisions and development of policies and procedures for public hearings.<sup>28</sup> The local government must then publish these standards and make them available for distribution to the public.<sup>29</sup> Familiarity with those standards is crucial for those who

want to effectively oppose unwanted land uses.

Although local governments must provide notice to the public regarding proposed zoning changes, public opposition and defeat of a proposed change will not necessarily prevent rezoning from occurring in the future. In fact, a local government may consider the same rezoning proposition six months after the rezoning is defeated.<sup>30</sup> Since local governments may consider rezonings any number of times after they are defeated, persistent developers are often able to steamroll zoning changes that are detrimental to low-income populations if public opposition is not forceful and constant.

## LIMITATIONS OF LAND USE PLANNING AND ZONING

Although the land use planning and zoning processes are powerful tools, they have important limitations.

First, land use planning and zoning have little effect on existing uses. Nearly all planning and zoning laws allow existing uses to remain, even if they are inconsistent with the projected future use of the area.

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Public participation in the initial comprehensive land use planning and zoning phases—before inappropriate projects are proposed—is critical

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In addition, once a building permit has been issued, a landowner has a right to develop the property pursuant to that permit even if the zoning subsequently changes.<sup>31</sup> Even without a permit, a landowner may have a right to develop property pursuant to a plan that has been approved by a county zoning authority—even if the development plan varies from existing zoning—if the landowner has already expended a large sum of money or other resources in reliance on the approved plan.<sup>32</sup>

In the context of environmental justice issues, these rules show that public participation in the initial comprehensive land use planning and zoning phases—before inappropriate projects are proposed—is critical. Getting involved at the permitting stage of development may be too late. Then, even public participation resulting in the passage of a more restrictive and seemingly preclusive land use ordinance will not be able to prevent the undesirable facility from being built and operated despite its inconsistency with the zoning ordinance.

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1. Georgia Rule 110-12-1-.01(2).
  2. O.C.G.A. § 50-8-3.
  3. See O.C.G.A. §§ 50-8-30, -32.
  4. O.C.G.A. § 50-8-34(b)(1).
  5. Also available at [www.georgiaplanning.com/documents/atlas/rdc\\_mapc\\_04.pdf](http://www.georgiaplanning.com/documents/atlas/rdc_mapc_04.pdf).
  6. Georgia Rule 110-12-1-.01 to -.09.
  7. Georgia Rule 110-12-1-.02(1)(a).
  8. Georgia Rule 110-12-1-.02(1)(b).
  9. Georgia Rule 110-12-1-.02(1)(c).
  10. Georgia Rule 110-12-1-.05(2)(a).
  11. Georgia Rule 110-12-1-.05(2)(a)(ii).
  12. Georgia Rule 110-12-1-.05(2)(a)(iii).
  13. Georgia Rule 110-12-1-.05(2)(b).
  14. Georgia Rule 110-12-1-.05(2)(c).
  15. Georgia Rule 110-12-1-.08(1)(c).
  16. Georgia Rule 110-12-1-.08(1)(g).
  17. Georgia Rule 110-12-1-.08(2)(a).
  18. Georgia Rule 110-12-1-.08(2)(a), (e)-(j).
  19. Georgia Rule 110-12-1-.08(2)(m).
  20. O.C.G.A. § 36-66-3(3).
  21. O.C.G.A. § 36-66-3(5).
  22. *City of Atlanta v. TAP Assocs.*, 544 S.E.2d 433, 434 (Ga. 2001).
  23. *WMM Props. v. Cobb County*, 339 S.E.2d 252, 254 (Ga. 1986), citing *City of Atlanta v. Westinghouse Elec. Corp.*, 246 S.E.2d 678 (Ga. 1978).
  24. *North Georgia Mountain Crisis Network v. City of Blue Ridge*, 546 S.E.2d 850, 853 (Ga. App. 2001).
  25. *Id.*
  26. O.C.G.A. § 36-66-4.
  27. See *Tilley Props. v. Bartow County*, 401 S.E.2d 527, 528 (Ga. 1991).
  28. O.C.G.A. § 36-66-5.
  29. O.C.G.A. § 36-66-5(b).
  30. O.C.G.A. § 36-66-4(c).
  31. *WMM Props.*, 339 S.E.2d at 254, citing *Clark v. Int'l Horizons, Inc.*, 252 S.E.2d 488 (Ga. 1979).
  32. *WMM Props.*, 339 S.E.2d at 254, citing *DeKalb County v. Chapel Hill, Inc.*, 205 S.E.2d 864 (Ga. 1974).

## 11. Solid Waste Management and Landfill Permitting

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How to safely dispose of the nation's ever-increasing volume of solid waste has been for years, and remains an ongoing challenge. Currently, the primary method for disposing of solid waste is the landfill. Landfills present a host of public health and environmental problems—among other things, they can smell bad; attract vermin; leak toxic chemicals into surface and groundwater; and catch fire, releasing smoke and toxins into the air. As existing disposal sites fill up and new sites are developed, these problems continue to increase.

For obvious reasons, most people do not want landfills near them. Historically, therefore, most landfills have been placed in communities of color and low-income communities, which have not had the means to fight back. In recent years, however, as discussed in Chapters 2 and 3, a growing awareness of the hazards of landfills has resulted in a number of successful fights. Several of the crucial legal tools for these fights are the focus of this chapter.

### THE AGENCIES GOVERNING SOLID WASTE MANAGEMENT

Solid waste is managed at three governmental levels: federal, state, and local.

At the federal level, the Resource Conservation and Recovery Act (RCRA)<sup>1</sup> gives the U.S. Environmental Protection Agency (EPA) the responsibility for regulating the treatment, storage, and disposal of all solid and hazardous waste in the United States. Realizing that such a large task would be nearly impossible to effectively implement at the national level, Congress granted EPA the ability to delegate its authority to the states. A delegated state program must meet minimum federal standards stipulated by RCRA. However, RCRA does not prevent a state from enacting more stringent regulations.

Georgia, like many states, has assumed the EPA's role in implementing RCRA and managing solid waste disposal.

In Georgia, the Comprehensive Solid Waste Management Act (SWMA)<sup>2</sup> defines the rules and establishes the authority of agencies regarding solid waste management. Under the SWMA, the Department of Natural Resources' Environmental Protection Division (EPD) stepped into EPA's implementation role to manage Georgia's waste, including the regulation and permitting of landfills. EPD has the ultimate authority to issue or deny a landfill permit.<sup>3</sup> The Department of Community Affairs (DCA) also plays a significant role in waste management, most notably by creating minimum standards for solid waste management planning and helping local governments implement those standards.<sup>4</sup>

Finally, much of the direct regulation of landfill location is done at the local—city and county—level through their Solid Waste Management Plans, zoning regulations, and other ordinances.

### WASTE MANAGEMENT PLANNING REQUIREMENTS

Under the SWMA, each city and county must develop a comprehensive Solid Waste Management Plan (SWMP) according to procedures developed by the DCA. Several cities or counties may cooperate to develop a multijurisdictional plan.<sup>5</sup> The minimum requirement for the SWMPs is to assure adequate solid waste handling capability and capacity for at least ten years from plan adoption.<sup>6</sup> They must include analyses of several factors identified in DCA regulations.<sup>7</sup> The city or county must submit its plan to the DCA and then report annually on the status of the plan, including the amount of waste collected, progress on waste reduction, recycling and composting efforts, remaining capacity, and any public and/or informational activities.<sup>8</sup> For a copy of your community's SWMP, contact the DCA.

The DCA has set minimum procedural standards to ensure the public has a right to participate in development of SWMPs.<sup>9</sup> Local jurisdictions are free to provide more opportunity for participation.

At a minimum, local governments must hold two public hearings before submitting their draft SWMPs for review.<sup>10</sup> The first must be held before the plan is developed and is intended to inform the public about the purpose of the plan and the process to be followed in its preparation, and to get community input on needs and goals.<sup>11</sup> The second meeting must be held at least 30 days later, after the draft plan has been prepared. It is intended to be a briefing on the content of the plan; to allow the public to make suggestions, additions, or revisions; and to tell the community when the plan will be submitted for review. The draft plan must be made available when the second public hearing is announced.<sup>12</sup> The hearings should be publicized using the same procedures the government normally uses for public hearings.<sup>13</sup>

## LANDFILL SITING RESTRICTIONS

Many of the restrictions on landfill siting are set at the local level. First, SWMPs must identify any sites that are not suitable for solid waste facilities based upon environmental and land use factors; such sites may include historic and archeological sites.<sup>14</sup> Each city or county can also pass local ordinances and zoning regulations that govern the acceptable types and locations of landfills and manage landfill operation. To better understand the restrictions your community has placed on solid waste facilities, contact your local government for copies of the relevant ordinances and zoning regulations.

In addition to local efforts, the state of Georgia has numerous site restrictions that govern the location of landfills in Georgia. Depending on the specific location, unsuitable locations may include sites:

- within 5,708 yards of a national historic site;<sup>15</sup>
- within a half mile of a county or city boundary;<sup>16</sup>
- within two miles of a significant groundwater recharge area;<sup>17</sup>
- within two miles of a military bombing range;<sup>18</sup>
- near airports;<sup>19</sup>
- in floodplains or wetlands;<sup>20</sup>
- in fault zones, seismic impact zones, or unstable areas (all specifically defined terms);<sup>21</sup>
- near water supply intakes;<sup>22</sup>
- within buffer zones for streams;<sup>23</sup>
- within 200 feet from property lines;<sup>24</sup>
- within 500 feet of occupied dwellings and their drinking water wells;<sup>25</sup>

- within one mile of a 25-year-old private recreational camp for minors;<sup>26</sup>
- within a two-square-mile radius of the proposed site that already contains three landfills, including inactive ones.<sup>27</sup>

In some cases, landfills may be built within these areas if certain criteria are met.

## LANDFILL PERMITTING REQUIREMENTS

In general, a permit issued by EPD is required to build or operate a landfill.<sup>28</sup> However, an individual is exempt from the requirement to obtain a permit (and all other requirements of the SWMA) if he or she is disposing of waste from his or her own residence onto land or in a facility he or she owns, and disposal of the waste does not adversely affect human health.<sup>29</sup> For a landfill permit to be issued, an applicant must demonstrate that the landfill meets numerous requirements.

First, along with its initial application, the applicant must provide written verification that:

1. The proposed facility will comply with all local zoning and land use requirements.<sup>30</sup>
2. The proposed facility meets the jurisdiction's ten-year capacity needs identified in a SWMP.<sup>31</sup>
3. The host jurisdiction and all jurisdictions generating wastes destined for the facility are part of an approved SWMP and are actively involved in and have a strategy for meeting the state-wide goal of waste reduction, and the proposed facility is consistent with the SWMP or SWMPs.<sup>32</sup> If the proposed facility will accept waste that originates from outside Georgia, the applicant must also provide documentation that the communities that generated the waste have a waste reduction goal and are actively involved in a waste reduction plan that are substantially equivalent to Georgia's requirements.<sup>33</sup> Solid waste facilities on property owned exclusively by a private party that accept waste solely from the owner are exempted from this requirement as long as operation of the landfill will not adversely affect public health or the environment.<sup>34</sup>

This verification must take the form of letters from the relevant jurisdictions confirming compliance.<sup>35</sup>

Also with the application, the applicant must provide a site assessment prepared by a registered geologist or geotechnical engineer.<sup>36</sup> The assessment must include a hydrological assessment of the site and must demonstrate compliance with the state's siting restrictions.<sup>37</sup>

The applicant must also show it has adequate financial resources “to ensure the satisfactory maintenance, closure, and postclosure care of [the] facility or to carry out any corrective action which may be required as a condition of a permit.”<sup>38</sup> This “financial assurance” may be in the form of bonds, letters of credit, insurance, trust funds, or other resources.<sup>39</sup>

Finally, the applicant must have a Design and Operational Plan prepared by a professional engineer and approved by EPD. The plan must provide information about how the landfill will be designed and operated (such as specifications of liners, a description of the planned sequence of filling the landfill, and procedures for covering wastes).<sup>40</sup> It must also state how the landfill will monitor surface and groundwater to ensure they are not contaminated and monitor for leaks of methane gas.<sup>41</sup> Finally, it must provide for closure and post-closure care of the landfill.<sup>42</sup>

With a few exceptions, a permit applicant has a right to consideration of a permit under the laws that existed at the time of the application. In other words, if local zoning laws change between the time the application is submitted and when it is reviewed, the old laws will apply.<sup>43</sup>

Ultimately, if EPD finds the site unsuitable or identifies other problems with the application and supporting documents, the permit is denied. If the site is found suitable and the application information is sufficient, EPD will likely approve the permit application. Although various staff members who review the application make recommendations, the EPD Director makes the final decision whether to issue the permit. Nevertheless, the decision is not made at the Director’s *discretion*; state law mandates that the permit be issued if all requirements are met.<sup>44</sup>

## THE LANDFILL PERMIT PROCESS IN GEORGIA

Because landfills are large, dangerous, easily visible, and therefore almost always controversial, landfill siting has an extensive approval process. Unlike most permitting processes, which typically require at most one public meeting and one public comment period, the landfill permitting statute requires at least five public meetings and opportunities for comment. Because of the complexity of this process, it is worthwhile to go through it in some detail—it provides your opportunity to speak out and potentially affect whether a permit is issued.

### Step One: The Site Decision Meeting(s)

#### Landfill Siting Initiated by Public Entities

State law mandates that a public entity, such as a county, municipality, or group of counties, that is beginning to select

a site for municipal waste disposal must call at least one public meeting, before identifying potential locations, to describe the solid waste management needs of the proposed operation.<sup>45</sup> Notice of this meeting must be advertised in a locally distributed newspaper, at least once a week, for two weeks before the scheduled public meeting.

#### Landfill Siting Initiated by Private Landfills

As with publicly-owned landfills, referenced above, counties or municipalities considering a privately-owned landfill must also provide notice of a public meeting to discuss potential sites with citizens. However, private companies are

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### FIRST PUBLIC MEETING: POTENTIAL SITE REVIEW

When Held	Prior to identifying potential landfill locations
Why Held	To describe the solid waste management needs of the proposed facility to concerned citizens
Public Notice Requirements	Advertised in a local newspaper at least once a week for two weeks prior to the Proposed Site Decision Meeting (14 days between first notice and meeting date)

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not required to give public notice of their intent to purchase land or other pre-development activities as early as government entities. To avoid getting involved after-the-fact (i.e. after the land is under contract or purchased), citizens should:

- Watch for surveyors and other consultants (e.g., people taking boring samples);
- Look for large tracts of land for sale and/or purchases of large tracts of land;
- Become aware of requests for ordinance and/or zoning changes to local government; and
- Attend zoning and county commission meetings.

#### After Potential Site Selection

After a potential site is selected and hydrological studies are performed, the local government must hold one or more siting decision meetings for any siting decisions such as final selection of the site or execution of contracts pertaining to the proposed facility; zoning decisions are not subject to this requirement.<sup>46</sup> Notice of the meeting—stating the time,

place, and purpose of the meeting—should be advertised in a locally distributed newspaper, at least once a week, for two weeks prior to the scheduled meeting.

### Step Two: Submission of the Application

Following the Siting Decision Meeting, the applicant must submit its application to the EPD. This application must include the materials discussed above.

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## SECOND PUBLIC MEETING: SITE DECISION MEETING

<b>When Held</b>	After a landfill location has been selected and hydrological studies of the area performed
	Prior to identifying potential landfill locations

<b>Why Held</b>	To decide the final selection of the site or execute contracts or agreements pertaining to the proposed landfill
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<b>Public Notice Requirements</b>	Advertised in a local newspaper at least once a week for two weeks prior to the Site Decision Meeting
	Notice must state the time, place, and purpose of the meeting

<b>FYI</b>	This meeting must be conducted by the local government and/or the local government department handling the landfill siting
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### Step Three: Public Notice of Application Submission

Within 15 days of submission of the application to EPD, the applicant must notify all local governments in the affected area and the affected regional development center in writing. It must also publish a notice in the local newspaper serving the affected county or region and prominently display the notice in the courthouse of each notified county.<sup>47</sup>

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## PUBLIC NOTICE OF LANDFILL APPLICATION

<b>When</b>	Applicant must notify the public that an application was submitted to EPD within 15 days of its submission
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<b>Public Notice Requirements</b>	<p>The applicant must:</p> <ul style="list-style-type: none"> <li>• Give written notice to local governments and the Regional Development Center</li> <li>• Publish notice in a local newspaper serving the affected county or region</li> <li>• Display notice in the courthouse of each notified county</li> </ul>
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### Step Four: EPD Reviews the Application

After receiving a complete landfill permit application, EPD reviews the application and the supporting data. EPD’s internal review of site suitability includes reviewing the site assessment report submitted by the applicant and inspecting the site.

During the review process, EPD makes a determination as to the suitability or unsuitability of the proposed site for the landfill. There is no timeframe within which EPD is required to come to a decision. After making a determination, EPD notifies the applicant and the host local government of its decision in writing.<sup>48</sup>

### Step Five: Applicant Informs the Public of Site Approval

If the applicant receives notification from EPD that the proposed site is suitable for use as a landfill, the applicant must, within 15 days of receipt of the notification, publicize the approval of the site in the same manner used to publicize its application submission (see “Public Notice of Landfill Application” Table).<sup>49</sup>

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## THIRD PUBLIC MEETING GOVERNMENT TO INFORM CITIZENS

When Held	Within 45 days of the applicant's notice to the public of its landfill application submission to EPD
Why Held	To inform affected residents and landowners of the proposed site and offer them the opportunity to get involved in the Facility Issues Negotiation Process
Public Notice Requirements	The host government must: <ul style="list-style-type: none"><li>• Give written notice to other local governments and the Regional Development Center</li><li>• Publish notice in a local newspaper serving the affected county or region</li><li>• Display notice in the courthouse of each notified county</li></ul>

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### Step Six: Government Informs the Public

Within 45 days after notification, the host local government must hold a public meeting to inform the affected residents and landowners of the proposed site and give residents and landowners the opportunity to engage in an issue negotiation process.<sup>50</sup> Notice of this meeting must be advertised in the local paper and courthouse as previously described. Unlike previous meeting notifications, however, this step does not require the local government to publish notice for a specific number of days in advance of the meeting.

### Step Seven A: Facility Issues Negotiation Process

If citizens wish to engage in the Facility Issues Negotiation Process, a petition is required. A minimum of 25 affected persons, at least 20 of whom must be registered to vote in the jurisdiction, must file a petition with the host government within 30 days of the public meeting.<sup>51</sup> The local government has 15 days from receipt of the petition to validate the petition and initiate the negotiation process.<sup>52</sup>

A committee, including ten registered voters and representatives of the local government and the applicant, is formed after validation of the petition. The committee must hold a minimum of three meetings, the first of which should be

set for no later than 30 days from the petition validation date. The third meeting must be held within 45 days of the first meeting.

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## REQUIREMENTS FOR FACILITY ISSUES NEGOTIATION PROCESS

For Citizens	Petition must be filed within 30 days of the meeting during which the landfill application was discussed
	Petition must be signed by at least 25 affected people, at least 20 of whom must be registered to vote in the affected jurisdiction(s)
For Government	Upon receipt of the petition, local government has 15 days to: <ul style="list-style-type: none"><li>• Validate the petition</li><li>• Initiate the negotiation process</li></ul> Local government sets the date for the first meeting
For Committee	Includes ten registered voters and representatives of local government and the applicant.
	Three meetings, at minimum, are required: <ul style="list-style-type: none"><li>• 1st Meeting held no later than 30 days from the petition validation date (45 days after petition submission)</li><li>• 3rd Meeting held no later than 45 days after the 1st Meeting (90 days after petition submission)</li></ul>

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The negotiations are non-binding.<sup>53</sup> Thus, the applicant is not required to adopt any suggestions made or address any concerns raised during the meetings. Furthermore, failure of the Committee to reach agreement on any requested concession does not prevent the applicant from receiving a permit.<sup>54</sup>

After all three required committee meetings, the facilitator will publish the results of the Facility Issues Negotiation Process and notice of a subsequent meeting by the same procedures as described above.<sup>55</sup>

EPD may not issue or deny the permit until the local notification and negotiation processes have been exhausted.<sup>56</sup> If a petition is not submitted or cannot be validated, local government notifies EPD that the Facility Issues Negotiation Process is complete. At that point, EPD may finish reviewing the permit application.

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#### FOURTH PUBLIC MEETING: RESULTS OF THE FACILITY ISSUES NEGOTIATION PROCESS

<b>When Held</b>	After all three negotiation committee meetings and within 10 days of the public notice regarding the meeting
<b>Why Held</b>	To give citizens and landowners not involved in the negotiation committee the opportunity to provide input before the permit process continues.
<b>Public Notice Requirements</b>	<p>Notice must contain the date, time, and place of the meeting</p> <p>The facilitator must:</p> <ul style="list-style-type: none"> <li>• Give written notice to local governments and the Regional Development Center</li> <li>• Publish notice in a local newspaper serving the affected county or region</li> <li>• Display notice in the courthouse of each notified county</li> </ul>

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#### Step Seven B: Creation of the Site Design and Operational Plan

During the Facility Issues Negotiation Process, the applicant must create its Design and Operational Plan for the facility and submit it to EPD for approval. EPD’s engineers and geologists review the plan while citizens, local government, and the applicant are involved in the Facility Issues Negotiation Process, if any. If they identify any deficiencies, the applicant must amend the plans accordingly and resubmit the paperwork.

#### Step Eight: Approval or Denial of the Landfill Permit

Ultimately, EPD makes its decision to approve or deny the permit. However, approval may not be issued prior to a public hearing on the matter hosted by the local government.

#### Step Nine: Local Government Informs Public of Permit Approval

Not less than two weeks before issuance of the permit, the county, municipality, or regional authority involved in the landfill application process must hold a public hearing. Notice of the hearing must be posted at the proposed landfill site and advertised in a local newspaper serving the county or counties affected by the proposed landfill at least 30 days prior to the hearing date.<sup>57</sup>

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#### FIFTH (AND FINAL) PUBLIC MEETING: HEARING ON PERMIT APPROVAL

<b>When Held</b>	Not less than two weeks prior to the issuance of the permit.
<b>Why Held</b>	For the government to inform affected residents and landowners of the approval of the landfill permit and offer them the opportunity to voice their concerns.
<b>Public Notice Requirements</b>	<p>The hearing must be advertised at least 30 days prior to the hearing date.</p> <p>Notice of the hearing must be:</p> <ul style="list-style-type: none"> <li>• Posted at the selected landfill site</li> <li>• Advertised in a local newspaper serving the affected county, municipality, or region</li> </ul>

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#### CHALLENGING THE LANDFILL PERMITTING PROCESS AND ITS OUTCOME

Prior to and during the landfill permitting process, both the permit applicant and citizens may challenge various regulations and decisions. These challenges could result in or require litigation. The permit applicant has the right to challenge any local government’s refusal to verify compli-

ance with the SWMP, ordinances, or zoning laws. Both the applicant and citizens may challenge local land use laws. The goal of such challenges would be to show that such laws are inconsistent with the SWMP or relevant ordinances and zoning laws. Any of these challenges would be raised in a lawsuit filed in state court.

In addition, citizens may challenge the approval of a permit application, using the administrative review process described in Chapter 18 of this handbook.

Once they begin operations, landfills may be governed by federal law under the Clean Water Act and the Resource Conservation and Recovery Act. If a landfill violates either law, citizens are allowed to sue under the “citizen suit” provisions of those acts, as described in Chapter 19 of this handbook.

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1. 42 U.S.C. §§ 6901-6992k.
  2. O.C.G.A. §§ 12-8-20 to -41.
  3. O.C.G.A. § 12-8-21(d).
  4. O.C.G.A. § 12-8-31.1.
  5. O.C.G.A. § 12-8-31.1(a).
  6. O.C.G.A. § 12-8-31.1(b).
  7. Georgia Rule 110-4-3-.04.
  8. O.C.G.A. § 12-8-31.1.
  9. Georgia Rule 110-4-3-.05.
  10. Georgia Rule 110-4-3-.05(3)(b).
  11. Georgia Rule 110-4-3-.05(3)(b)(1).
  12. Georgia Rule 110-4-3-.05(3)(b)(2).
  13. Georgia Rule 110-4-3-.05(3)(b)(3).
  14. O.C.G.A. § 12-8-31.1(b).
  15. O.C.G.A. § 12-8-25.1.
  16. O.C.G.A. § 12-8-25.
  17. O.C.G.A. § 12-8-25.2.
  18. O.C.G.A. § 12-8-25.3(d).
  19. 49 U.S.C. § 44718(d); Georgia Rule 391-3-4-.05(1)(c).
  20. Georgia Rule 391-3-4-.05(1)(d), (e).
  21. Georgia Rule 391-3-4-.05(1)(f)-(h).
  22. Georgia Rule 391-3-4-.05(1)(k)8, 391-3-16-.01.
  23. O.C.G.A. § 12-7-6(b)(15), (16).
  24. Georgia Rule 391-3-4-.07(b).
  25. *Id.*
  26. O.C.G.A. § 12-8-25.5.
  27. O.C.G.A. § 12-8-25.4.
  28. O.C.G.A. § 12-8-24(a).
  29. O.C.G.A. § 12-8-30.10.
  30. O.C.G.A. §§ 12-8-24(g), 12-8-31.1(e)(1); Georgia Rule 391-3-4-.05(1)(a).
  31. O.C.G.A. § 12-8-31.1(e)(2).
  32. O.C.G.A. §§ 12-8-24(g), 12-8-31.1(e)(3); Georgia Rule 391-3-4-.02(10).
  33. O.C.G.A. § 12-8-24(g).
  34. O.C.G.A. § 12-8-31.1(f).
  35. Georgia Rule 391-3-4-.02(10), -.05(1)(a).
  36. Georgia Rule 391-3-4-.05(4).
  37. *Id.*
  38. O.C.G.A. § 12-8-27.2.
  39. Georgia Rule 391-3-4-.13.
  40. Georgia Rule 391-3-4-.07.
  41. Georgia Rule 391-3-4-.07(1)(l), (3)(h)(2).
  42. Georgia Rule 391-3-4-.07(1)(m), (n).
  43. *Banks County v. Chambers of Georgia, Inc.*, 444 S.E.2d 783 (Ga. 1994).
  44. O.C.G.A. 12-8-24(d).
  45. O.C.G.A. 12-8-26(a).
  46. O.C.G.A. § 12-8-26(b).
  47. O.C.G.A. § 12-8-32(a).
  48. O.C.G.A. § 12-8-32(b).
  49. O.C.G.A. § 12-8-32(c).
  50. *Id.*
  51. O.C.G.A. § 12-8-32(f).
  52. O.C.G.A. § 12-8-32(g), (h).
  53. O.C.G.A. § 12-8-32(k).
  54. O.C.G.A. § 12-8-32(p).
  55. O.C.G.A. § 12-8-32(n).
  56. O.C.G.A. § 12-8-32(d).
  57. O.C.G.A. § 12-8-24(d).

## 12. Water Quality Permitting

The Federal Water Pollution Control Act, more commonly known as the Clean Water Act (CWA),<sup>1</sup> is the basic federal law controlling water pollution in the United States. The objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”<sup>2</sup> As a basic tool to achieve this goal, the CWA prohibits (with some exceptions) the discharge of any pollutants into “waters of the United States” without a permit. This system is known as the National Pollutant Discharge Elimination System (NPDES) permitting program.



The Environmental Protection Agency (EPA) is charged with the overall administration of the CWA.<sup>3</sup> However, the CWA allows the EPA to delegate permitting authority to the states.<sup>4</sup> In Georgia, the Georgia Water Quality Control Act<sup>5</sup> was enacted to provide the legal authority for the state to administer the NPDES program. Thus, permitting authority under the CWA has been delegated from the federal government to the state of Georgia, so both federal and state law apply. The Georgia Environmental Protection Division of the Department of Natural Resources (EPD) is the agency charged with issuing NPDES permits.

### OVERVIEW OF THE NPDES PROGRAM

Under the NPDES program, any person (including a company) that discharges pollutants from a point source into waters of the United States is required to obtain a NPDES permit.<sup>6</sup> “Waters of the United States” are defined broadly and include most streams, rivers, lakes, wetlands, or other reasonably permanent bodies of water.<sup>7</sup> They do not, however, include underground water, which means

that the NPDES program does not cover injection of pollutants into wells. (This injection is regulated under the Underground Injection Control program of the Safe Drinking Water Act, as discussed in Chapter 14 of this handbook.)

### Pollutants Covered Under the NPDES Program

NPDES permits generally regulate three categories of pollutants:

- **Conventional Pollutants**—These pollutants are representative of basic sewage components. They are biochemical oxygen demand (BOD), total suspended solids (TSS), fecal coliform bacteria, oil and grease, and pH.<sup>8</sup>
  - **Biochemical Oxygen Demand (BOD)**—BOD measures the amount of oxygen required for microorganisms to break down the organic waste in water—the more oxygen required, the more waste and the more polluted the water. High BOD can also be associated with low levels of oxygen dissolved in the water (because the oxygen is used by the microorganisms); adequate oxygen levels are essential for aquatic life.
  - **Total Suspended Solids (TSS)**—TSS is a measure of the solids suspended in a water sample. Some of these solids may be poisonous, but more generally, suspended solids block sunlight and can literally smother aquatic life.
  - **Fecal Coliform Bacteria**—Fecal coliform bacteria are found in the digestive tracts of humans and animals. Although they are not harmful themselves, their presence in water potentially indicates the presence of pathogenic (disease-causing) organisms.
  - **Oil and grease**—Oil and grease often affect recreational uses of waters; more importantly, they can restrict light and oxygen to aquatic life and can coat the body surfaces of aquatic species.

- pH—pH measures how acidic or basic a liquid is. Aquatic life thrives at pH levels close to neutral, with extremes being toxic. High or low extremes interfere with the ability of aquatic life to breathe. The pH also affects the bioavailability and toxicity of nutrients, heavy metals, and other compounds.

- **Toxic Pollutants**—Toxic pollutants are a set of listed pollutants<sup>9</sup> that are particularly harmful to animals (including humans). There are currently 65 such pollutants. Toxic pollutants cause death, disease, behavior abnormalities, cancer, genetic mutations, physiological malfunctions, or physical deformations in organisms that ingest or absorb them. These pollutants are grouped in two categories: organics and metals. Organics include such things as pesticides, solvents, PCBs, and dioxins. Common metals include lead, silver, mercury, copper, chromium, zinc, nickel, and cadmium. Toxicity of heavy metals can kill fish, contaminate their flesh, and impair water supplies.
- **Non-Conventional Pollutants**—Non-conventional pollutants are any substances that are not classified as conventional or toxic pollutants but sometimes need to be included in permits due to the nature of the waste and/or to protect the receiving stream. Common non-conventional pollutants include ammonia, nitrogen, phosphorus, and thermal discharges (temperature).

## Sources Covered Under the NPDES Program

Pollutants can enter waters of the United States from a variety of pathways including agricultural, domestic, and industrial sources. For regulatory purposes these sources are generally categorized as either “point sources” or “non-point sources.” Point sources must obtain NPDES permits, but non-point sources are exempt from these requirements.<sup>10</sup>

Pollutant contributions to waters of the United States may come from both direct and indirect sources. Direct sources are those that discharge wastewater directly into the receiving water body, whereas indirect sources discharge wastewater to a sewage treatment plant, which in turn discharges into the receiving water body. NPDES permits are issued only to direct point source discharges. Indirect sources may, however, be required to “pretreat” their wastewater,<sup>11</sup> and many of them are required to obtain “pretreatment permits” from EPD.<sup>12</sup>

The definition of point source is “any discernable, confined, and discrete conveyance” of pollutants into a water body.<sup>13</sup> This includes, but is not limited to, “any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from

which pollutants are or may be discharged.”<sup>14</sup> Moreover, stormwater discharges from industrial facilities and urban areas are specifically included as point sources.<sup>15</sup> Point sources need not be man-made—a ditch or gully can be a point source as well as a pipe.<sup>16</sup> In short, nearly anything that in any way collects pollutants can be a point source.

The CWA provides one major exception to the point source definition: It specifically excludes “agricultural stormwater discharges and return flows from irrigated agriculture.”<sup>17</sup> This exempts many but by no means all agricultural activities from the NPDES program.

Under these definitions, examples of facilities that must obtain NPDES permits are:

- **Municipal Sewage Treatment Plants**—Municipal sewage treatment plants collect and treat wastewater from both industrial and residential users. The contents of wastewater may differ dramatically depending on whether the plant accepts waste from industrial users or merely from residential users. Municipalities discharge waste either as direct discharges (dumping waste directly into the water) or through sludge application (applying waste to agricultural or rural land).
- **Industries**—The manufacturing process for most products results in a wide variety of by-products that must be disposed of in some fashion. Industries may obtain NPDES permits in order to discharge these by-products directly. Alternatively, an industry may apply for a pretreatment permit allowing it to discharge waste indirectly by funneling it to a municipal sewage treatment plant.
- **Construction Sites/Urban Areas Affecting Stormwater**—Many entities that pollute stormwater must also obtain a NPDES permit. NPDES permits are required for urban storm sewers that channel polluted runoff from streets, rooftops, parking lots, and other impervious surfaces to water bodies. Construction sites can also generate silt-laden runoff that threatens water quality and must obtain permits, as do certain categories of industry (e.g., manufacturing, landfills, and light industrial activity).
- **Concentrated Animal Feeding Operations (CAFOs)**—CAFOs are large-scale animal production facilities where poultry, hogs, and cattle are confined in small feeding areas. CAFOs must obtain NPDES permits because animal waste and wastewater can enter water bodies via spills or breaks from waste lagoons.

## Types of NPDES Permits

The two basic types of NPDES permits are individual and general permits. An individual permit is specifically tailored to an individual facility, while a general permit covers multiple facilities within a specific category.<sup>18</sup> General permits may offer a cost-effective option for permitting agencies because a large number of facilities can be covered under

a single permit provided there is a common element between the facilities. Examples of general permit categories are stormwater permits, facilities that involve the same or substantially similar operations, or facilities that require the same or similar monitoring.<sup>19</sup> The limiting factor on general permits is that they may only be issued to dischargers within a specific geographical area such as a city, county, or state political boundary; designated planning area; sewer district; or urbanized area.<sup>20</sup>

## NPDES Permit Contents

The heart of an NPDES permit is the “effluent limitations,” or maximum amounts or concentrations of pollutants the facility can discharge.<sup>21</sup> These limitations are set in a variety of ways depending on whether the pollutants are conventional, toxic, or non-conventional; the condition of the water body receiving the discharge; the nature of the activity causing the discharge; and other factors.

Most permits also include monitoring and reporting requirements that help characterize waste streams and receiving waters, evaluate wastewater treatment efficiency, and determine compliance with permit conditions.<sup>22</sup> For major industrial operations, these typically require the facility to report monthly to EPD.

A permit may also include special conditions, which are developed to supplement effluent limitations. Examples include best management practices, additional monitoring activities, ambient stream surveys, and toxicity reduction evaluations. Finally, a permit will contain a number of standard conditions that apply to all NPDES permits and delineate the legal, administrative, and procedural requirements of the permit.<sup>23</sup>

## PERMITTING PROCESS

The permitting process begins when an operator of a facility (permittee) submits a permit application to EPD. EPD reviews the application for completeness and accuracy then makes a tentative decision whether to approve or deny the permit application. If EPD tentatively decides to approve the permit, a draft permit will be prepared.

Once the draft permit is prepared, EPD must issue a public notice describing the basic details of the permit and requesting public comment.<sup>24</sup> Parties who want to comment on the permit have 30 days to submit comments to EPD regarding the draft permit unless EPD allows a longer period.<sup>25</sup> Additionally, during the 30 day notice period, citizens may request a public hearing.<sup>26</sup> If there is “sufficient public interest” in an application, EPD must hold a hearing.<sup>27</sup>

EPD must also submit any proposed permit to the Regional Administrator of EPA, who then has an opportunity to review and object to the permit.<sup>28</sup> If EPA objects to a permit, EPD must address the concerns and resubmit the permit by a certain deadline; if EPD fails to do so, the authority to issue the permit passes to EPA, and EPD loses its authority.<sup>29</sup>

If EPD ultimately issues a permit, it must prepare a response to all comments received from the public, which must be made available to the public.<sup>30</sup> If you believe the permit was issued unlawfully, you then have the right to file an administrative appeal, as discussed in Chapter 18.

Under the CWA, permits may not exceed five years in duration.<sup>31</sup> Upon expiration, a permit must be renewed and must go through the same process as for its initial issuance, including public review. One significant feature of the renewal process is the CWA’s “anti-backsliding” provision,<sup>32</sup> which requires that, with limited exceptions, no permit may be reissued with terms less stringent than those of the previous permit. One important aspect of reviewing a proposed renewal permit, therefore, is being sure that no permit terms have been weakened or that the permittee is not improperly claiming an exception to the anti-backsliding rule.

## CHALLENGING A PERMIT AFTER IT HAS BEEN ISSUED

Challenging an existing permit can be difficult. Any individual may petition EPD for modification or termination of a NPDES permit.<sup>33</sup> EPD may *modify* a permit if a citizen can show that there have been “material and substantial alterations or additions to the permitted facility” or that new information exists that “would have justified the application of different permit conditions at the time of issuance.”<sup>34</sup> EPD may *terminate* a permit if a citizen can show that there has been “noncompliance by the permittee with any condition of the permit,” or misrepresentation or omission of relevant facts by the permittee during the permit process.<sup>35</sup>

To challenge a permit, interested parties should seek information about the permit from EPD. EPD is required to maintain all of the relevant documents (including reports, correspondence, and so forth) related to a particular permit on file in its Atlanta office. The public is entitled to inspect all these documents except trade secrets. With enough documentation of the water quality problems that a permitted discharge can cause or is causing, permits may be reopened. If it is not possible to reopen a NPDES permit, then citizens should continue to build a case for a modification when the NPDES permit comes up for renewal.

## PERMIT ENFORCEMENT

A violation of a NPDES permit constitutes a violation of the CWA.<sup>36</sup> Fault is not required to support liability; instead, enforcement of NPDES permits is based on “strict liability.”<sup>37</sup> In other words, even if the permittee did not mean to violate its permit, it is liable for the results. The only question is “whether the discharger has exceeded the limitations on discharge of pollutants from a particular point source.”<sup>38</sup>

When a CWA violation occurs, compliance or enforcement can occur in four different ways:

- **Self-Monitoring**—The primary responsibility for complying with the CWA and the terms of a permit rests with the permit holder.<sup>39</sup> The permittee is responsible for reporting any violations and taking corrective action. Unfortunately, many facilities do not comply with these requirements, making the other methods of enforcement necessary.
- **EPD Civil Enforcement Actions (including administrative fines)**—If a permittee fails to comply with its permit requirements, EPD has the primary responsibility for enforcing that permit.<sup>40</sup> When EPD documents a violation, it typically issues a notice of noncompliance to the violator. The most common tool for civil enforcement is the issuance of a civil penalty or fine. The CWA provides for penalties of up to \$32,500 per violation per day.<sup>41</sup> EPD may also require immediate actions to correct violations, order facility operators to cease operations until the problems are fully addressed, revoke the discharger’s permit, or refuse to renew a permit. EPD may require a violator to enter into

a consent order that describes measures that must be taken, such as upgrading equipment or providing operator training, with a schedule for achieving compliance.

- **Criminal Prosecution**—The CWA and Georgia Water Quality Control Act also contain criminal penalties for certain violations.<sup>42</sup> Prosecution is rare and is reserved for severe violations. Prosecutors generally base their decision on whether the violation was committed intentionally or negligently. The most common criminal cases involve discharging without a permit, bypassing pollution control equipment, or falsifying discharge monitoring reports.
- **Citizen Suits**—Where a facility continually violates its NPDES permit and EPD fails to take action or takes inadequate action, citizens or a citizen group can file suit in federal court to enforce compliance with the permit terms.<sup>43</sup> For more information, see “Citizen Suits,” Chapter 19 of this handbook.

Obviously, citizens have little influence over the first of these methods, self-monitoring. They can be involved in the other enforcement activities, though. The CWA requires each permittee to submit Discharge Monitoring Reports (DMRs) detailing its compliance with pollution limits contained in its NPDES permit,<sup>44</sup> so citizens may aid the enforcement process by reviewing DMRs for facility compliance. When citizens become aware of permit violations, they can pressure EPD to take civil or criminal enforcement action against violators. The best way to do this is by filing a complaint form. See Appendix C-3 for an example. If that fails, the same DMRs can support a citizen suit.

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1. 33 U.S.C. §§ 1251-1387.  
2. See Clean Water Act (CWA) § 101(a), 33 U.S.C. § 1251(a).  
3. CWA § 101(d), 33 U.S.C. § 1251(d).  
4. CWA § 306(c), 33 U.S.C. § 1316(c).  
5. O.C.G.A. §§ 12-5-20 to -53.  
6. CWA § 402(a), 33 U.S.C. § 1342(a).  
7. 40 C.F.R. § 122.2.  
8. See 40 C.F.R. § 401.16.  
9. See CWA § 307(a), 33 U.S.C. § 1317(a); 40 C.F.R. § 401.15.  
10. CWA §§ 402(a), 502(12), 33 U.S.C. §§ 1342(a), 1362(12).  
11. CWA § 307(b), 33 U.S.C. § 1317(b).  
12. Georgia Rule 391-3-6-.08.  
13. CWA § 502(14), 33 U.S.C. § 1362(14).  
14. *Id.*  
15. CWA § 402(p), 33 U.S.C. § 1342(p).  
16. *Sierra Club v. Abston Constr. Co.*, 620 F.2d 41 (5th Cir. 1980).  
17. CWA § 502(14), 33 U.S.C. § 1362(14).  
18. 40 C.F.R. § 122.28.  
19. 40 C.F.R. § 122.28(a)(2).  
20. 40 C.F.R. § 122.28(a)(1).  
21. 40 C.F.R. § 122.41(a)(1).  
22. 40 C.F.R. §§ 122.41(f), 122.44(f), 122.48; Georgia Rule 391-3-6-.06(11).

23. 40 C.F.R. § 122.41.  
24. Georgia Rule 391-3-6-.06(7)(b).  
25. Georgia Rule 391-3-6-.06(7)(b)(iv).  
26. Georgia Rule 391-3-6-.06(7)(c)1.  
27. *Id.*  
28. 40 C.F.R. § 122.44.  
29. 40 C.F.R. § 122.44(h).  
30. 40 C.F.R. § 124.17.  
31. 40 C.F.R. § 122.46(a).  
32. CWA § 402(o), 33 U.S.C. § 1342(o).  
33. 40 C.F.R. § 124.5; Georgia Rule 391-3-6-.06(12)(b).  
34. 40 C.F.R. § 122.62(a)(1).  
35. 40 C.F.R. § 122.64(a).  
36. CWA § 301(a), 33 U.S.C. § 1311(a).  
37. *Id.*; *Altamaha Riverkeepers v. City of Cochran*, 162 F. Supp. 2d 1368, 1373 (M.D. Ga. 2001).  
38. *Proffitt v. Lower Bucks County Joint Mun. Auth.*, 1987 WL 16674 (E.D. Pa., Sept. 1, 1987).  
39. 40 C.F.R. § 122.44(i).  
40. CWA § 309(a), 33 U.S.C. § 1319(a).  
41. 40 C.F.R. § 19.4.  
42. CWA § 309(c), 33 U.S.C. § 1319(c); O.C.G.A. § 12-5-53.  
43. CWA § 505, 33 U.S.C. § 1365.  
44. 40 C.F.R. § 122.41(f)(4).

## 13. Air Quality Permitting

Air pollution is a serious problem throughout the country and in Georgia, in both urban and rural areas. Air emissions can reduce visibility, cause unsightly “brown clouds,” and create noxious odors. More importantly, though, air pollution is linked to a host of human health problems, including asthma, lung disease, heart disease, strokes, and some cancers.

There are two primary categories of air pollution sources: mobile sources (e.g., automobiles, trains) and stationary sources (e.g., factories, power plants). Although mobile sources are a major contributor to urban air quality problems, they are not rigorously regulated—about the only thing you can do on this front is oppose new highway construction. Therefore, this chapter focuses on stationary sources.



The CAA has two main programs for addressing pollution, depending on the pollutants involved.

### National Ambient Air Quality Standards

First, the CAA calls for EPA to set standards, the “national ambient air quality standards” (NAAQS), for the maximum “safe” levels of certain common pollutants known as “criteria pollutants.”<sup>2</sup> To date, EPA has established six NAAQS, for sulfur dioxide (SO<sub>2</sub>), particulate matter (PM), carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), lead, and ozone. In general, ozone is not emitted directly by air pollution sources, but is formed when volatile organic compounds (VOCs) combine with nitrogen oxides (NO<sub>x</sub>); thus,

emissions of these “precursor” pollutants are regulated to prevent excessive ozone concentrations.

A geographic area that is able to achieve the NAAQS for a pollutant is said to be an “attainment area” for that pollutant. An area that does not meet the standard considered “safe” for human health is said to be a “nonattainment area.” An area may be in attainment for one criteria pollutant and in nonattainment for another. EPA establishes deadlines by which nonattainment areas must achieve air quality that satisfies the minimum standards. Many counties in Georgia are nonattainment areas for ozone, PM, or both.

Once NAAQS are set, the CAA requires States to develop strategies for attempting to meet and enforce these health-based standards.<sup>3</sup> Under Section 110 of the CAA, each state must submit a State Implementation Plan (SIP) that demonstrates how the state will achieve or maintain air quality

### CLEAN AIR ACT OVERVIEW

The federal law that regulates air pollution is called the Clean Air Act (CAA). The CAA was originally enacted in 1970 but has been amended several times to add new programs or refine existing ones. The Environmental Protection Agency (EPA) is the federal agency charged with implementing and overseeing enforcement of the Act. However, the CAA also requires states to participate in its implementation and enforcement, and thus in Georgia the Air Protection Branch of the Environmental Protection Division of the Georgia Department of Natural Resources (EPD) is the primary entity involved in permitting and enforcement.<sup>1</sup>

that satisfies the standards. The SIPs are primarily made up of state regulations but must be approved by the EPA. Once approved, the SIP becomes federally enforceable by the EPA.<sup>4</sup>

## Hazardous Air Pollutants

Second, the Clean Air Act regulates less-prevalent but very dangerous pollutants, known as hazardous air pollutants (HAPs).<sup>5</sup> Congress has specifically identified 189 of these HAPs.<sup>6</sup> The primary regulation of HAPs is emission limits that are based on the level of pollution control possible by using “Maximum Achievable Control Technology” (MACT).<sup>7</sup> EPA must identify categories of facilities that release any of the 189 HAPs and establish MACT standards for each category.<sup>8</sup> Thus, unlike criteria pollutants, HAPs are regulated not based upon their concentration in the environment but solely upon the amounts emitted by individual facilities.

## Permitting Programs

The CAA uses several strategies or programs to meet NAAQS and HAP requirements. Of primary interest here are the requirements that facilities obtain permits. The most important of these are “Construction Permits” and “Title V Permits,” but there are others as well. In general, the states issue these permits and are called “permitting authorities.”

## CONSTRUCTION PERMITS

The CAA requires all new “major sources” of any of the criteria pollutants to get state-issued Construction Permits before commencing construction.<sup>9</sup> It also requires “modifications” of existing sources to obtain Construction Permits if they may result in significant increases in pollution;<sup>10</sup> whether a modification results in a significant increase is an extremely complicated analysis, and you should consult an expert if you suspect a modification may trigger the Construction Permit requirement. The process leading to the issuance of a Construction Permit is also known as “New Source Review” (NSR) or “preconstruction review.”

What constitutes a “major source” depends on whether the area is in “attainment” or “nonattainment” for a given pollutant and is based on whether the facility has the “potential to emit” above a threshold amount of a given pollutant. Similarly, the requirements that must be met to get a Construction Permit depend on whether it is in an attainment or nonattainment area. Keep in mind that because an area may be nonattainment for some pollutants and attainment for others, the thresholds and permit requirements may vary for a specific source.

## Major Source Definitions

In attainment areas, there are two thresholds for a major source: If the facility is in one of 28 listed source categories (types of facilities), it is a major source if it may emit 100 tons per year (tpy) or more of any regulated pollutant; if it is not one of those 28 types, it is major if it may emit 250 tpy or more.<sup>11</sup> In nonattainment areas, the thresholds are lower and depend on the particular pollutant and the severity of the problem. The highest thresholds are 100 tpy, and they step down to as low as 10 tpy.<sup>12</sup> In Georgia’s nonattainment areas, the current thresholds are 100 tpy for each of the pollutants.

## Permit Requirements

### Attainment Areas

In attainment areas, Construction Permits are also known as Prevention of Significant Deterioration (PSD) Permits. As the name suggests, the purpose of the permitting program is to prevent the air quality of the area from becoming significantly worse.

To obtain a PSD Permit, a proposed new major source or modification must demonstrate that it will use “Best Available Control Technology” (BACT) to control each criteria pollutant for which it is a major source.<sup>13</sup> BACT is determined on a case-by-case basis for each source, and incorporates a balancing approach that includes air pollution, other energy and environmental, and economic considerations. The BACT analysis is also informed by what pollution control equipment is being used at other similar facilities around the country. Thus, in applying for a PSD Permit, a proposed facility must set an emissions limit for each of the criteria pollutants and then justify why that limitation represents BACT.

A proposed new or modified facility must also perform an air quality impacts analysis to obtain a PSD Permit. Under the CAA, each attainment area is given an allowable pollution increase, or “increment,” and the air quality impacts analysis must show that the pollution emitted by the facility will not take up too much of the remaining increment for the area.<sup>14</sup>

### Nonattainment Areas

As in attainment areas, any new major source or modification in a nonattainment area must install pollution control technology for criteria pollutants for which it is a major source. In nonattainment areas, however, the standard for judging technology is more stringent and is known as “Lowest Achievable Emissions Rate” (LAER).<sup>15</sup> The primary difference between BACT and LAER is that under LAER, there is little or no consideration of energy, other

environmental, or economic factors—the focus is almost solely on reducing air emissions.

In addition, any new or modified source in a nonattainment area must obtain offsetting emissions reductions from existing sources in the area.<sup>16</sup> The amount of the offset depends on the severity of the problem, but is always at least as much as the added pollution from the facility.

### **Hazardous Air Pollutants**

Any proposed facility that is a major source of HAPs—defined as one with the potential to emit 10 tpy of any HAP or 25 tpy of any combination of HAPs<sup>17</sup>—must obtain a “Notice of MACT Approval,” or finding that it will comply with the appropriate Maximum Achievable Control Technology requirements, from the permitting authority before commencing construction.<sup>18</sup> In Georgia, as in many states, this determination has been folded into the Construction Permit process.<sup>19</sup> Thus, even if a facility is not a major source of a criteria pollutant, it will have to obtain a Construction Permit if it is a major source of HAPs.

## **TITLE V PERMITS**

The Title V Permitting Program was created by the latest significant amendments to the CAA in 1990. These amendments called for a program requiring permits for all major sources, and many smaller sources, of air pollution. The program is commonly referred to as “the Title V program” (with “V” being the roman numeral for five and thus pronounced as “the Title Five program”) because the relevant requirements appear in Title V of the CAA (there are eleven “titles” that make up the entirety of the Act). Title V Permits are also known as Part 70 Permits because the federal regulations implementing the program appear in Part 70 of the EPA regulations.

The Title V Permit includes federally enforceable requirements that incorporate all federal and state regulations pertaining to a given facility. After a Title V Permit is issued to a facility, a member of the public who wishes to know which air quality regulations apply to a given facility can simply request to see the facility’s Title V Permit, where all the answers should lie.

### **Facilities Subject to Title V Permitting**

The Title V program has a broader reach than the Construction Permit program. First, it applies to existing facilities as well as new or modified facilities. It also applies to a broader range of facilities. All facilities subject to Construction Permit requirements or that have the potential to emit 100 tpy or more of a criteria pollutant, 10 tpy of any HAP,

or 25 tpy of any combination of HAPs must obtain a Title V Permit.<sup>20</sup> Likewise, any source, irrespective of size, that is covered by other requirements, such as New Source Performance Standards (NSPS; a minimal pollution control requirement for certain source categories that has been largely supplanted by the BACT/LAER requirements) or MACT standards, must obtain a Title V Permit.<sup>21</sup>

### **Permit Contents**

A facility’s Title V Permit must include all “applicable requirements” for the facility.<sup>22</sup> This includes any NSR requirements, including BACT or LAER standards; NSPS requirements; MACT requirements; or other requirements imposed by the state’s SIP.

The Title V Permit also includes monitoring, testing, recordkeeping, and reporting requirements to assure that the source complies with emission standards and other permit requirements. The Title V program requires permit conditions obligating a facility to conduct regular monitoring activities such as stack tests, inspections, and measuring raw materials and fuel consumption;<sup>23</sup> sign an annual “compliance certification” stating whether the facility is in compliance with its permit;<sup>24</sup> and submit these documents to the permitting authority, where they are made available to the public.<sup>25</sup> There are stiff penalties for false statements on any of these documents.

In short, the Title V Permit is intended to include all relevant information and requirements, so that it is clear to the source, regulators, and the public what federal and state requirements the source is legally obligated to meet and whether it is meeting them. It thus provides the roadmap for enforcement of air pollution requirements by the agencies and the public.

### **Timing and Duration of Permit**

A new facility must apply for a Title V Permit within twelve months after it commences operations.<sup>26</sup> Existing facilities were required to submit their applications within twelve months after the state’s Title V program was approved;<sup>27</sup> in Georgia, this has long since occurred. If a facility has submitted a timely and complete application, it is shielded from any claims based on its failure to have a valid permit.<sup>28</sup> Title V Permits may have terms of no more than 5 years<sup>29</sup> and therefore must be renewed as long as the facility is in operation. The renewal application reopens all state, federal, and public review requirements, allowing any new requirements applicable to the facility to be incorporated into the new permit.

## Title V Permit Amendments

Facilities that have a Title V Permit may amend their permit for several reasons. The type of amendment dictates whether public or EPA review is required.

The simplest type of amendment is an *administrative amendment*, which is available for such minor items as an ownership or name change of a facility or fixing typographical errors in a permit.<sup>30</sup> This amendment does not trigger EPA or public review.

Slightly more complicated are *minor modifications*. These are defined in terms of what they are not and are essentially those that will *not* result in changes in emissions or significant changes in monitoring, reporting, or recordkeeping. These modifications are subject to review by the permitting agency and EPA, but not by the public.<sup>31</sup>

*Significant modifications* are all other changes to the permit, and they are subject to the full public and EPA review processes.<sup>32</sup>

In addition to these permit modifications, a facility may be able to make an *off-permit change* to change items that are not addressed or prohibited in the permit.<sup>33</sup> These changes do not trigger EPA or public review.

Finally, a facility may make changes in operations without triggering a permit revision if those changes are not “modifications” as defined in the CAA and will not result in emissions greater than those allowed under the permit.<sup>34</sup>

## THE PERMITTING PROCESS

Both Construction Permits and Title V Permits are subject to extensive procedural requirements that involve substantial opportunities for public participation. These processes have many similarities but also some differences. The same requirements apply for Title V Permit amendments subject to public review requirements.

### Both Construction Permits and Title V Permits

For both Construction Permits and Title V Permits, the process begins when the facility owner submits a permit application. The permitting authority reviews the application, gets any necessary additional information from the applicant, and prepares a “draft permit” containing the relevant requirements.

The agency must publish notice of the draft permit and make it available to the public. The public then has an opportunity to submit written comments and prepare oral comments at a public hearing.<sup>35</sup> For more information on how

to submit comments, see “Submitting Public Comments,” Chapter 16 of this handbook.

This ends the process for Construction Permits, and the permitting authority can issue a permit at this point if it meets all the requirements of the CAA. Federal law says a permitting authority must issue or deny a Construction Permit within one year after submission of a complete application;<sup>36</sup> in practice, it often takes longer for these decisions to be made.

## Title V Permits Only

For Title V Permits, there are additional procedural requirements. In addition to the public comment period, the permitting authority must submit the draft permit to the U.S. EPA for review.<sup>37</sup> There is no specific time when this submission must occur. After receiving the proposed permit, EPA has 45 days to review it and object to its issuance if it will violate any applicable law.<sup>38</sup> If EPA does not object, then the final permit may be issued. If EPA does object, the permit may not be issued and the permitting authority must either deny it or revise and resubmit it to EPA within 90 days of EPA’s rejection notice.<sup>39</sup> If the permitting authority fails to send the permit back in time, it loses control of the permit and EPA must either deny or rewrite the permit.<sup>40</sup>

If EPA does not reject a proposed permit, any member of the public who submitted comments during the public comment period may petition EPA to reject the permit, but only on grounds the person raised during the public comment period.<sup>41</sup> The petition must be submitted within 60 days after the end of EPA’s 45-day review period.<sup>42</sup> Filing of the petition does not invalidate an already-issued permit unless the EPA raises an objection in response to the petition.<sup>43</sup> After receiving the petition, EPA has 60 days to respond to it.<sup>44</sup> If the EPA does not object to the permit in response to the petition, the petitioner has the right to bring a lawsuit against EPA in the federal Court of Appeals challenging the failure to object.<sup>45</sup>

Federal law requires permitting authorities to take final action—the decision to issue or deny a permit—on each permit application within 18 months after its submittal.<sup>46</sup> As with Construction Permits, however, they have often taken far longer in practice.

## OTHER PERMITS

In addition to Construction Permits and Title V Permits, the Air Protection Branch of EPD issues several other types of air permits. Most of these permits are called “SIP Permits” because they are governed by Georgia’s State Implementation Plan (SIP).

The most significant of these permits is the state “Operating Permit.”<sup>47</sup> This permit, which is not required by federal law, is similar to a Title V Permit in that it combines all of the requirements applicable to a facility. However, Operating Permits are required for much smaller facilities than Construction or Title V Permits—a few small sources of air pollution sources are exempted, but nearly every industrial facility that does not require a Title V Permit is covered.<sup>48</sup> Facility owners must apply for an Operating Permit within 30 days after commencing operations, and the application is subject to EPA and public review.<sup>49</sup> As might be expected, the requirements for obtaining an Operating Permit are less burdensome than those for a Title V Permit.

Another type of state-issued permit is a “Permit by Rule.”<sup>50</sup> This is a single permit that is issued to cover many similar facilities. The permit itself is subject to public review, but an individual facility’s election to be covered by the Permit by Rule is not.<sup>51</sup>

A source whose potential to emit would require it to get a Title V Permit may agree to take federally enforceable limitations to bring its emissions under the Title V threshold. For instance, a source that could emit 101 tpy of NO<sub>x</sub> running year-round might agree to shut down for three weeks every year to bring its emissions below 100 tpy. These federally enforceable agreements are contained in a “Synthetic Minor” permit. In Georgia, this is included in the state Operating Permit and is subject to the same procedural requirements.

## USING PERMITS TO YOUR ADVANTAGE

### Participating in Public Review and Comment Process

For any permit, it is important to participate in the review and comment process from the beginning. If you wait to get involved until after a final permit is issued, you cannot take the EPA to court for failure to object to the permit, and you cannot petition for changes or improvements in the permit. Once a final permit is issued, the only way to remedy a flaw in the permit is to convince the permitting authority to “reopen” the permit. The permitting authority is unlikely to reopen the permit, absent unusual circumstances, particularly when you had the opportunity to comment on any perceived flaws during the public comment period. If you miss the public comment period, you will have to wait until the permit is renewed (usually five years) to advocate for improvements.

## Challenging Permits

After a permit has been issued, you have a window of opportunity to challenge it if you believe it contains provisions that violate the Clean Air Act. For more information on this process, see “Administrative Appeals in Georgia,” Chapter 18 of this handbook.

## Obtaining and Reviewing Permits

Permits are the basis for being sure that a facility is complying with the requirements of the Clean Air Act. Thus, the first order of business if you suspect an existing facility in your neighborhood may be emitting too much pollution is to get copies of its permits and supporting documents.

In addition to using the online resources listed in Chapter 5, “Knowing What’s in Your Neighborhood,” you can also just call or visit the Air Protection Branch of EPD and request to see the files for a specific facility. You will have to review the documents in person, but can have copies of any documents made on site for a small fee. In some cases you may want to file a formal, written, open records request. For more information about filing open records requests, see “Accessing Public Records and Meetings,” Chapter 15 of this handbook.

## Addressing Permit Violations

Like the Clean Water Act discussed in the previous chapter, the Clean Air Act imposes “strict liability”: Any violation establishes liability, regardless of fault.<sup>52</sup> Determining whether a facility is violating its air permits can be difficult. Facilities are required to submit reports of their emissions, and you certainly should review them to see whether any violations are apparent. If the reports are false, however, the only way to show a violation would be to measure the facility’s emissions yourself. This is often difficult to do, but environmental professionals may be able to point you to some available resources.

If you can document violations of the air permit, you can try to contact the facility itself or the Air Protection Branch to stop the violations. If those approaches fail, you may be able to file a citizen suit. For more information on citizen suits, see “Citizen Suits,” Chapter 19 of this handbook.

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1. See Georgia Air Quality Act, O.C.G.A. §§ 12-9-1 to -25.
  2. Clean Air Act (CAA) §§ 108, 109, 42 U.S.C. §§ 7408, 7409.
  3. CAA § 107, 42 U.S.C. § 7407.
  4. CAA § 110, 42 U.S.C. § 7410.
  5. CAA § 112, 42 U.S.C. § 7412.
  6. CAA § 112(b)(1), 42 U.S.C. § 7412(b)(1).
  7. CAA § 112(d)(2), (g)(2), 42 U.S.C. § 7412(d)(2), (g)(2).
  8. CAA § 112(c), (d), 42 U.S.C. § 7412(c), (d).
  9. CAA §§ 165(a)(1), 172(c)(5), 42 U.S.C. §§ 7475(a)(1), 7502(c)(5).
  10. CAA §§ 111(a)(4), 165(a)(1), 172(c)(5), 42 U.S.C. §§ 7411(a)(4), 7475(a)(1), 7502(c)(5).
  11. 40 C.F.R. § 52.21(b)(1).
  12. 40 C.F.R. § 51.165(a)(1)(iv)(A).
  13. CAA § 165(a)(4), 42 U.S.C. § 7475(a)(4).
  14. CAA § 165(a)(3), 42 U.S.C. § 7475(a)(3).
  15. CAA § 173(a)(2), 42 U.S.C. § 7503(a)(2).
  16. CAA § 173(a)(1), 42 U.S.C. § 7503(a)(1).
  17. CAA § 112(a)(1), 42 U.S.C. § 7412(a)(1).
  18. 40 C.F.R. § 63.43.
  19. Georgia Rule 391-3-1-.02(9)(b)16.
  20. CAA § 502(a), 42 U.S.C. § 7661a(a).
  21. *Id.*
  22. 40 C.F.R. § 70.3(c).
  23. 40 C.F.R. § 70.6(a)(3).
  24. 40 C.F.R. § 70.6(c)(5).
  25. 40 C.F.R. § 70.6(a)(3)(iii).
  26. 40 C.F.R. § 70.5(a)(1).
  27. CAA § 503(c), 42 U.S.C. § 7661b(c).
  28. CAA § 503(d), 42 U.S.C. § 7661b(d).
  29. CAA § 501(b)(5), 42 U.S.C. § 7661(b)(5).
  30. 40 C.F.R. § 70.7(d).
  31. 40 C.F.R. § 70.7(e)(2).
  32. 40 C.F.R. § 70.7(e)(4).
  33. 40 C.F.R. § 70.4(b)(14); see Georgia Rule 391-3-1-.03(10)(b)6 for limitations on the use of off-permit changes.
  34. CAA § 502(b)(10), 42 U.S.C. § 7661a(b)(10).
  35. 40 C.F.R. § 52.21(q); Georgia Rule 391-3-1-.02(7)(b)14 (Construction Permits); 40 C.F.R. § 70.7(h); Georgia Rule 391-3-1-.03(10)(e)8 (Title V Permits).
  36. 40 C.F.R. § 51.166(q)(2).
  37. CAA § 505(a)(1)(B), 42 U.S.C. § 7661d(a)(1)(B).
  38. CAA § 505(b)(1), 42 U.S.C. § 7661d(b)(1).
  39. CAA § 505(b)(3), (c), 42 U.S.C. § 7661d(b)(3), (c).
  40. CAA § 505(c), 42 U.S.C. § 7661d(c).
  41. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2).
  42. *Id.*
  43. *Id.*
  44. *Id.*
  45. CAA § 307(b), 42 U.S.C. § 7607(b).
  46. 40 C.F.R. § 70.7(a)(2).
  47. Georgia Rule 391-3-1-.03(2).
  48. Georgia Rule 391-3-1-.03(6).
  49. Georgia Rule 391-3-1-.03(2)(b), (i).
  50. Georgia Rule 391-3-1-.03(11).
  51. *Id.*
  52. See, e.g., *U.S. v. Anthony Dell'Aquila, Enterprises and Subsidiaries*, 150 F.3d 329, 332 (3d Cir. 1998).

## 14. Other Laws

The preceding chapters have discussed several of the most important, and most used, environmental statutes: Georgia laws governing land use planning and zoning, the Georgia Solid Waste Management Act, the Clean Water Act, and the Clean Air Act. A host of other statutes, however, may apply to a given situation. Most of these statutes are administered by either the U.S. Environmental Protection Agency (EPA) or the Environmental Protection Division of the Georgia Department of Natural Resources (EPD).

It is impossible to describe all of the complex environmental statutes in detail in this handbook. However, this list includes a basic description of several statutes one may encounter in pursuing environmental justice. In addressing any environmental justice issue, one of your first tasks will be to determine which of these laws might apply.

### WASTE

#### **Resource Conservation and Recovery Act (42 U.S.C. §§ 6901-6992k)**

The Resource Conservation and Recovery Act of 1976 (RCRA) is a federal statute that regulates solid waste “from cradle to grave.” RCRA is a very expansive statute governing the treatment, storage, and disposal of solid and hazardous waste.

The EPA is primarily responsible for implementing and enforcing RCRA. However, in states, like Georgia, where the state has promulgated statutes and regulations that meet RCRA requirements, EPA allows “delegation” of the RCRA programs to the state government. After Georgia passed its Solid and Hazardous Waste Management Acts, EPA approved Georgia’s state RCRA program, and the Georgia state government, primarily EPD, took over the operation of RCRA.

Since RCRA enforcement and compliance has been delegated to Georgia, any questions about RCRA or information about a hazardous waste site should be directed to:

Mr. Tim Cash  
Program Manager  
Hazardous Sites Response Program  
(404) 657-8600 (phone)  
(404) 657-0807 (fax)

#### **Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601-9675)**

Congress established the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in 1980 to help clean up sites contaminated with hazardous waste and to restore the land to productive use. CERCLA provides two mechanisms to help achieve this goal—a liability framework to require those responsible for the contamination to pay for cleanup, and an alternative financing option in the form of a trust fund.

Under CERCLA, parties who have owned a contaminated site or contributed to the problem are required to clean up the site. But sometimes these parties cannot be found or are bankrupt. To ensure that funding is still available to cleanup these sites, CERCLA established a trust fund.

The trust fund, known as the “Superfund,” is funded through a tax on the chemical and petroleum industries. The fund may be used to finance the cleanup of hazardous waste sites when responsible parties cannot pay, to pay a claim by other persons for necessary response costs, and to provide compensation to the government for damage to natural resources.

The CERCLA process begins when the EPA is notified of possible hazardous chemical releases. The EPA records the site in a database and begins determining if cleanup action is required. The timeframe for the evaluation and cleanup process depends on the magnitude of the damage, and can range from emergency or short-term remedial action to long-term remedial action.

All remedial plans must be subject to public comment, and citizen suits are allowed against federal or state government actors for violating any provision of CERCLA. Additionally, citizens who have spent money to clean up sites may file civil suits for contribution, in which they seek reimbursement of their costs from responsible parties.

Technical Assistance Grants (TAGs) are available to assist community groups in understanding the nature of the hazard and the Superfund process, including remediation measures. TAGs are available up to \$50,000; however, grant recipients must contribute at least 20% of the cost of the technical assistance unless they receive a waiver. To apply for a TAG, community groups should submit a Letter of Intent to the EPA Region 4 Office.

To speak with someone at the EPA in the Superfund Community Involvement Program, call (800) 564-7577. Leave a message and your call will be returned. A Superfund Community Involvement Toolkit is also available through the EPA website at [www.epa.gov/superfund/tools/index.htm](http://www.epa.gov/superfund/tools/index.htm).

To report an environmental emergency, hazardous substance release, or oil spill to the EPA, contact either:

The National Response Center at (800) 424-8802; or  
The Region 4 Duty Officer at (404) 562-8705.

These phone numbers are staffed 24 hours per day, 7 days per week, including holidays.

To report an environmental emergency or hazardous substance release to EPD, contact either:

Alexandra Cleary, Program Manager for the Hazardous Sites Response Program at (404) 657-8600; or  
David Reuland, Unit Manager for the Superfund Management Unit at (404) 657-8600.

## **Georgia Underground Storage Tank Act (O.C.G.A. §§ 12-13-1 to -22)**

The Georgia Underground Storage Tank Act was established to protect human health and safety and to protect groundwater and surface water against environmental contamination from the release of harmful substances stored in underground storage tanks. EPD administers the Act.

The Act establishes requirements for notifying EPD of the presence of underground tanks on a property, maintaining a leak detection system or inventory control system, and reporting releases and corrective actions. Under the Act, owners or operators of storage tanks are also required to maintain evidence of financial security deemed necessary to undertake corrective action or compensate third parties for bodily injury or property damage resulting from a leak.

All underground storage tanks are covered by this act, unless exempted. Exemptions include farm or residential storage tanks storing motor fuel, tanks storing heating oil for use on the premises, septic tanks, regulated pipelines, storm or wastewater collection systems, flow through process tanks, surface impoundments, or storage tanks situated in an underground area like a basement but sitting on a floor.

This Act is geared towards owners and operators of underground storage tanks. Citizen involvement is likely to be limited to notifying EPD of evidence of leaks or contamination from underground storage tanks.

For more information, contact:

Dick Swanson, Program Manager  
Georgia Environmental Protection Division  
Underground Storage Tank Management Program  
Phone: (404) 362-2687

## **Georgia Hazardous Waste Management Act (O.C.G.A. §§ 12-8-60 to -83)**

The Georgia Hazardous Waste Management Act is a comprehensive, state-wide program to manage hazardous wastes through the regulation of the generation, transportation, storage, treatment, and disposal of hazardous wastes. The Act requires that all generators of hazardous waste have plans to reduce their generation of hazardous waste and submit progress reports.

The Act establishes a permitting process for the construction, modification, and operation of hazardous waste facilities. Upon receipt of an application for a hazardous waste facility, EPD has 30 days to give the public notice in a local newspaper. Citizens may request a hearing, but the request must be made in writing within 30 days and must be made by at least 25 individuals affected by the facility.

The Act also requires that any hazardous waste storage, treatment, or disposal facility demonstrate adequate financial responsibility to cover the expenses of maintaining, operating, and properly closing the facility as well as assuming responsibility for any liability claims.

The Hazardous Waste Management Act is administered by the Waste Management Branch of EPD. For more information contact:

Mark Smith, Branch Chief  
Georgia Environmental Protection Division  
Waste Management Branch  
Phone: (404) 656-7802

## Georgia Hazardous Site Response Act

(O.C.G.A. §§ 12-8-90 to -97)

The Hazardous Site Response Act (HSRA) is a state level analog to CERCLA. It is designed to ensure that when releases of hazardous wastes or substances occur, the proper corrective action can be taken. The Act provides that after a hazardous release, EPD will notify the responsible parties and give them an opportunity to enter into a voluntary agreement to clean up the release. Should the responsible parties refuse to act voluntarily, EPD can order cleanup.

The Act also provides a funding mechanism, called the Hazardous Waste Trust Fund, to pay for the cleanup should the responsible party be unable to pay or fail to comply with the order. The fund is financed by fees collected from industries and government agencies that generate, manage, or dispose of hazardous wastes, hazardous substances, and solid wastes as well as from fines collected from violators of state environmental laws. The fund can be used to pay for investigation, detoxification, removal, and disposal of hazardous waste or substances from sites posing a danger to public health, safety, or the environment, or for emergency response to releases of hazardous wastes or substances. The fund can also be used by EPD for program administration costs.

Each year, EPD is required to publish the Hazardous Site Inventory. This inventory is a list of sites that have had known or suspected releases of a regulated substance above a reportable quantity and do not yet meet state clean-up standards. The inventory provides information on the location of the site, hazardous substances present, whether corrective action is required, and the cleanup status and priority. The Hazardous Site Inventory can be accessed in the clerk's office in each superior court of the state, the county office of deeds and records, or online at the EPD website: [www.gaepd.org/Documents/hazsiteinv.html](http://www.gaepd.org/Documents/hazsiteinv.html). To search for hazardous sites near you, click on the link for "Sites Listed by County," as discussed in Chapter 5, "Knowing What's in Your Neighborhood."

EPD cleans up hazardous sites according to risk-based standards, which means the worst problems are cleaned up first so that people are not exposed to harmful levels of hazardous substances. This means not only tackling the worst sites first, but also dealing with the worst problems at those sites, many of which are large and complex.

If you believe there is a hazardous site in your area, please contact the Hazardous Site Response Branch of EPD at: (404) 657-8600.

## AIR

### Georgia Air Quality Act (O.C.G.A. §§ 12-9-1 to -25)

The Georgia Air Quality Act is the state law under which EPD administers the Clean Air Act, discussed in Chapter 13, "Air Quality Permitting." The Georgia act does not impose any requirements in addition to those of the federal act.

## WATER

### Safe Drinking Water Act

(42 U.S.C. §§ 300f to 300j-26)

The Safe Drinking Water Act (SDWA) is the main federal law that protects the nation's public drinking water supplies. The Act also sets the framework for underground injection of wastes into groundwater, known as the underground injection control program (UIC).

The SDWA regulates the drinking water supply through the entire process—from source to collection, treatment, storage, and distribution to customers. Under the Act, the EPA must establish health-based standards for drinking water, known as maximum contaminant levels (MCL), that public water systems are required to meet. Maximum contaminant level goals (MCLG), levels at which there are no known or expected health risks, are also established; however, these levels are not enforceable and simply serve as goals. Additionally, every five years, the EPA must compile a list of contaminants known or anticipated to occur in public water systems that might require future regulation. The contaminants on the list are then researched and more data is collected to determine if regulation is needed.

The Act also makes funds available to public water systems to help finance improvements to their water system. Water systems must apply for the funding, and special consideration is typically given to small water treatment systems such as community systems.

The Act requires all public water systems to create an annual report on their system's water quality, called a consumer confidence report. To review your public water system's consumer confidence report, contact the system.

The Act's second component, the UIC program, establishes minimum requirements for the siting, construction, and operation of systems for underground injection of waste to ensure the protection of underground sources of drinking water. The UIC program classifies wells based on the potential of the injection endangering the water supply. Lower risk wells are authorized by rule, whereas higher risk wells require a permit. The permitting process requires the

applicant to submit operational plans and proposed monitoring of the wells. Additionally, before permits are issued, an investigation is made into whether underground drinking water supplies will be adequately protected against contamination. Before final permits are issued, a 30 day public notice period is required.

Public involvement in the SDWA is encouraged. The EPA website ([www.epa.gov/safewater/contaminants/index.html](http://www.epa.gov/safewater/contaminants/index.html)) contains a lot of information about the process for establishing MCLs, as well as the current regulated contaminants. Citizens can also become involved in the process of listing a new contaminant for possible regulation.

### **Georgia Safe Drinking Water Act (O.C.G.A. §§ 12-5-170 to -193)**

The federal Safe Drinking Water Act permits states to implement the act as long as the minimum federal standards are met. The Georgia SDWA gives EPD the authority to adopt rules and regulations affecting the source, collection, treatment, storage, and distribution of the state's drinking water and thus to administer the federal requirements. These rules and regulations are in Georgia Rule 391-3-5.

### **Georgia Water Quality Control Act (O.C.G.A. §§ 12-5-20 to -53)**

The primary purposes of the Georgia Water Quality Control Act are to give EPD the authority to (1) establish water quality standards for lakes, tributary streams, and reservoirs; (2) administer the NPDES program; and (3) regulate surface water withdrawals, diversions, and impoundments. The first two of these purposes are discussed above in Chapter 12, "Water Quality Permitting."

Under the Act, surface water withdrawals that exceed 100,000 gallons per day on a monthly average require a permit from EPD. Similarly, water diversions and impoundments that reduce the flow of the surface water by more than 100,000 gallons per day require a permit. In awarding permits, EPD may take into consideration the extent to which the withdrawal, diversion, or impoundment is reasonably necessary. Permits that would have an unreasonably adverse effect on other water users in the area or pose future potential for adverse effects may not be granted.

Permits are granted for a period of ten years or more, but may not exceed 50 years. In issuing permits for 25 years or more, EPD must evaluate the water supply to ensure that it is adequate to meet future needs, and the permit must be consistent with a water development and conservation plan developed either for the applicant or the region.

The Act also gives EPD the authority to change the conditions of a permit, suspend a permit, or otherwise restrict a permit during periods of emergency water shortage. During these emergencies, priority must first be given to human consumption and then to farm use.

### **Groundwater Use Act (O.C.G.A. §§ 12-5-90 to -107)**

The primary purpose of the Groundwater Use Act is to ensure that the state's water supply is put to the best use and to protect the water quality of the state's groundwater. A permit is required for any withdrawal of more than 100,000 gallons of water, and the permit application must be accompanied by a water conservation plan. Applications for a permit modification that request an increase in water usage must also submit a water conservation plan. Standards for issuance of groundwater withdrawal permits are similar to those for surface water under the Georgia Water Quality Control Act.

### **Georgia Erosion and Sedimentation Act (O.C.G.A. §§ 12-7-1 to -22)**

The Georgia Erosion and Sedimentation Act (E&S Act) was enacted to protect and restore the quality of Georgia's rivers and streams, which have been impacted by development and the resulting stormwater runoff. The E&S Act requires that each county or municipality in the state adopt a comprehensive ordinance establishing procedures governing land-disturbing activities based on the minimum requirements established by the Act. The Act is administered by EPD and by local governments.

The E&S Act requires permits, called land disturbing activity permits, for all land disturbing activities that are not expressly exempt by the Act. Any land disturbing activity must meet minimum protections to reduce erosion and sedimentation. Such protections include minimizing erosion from vegetative stripping and regrading, preserving natural vegetation when possible, reducing cut and fill operations, stabilizing disturbed areas and limiting exposure to erosive elements, and providing sedimentation control and treatment to ensure adjacent waters are not affected. Another minimum protection established in the act is a 25 foot buffer along the banks of any State water. This buffer is extended to 50 feet if the water is a trout stream. Development activities are prohibited in these buffers unless a variance is granted.

The E&S Act has established specific exemptions to the permit requirements. Projects disturbing less than one acre and not part of a larger development scheme, such as the construction of single family residences, are exempt from

the permitting process; however, they must still meet the minimum protections outlined above. Other exemptions include mining activities, agricultural practices, farming operations, transportation projects, airport projects, electrical utility projects, and public utility projects.

Any person that does not comply with the requirements of the E&S Act may be issued an order requiring work to stop until corrective actions have been undertaken. The violator may also be subject to a civil penalty of up to \$2500 per day.

Citizens can play a large role in carrying out the mission of the E&S Act. With the vast amount of land development occurring in the state of Georgia, EPD lacks the manpower to monitor and ensure compliance at all sites at all times. Citizens can alert EPD to violations of the Act and ensure that corrective actions are taken before water quality is further impaired.

For more information, contact:

Jan Sammons, Unit Manager  
Georgia Environmental Protection Division  
Erosion and Sedimentation Unit  
Phone: (404) 675-6240

### **Water Wells Standards Act (O.C.G.A. §§ 12-5-120 to -138)**

The purpose of the Water Wells Standards Act is to protect the state's groundwater supply from contamination by establishing standards for siting, constructing, operating, maintaining, and abandoning wells and boreholes. Under the Act, individual and non-public wells must be located as far as possible from known or potential sources of pollutants; the Act also establishes distance requirements from sewers and septic systems. Wells must also be accessible for cleaning, treatment, repairs, testing, and inspection.

Persons constructing wells or boreholes must have a passed an examination and be licensed. Licenses must be prominently displayed in rigs or commercial vehicles. The Act also requires that all drilling be performed under the direction of a geologist or engineer.

The Act further seeks to protect groundwater against pollution by requiring that unused wells or boreholes be filled, sealed and plugged within 30 days of disuse. It also prohibits the disposal of wastes or pollutants into wells or boreholes.

Violators of the Act may be subject to criminal and civil penalties. Anyone who falsely holds himself out as a water well contractor may be found guilty of a misdemeanor. Additionally, violators may be fined up to \$5000 per day.

## **OTHER**

### **Emergency Planning & Community Right-to-Know Act (42 U.S.C. §§ 11001-11050)**

Congress enacted the Emergency Planning and Community Right-to-Know Act (EPCRA) to help communities deal safely and effectively with hazardous substances. EPCRA has two main goals: (1) to encourage and support emergency planning for responding to chemical accidents and (2) to provide local governments and the public with information about possible chemical hazards in their communities.

EPCRA requires each state to appoint a State Emergency Response Commission (SERC). Each SERC then divides its state into Emergency Planning Districts, and a Local Emergency Planning Committee (LEPC) is named for each district. Broad representation by firefighters, health officials, government and media representatives, community groups, industrial facilities, and emergency managers ensures that all necessary interests are included.

The emergency planning aspect of EPCRA requires facilities with hazardous substances above threshold quantities to report their inventory to the SERC, LEPC, and the local fire department. For those facilities, the act requires that the LEPC develop an emergency response plan. The Act also requires that these facilities report chemical releases exceeding the reportable quantities established in the Act to the EPA Administrator and designated state official.

The community right-to-know aspect of EPCRA gives the public access to information concerning potential threats from hazardous substances. Every March, facilities are required to submit inventory forms that identify the chemicals on site for the previous calendar year, estimate the maximum amount stored, estimate the average daily amount stored, and state the general location of chemical storage. Facilities may elect to withhold the storage location information from the general public; however, citizens may make a written request to the SERC or LEPC to review this information. Citizens may also review any emergency response plans that have been developed.

Additionally, every July facilities are required to submit toxic release inventory forms for every toxic chemical onsite. Information on this form includes: (1) the name, location, and principal activities of the facility; (2) whether the chemical was manufactured, processed, or used at the facility; (3) the maximum amount present at the facility for the preceding calendar year; (4) the waste treatment or disposal method used; and (5) the quantity of any toxic entering the environment from a release. This information is also available to the public.

EPCRA provides an excellent opportunity for citizens to become informed about the types of potential chemical hazards that exist in their communities and what courses of action might be expected should a release occur. Citizens can also use this Act to stay informed of releases that have occurred in their communities.

For information about the storage or release of hazardous or toxic chemicals in your area, please contact:

Kent Howell  
Georgia Environmental Protection Division  
Georgia EPCRA Program Contact  
Phone: (404) 656-6905

## **Occupational Safety and Health Act (29 U.S.C. §§ 651-678)**

Congress enacted the Occupational Safety and Health Act (OSH Act) to ensure safe and healthful working conditions for all employees. The Act is administered by the Occupational Safety and Health Administration (OSHA). Under the Act, states are encouraged to develop and operate their own job safety and health programs, subject to OSHA approval and monitoring. Georgia, however, does not have a state level plan.

One important standard developed under the Act is the Hazard Communication (HAZCOM) standard, which is designed to inform employees of the hazards in their workplace, the chemicals they may be exposed to, and what measures they should take to protect themselves. The HAZCOM standard requires employers to have material safety data sheets (MSDS) accessible for every chemical in the workplace. An MSDS provides important information about a chemical's properties. It also contains health and safety information such as firefighting procedures, personal protective equipment requirements, and spill cleanup procedures. The HAZCOM standard also sets forth container labeling requirements and requires a written hazard communication program and formal training program. The standard applies to any industry where employees are exposed to chemical hazards, including manufacturers, importers, construction companies, and retailers.

Another important aspect of the OSH Act is the whistleblower provision. Under this provision, an employer is prohibited from discharging or discriminating against an employee who has exercised his or her rights under the act. The Act establishes that an employee can: (1) complain to OSHA and seek an OSHA inspection of the workplace; (2) participate in an OSHA inspection; (3) participate or testify in any proceeding related to an OSHA inspection.

If an employee feels that there is an unsafe workplace condition, OSHA recommends that the employee first notify his or her employer, who is in the best position to immediately resolve the problem. However, if the employer does not take action or if the employee does not feel comfortable approaching the employer, employees may contact OSHA directly to make a complaint. Citizens are also permitted to file OSHA complaints.

## **Federal Insecticide, Fungicide, and Rodenticide Act (42 U.S.C. §§ 136-136y) and Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301-399)**

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA) provide the framework for pesticide regulation in the United States.

FIFRA was enacted to regulate the distribution, sale, and use of pesticides. Under this Act, all pesticides used must be registered with the EPA. In considering whether to register a pesticide, the EPA will evaluate all claims made by the manufacturer, the effectiveness of the product, and whether the pesticide will cause an unreasonable adverse effect on the environment if used according to widespread and common practice. Pesticide registrations are valid for a period of five years; however, pesticides may be re-registered after an evaluation of the current data on the pesticide.

Under the FFDCA, the Food and Drug Administration (FDA) is given the authority to establish tolerances and exemptions for pesticide residues in food. In establishing these tolerances and exemptions, there must be reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue. Consideration must be given to the impact on infants and children, a more sensitive class of individuals.

## **Toxic Substances Control Act (42 U.S.C. §§ 2601-2692)**

The Toxic Substances Control Act (TSCA) was enacted to enable the EPA to track and control the over 75,000 industrial chemicals that exist today and take any steps necessary to protect human health and the environment. The Act provides the following regulatory tools over all chemicals manufactured, distributed, imported or exported, and used: (1) authority to require testing of existing chemicals; (2) pre-manufacture review of new chemicals; (3) authority to ban existing chemicals or place limits on them; (4) record-keeping and reporting requirements; (5) export notice to foreign governments; and (6) import certification.

There have been three recent amendments to the TSCA. The first directed the EPA to promulgate regulations for inspecting schools for asbestos and taking the necessary response actions. The second directed the Department of Housing and Urban Development to develop policies to deal with radon contamination in public housing. The third mandated that the EPA establish regulations governing lead-based paint activities, such as requiring mandatory training and certification for those engaged in this type of activity.

### **Endangered Species Act (16 U.S.C. §§ 1531-1544)**

The Endangered Species Act (ESA) was enacted to protect endangered or threatened species and their ecosystems. The Act defines an endangered species as “any species which is in danger of extinction throughout all or a significant portion of its range.” A threatened species is “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.”

The Act is administered by two agencies—the U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NMFS); however, the FWS plays the predominant role. NMFS has responsibility over marine species, and the FWS handles freshwater fish and all other species.

Under the Act, federal agencies are forbidden to authorize, fund, or take any action that may jeopardize the continued existence of endangered or threatened species or their critical habitat. The Act also provides that an agency, corporation, or citizen cannot harm, harass, or kill an endangered or threatened species without a permit.

The Act only protects species that are listed on the federal list of endangered and threatened wildlife and plants. Species can become listed in two ways: on the initiative of the FWS or NMFS or when an individual or organization petitions FWS or NMFS to conduct a scientific review.

### **National Environmental Policy Act (42 U.S.C. §§ 4321-4347)**

Congress enacted the National Environmental Policy Act (NEPA) in 1969, declaring “a national policy which will encourage productive and enjoyable harmony between man and his environment.” The Act seeks to achieve this balance by requiring federal agencies to consider the environmental impacts of proposed actions and to evaluate reasonable alternatives prior to decision-making. This Act is a purely procedural act and does not require any result or finding by the agency. It affects all federal actions including the issu-

ance of permits, distribution of federal funds, and construction projects.

The Act establishes three levels of analysis to evaluate the environmental effects of a federal action. First, an action may be determined to have no significant environmental impact based on a categorical exclusion previously established by the agency. If no categorical exclusion applies, the agency is then required to prepare an Environmental Assessment (EA) to determine whether the action will significantly affect the environment and to evaluate possible alternatives. If it is determined that the action will have no significant impact, a Finding of No Significant Impact (FONSI) is issued. If it is determined that the agency action is likely to have a significant impact on the environment, the agency must prepare an Environmental Impact Statement (EIS), which provides greater detail on the environmental effects and possible reasonable alternatives. If a project is expected to have a significant environmental impact, the agency may skip the preparation of an EA and immediately prepare an EIS.

The EIS phase requires the agency to solicit the input of applicable federal agencies, state or local governments, and the general public during the draft and final stages. The agency is required to respond to all comments by making corrections, improving its analysis, modifying the alternatives considered, or explaining why the comments do not warrant further consideration.

Citizens can play an important role in the NEPA process. Citizens are intimately familiar with their communities and should become involved during the preparation of the EIS, providing input on the issues that should be addressed and commenting on the agency’s findings. Citizens can also participate in NEPA-related hearings or public meetings or submit written comments directly to the lead agency. The agency is required by the Act to consider all comments on the NEPA documents received from the public during the comment period.

### **Georgia Environmental Policy Act (O.C.G.A. §§ 12-16-1 to -23)**

The Georgia Environmental Policy Act (GEPA) is the state’s version of NEPA. However, unlike NEPA, this Act does not apply to all actions involving the state—such as permits or providing funding—but instead mainly applies to construction projects undertaken by state agencies. The Act requires that the responsible official for the agency consider whether the proposed project will significantly affect the environment. If it is found to significantly affect the environment, the Act requires the agency to prepare an environmental effects report. Similar to an EIS under NEPA, the environ-

mental effects report should discuss the environmental effects, mitigation measures that may be undertaken, and any reasonable alternatives.

The report must be prepared at least 45 days before a decision is reached and published in the county of the proposed action. The report must be made available to counties, municipalities, institutions, and the general public upon request.

Citizens may request a public hearing on the proposed action; however, this request must be made in writing within 30 days of publication of the report and 100 Georgia residents must make the request. The responsible official must consider all comments made during the hearing in deciding whether to proceed with the agency action.

### **Georgia Asbestos Safety Act (O.C.G.A. §§ 12-12-1 to -21)**

Asbestos is a mineral fiber that was historically added to products to increase their strength and provide heat insulation and fire resistance. When disturbed, asbestos fibers become airborne and can be inhaled into the lungs, causing serious health problems such as lung disease and cancer.

The Asbestos Safety Act (ASA) is a state law enacted to protect public health, safety, and the environment by establishing licensing, training, and project notification requirements for contractors engaged in the removal or encapsulation of asbestos from facilities or residential dwellings. Under the Act, contractors must pay a fee and satisfy the training requirements to receive a license to perform this type of work.

Additionally, the law requires that contractors notify EPD of asbestos removal or encapsulation projects prior to commencing the activity. Under the Act, EPD has the authority to inspect and sample project sites for compliance with the regulation and asbestos handling guidelines. If the director determines that the site is not in compliance, a cease and desist order may be issued. Civil penalties up to \$25,000 per day may also be assessed for failure to comply.

Citizen involvement in this Act is limited to notifying EPD if you think someone is acting without a license or not following the proper removal or encapsulation procedures. The ASA is administered by the Land Protection Branch of EPD. For more information, contact:

Mark Gwin, Unit Manager  
Georgia Environmental Protection Division  
Waste Reduction and Abatement Program  
Phone: (404) 362-7026

### **The Georgia Lead Poisoning Prevention Act of 1994 (O.C.G.A. §§ 31-41-1 to -19)**

Lead poisoning affects thousands of children under the age of six in Georgia. Lead poisoning can lead to developmental, neurological, and behavioral problems in children. The Lead Poisoning Prevention Act was enacted to provide training and licensing requirements for persons performing lead hazard reduction activities, as well as to provide a mechanism to control children's exposure to lead hazards. The Act is administered and enforced by EPD.

As mandated by the Act, the Lead-Based Paint Abatement, Certification and Accreditation Rules were developed. These rules contain: (1) procedures and requirements for accreditation training programs; (2) procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities; and (3) standards for performing these activities.

Under this Act, all persons performing lead hazard reduction activities must successfully complete a training program and pass an examination before receiving a license to perform this type of work.

The Act also provides standards for those performing lead hazard reduction activities. For example, standards are established for conducting lead inspections, sampling, risk assessments or screenings, and abatement work.

Additionally, the Act gives EPD authority to control children's exposure to lead hazards. Upon determination that a child has lead poisoning, the Act requires EPD to take the following actions: (1) identify the source of the poisoning and provide written notice to the owner or managing agent; (2) require abatement by the owner within 60 days; and (3) inspect and verify that the work has been completed. If EPD finds that the work is not being completed, it may issue an order removing the children from the location, including their home.

Civil penalties, up to \$10,000 per day, may be imposed upon those who fail to comply with the Act or rules.

For more information, contact:

Mark Gwin, Unit Manager  
Georgia Environmental Protection Division  
Waste Reduction and Abatement Program  
Phone: (404) 362-7026

## 15. Accessing Public Records and Meetings

All levels of government—federal, state, and local—maintain records about polluting facilities that can be accessed by the public. At the federal level, these requirements are governed by the Freedom of Information Act (FOIA). In Georgia, the Georgia Open Records Act covers the state government and all of its subdivisions, such as county and city governments. Knowing how to use these laws can be an important tool for obtaining the necessary information to address pollution in your neighborhood. In addition, all levels of government are required to allow the public to attend and observe their meetings.

### FEDERAL

If you are seeking documents from a federal agency, such as the United States Environmental Protection Agency or the United States Army Corps of Engineers, your request will be subject to the Freedom of Information Act. An excellent guide to federal law governing open documents and meetings, “How to Use the Federal FOI Act,” published by the Reporters Committee for Freedom of the Press, can be found on the web at [www.rcfp.org/foiact/index.html](http://www.rcfp.org/foiact/index.html). In addition, a more comprehensive guide, “Litigation Under the Federal Open Government Laws” can be obtained by contacting [hhammitt@accessreports.com](mailto:hhammitt@accessreports.com). A sample request for records under FOIA is attached as Appendix C-1 to this handbook.

Federal agencies are also subject to the Federal Sunshine Act and the Federal Advisory Committee Act (FACA), which require different federal groups to allow for open meetings and disclosure of records to the public, with limited exceptions.

The Federal Sunshine Act<sup>1</sup> applies to all meetings of Federal agencies and Congressional committees at which official action is taken, considered, or discussed. The definition of agency here is any multimember Federal authority not including courts, the military, or Congress.<sup>2</sup> The Act requires these agencies to give notice in the Federal Register of their meetings, which are to be open to the public, and disclose

all records (such as minutes, agendas, reports, memos, drafts, etc.) upon request. There are ten exemptions within the Act that restrict access to information by the public. Courts can be used to gain access to information under the Sunshine Act, but they cannot stop any agency action based solely on the Act.

FACA<sup>3</sup> regulates committees that advise the President or any agency or officer of the federal government. The public may obtain information from these committees in many ways. Advisory committee meetings must be open to the public unless exempted through the Federal Sunshine Act, and are announced in the Federal Register at least 15 days in advance. Individuals may attend these meetings and may file statements and appear before them. All documentation of the committee (records, reports, minutes, agendas, working papers, transcripts, drafts, etc.) must be made available to the public unless a FOIA exemption applies. The committee must also provide copies of transcripts of any proceedings to anyone who requests them and pays duplication costs. Like the Federal Sunshine Act, FACA provides that courts may be used to force a committee to turn over information, but it cannot by itself prevent any agency action.

### STATE

*The following discussion, current as of the press date of December 2007, is reprinted from Georgia First Amendment Foundation, Georgia’s Sunshine Laws: A Citizen’s Guide to Open Government. Permission to reprint the article is gratefully acknowledged. As of the press date, however, an overhaul of the Georgia Open Records Act is anticipated. For current information about Georgia’s Sunshine Laws, please visit the Georgia First Amendment Foundation’s website, [www.gfaf.org](http://www.gfaf.org).*

Georgia has a long and proud tradition of encouraging openness in governmental meetings and records. As Chief Justice Weltner stated in the case of *Davis v. City of Macon*<sup>4</sup>: “Because public men and women are amenable ‘at all times’

to the people, they must conduct the public's business out in the open."

A democratic government assumes that those who elect public officials will have free access to what those public officials are doing. Access to government meetings and records provides citizens with the information they need to participate in the democratic process and to insist that government officials are held accountable for their actions. Justice Brandeis once said, "Sunlight is the best disinfectant."

Principles of openness in government are found in the Constitution of Georgia, the common law of the State of Georgia, and our state statutes. The two Acts that apply to most meetings and records are known as the "Sunshine Laws." These consist of the Open and Public Meetings Act (O.C.G.A. §§ 50-14-1 to -6) and the Open Records Act (O.C.G.A. §§ 50-18-70 to -76).

The starting place under Georgia law for citizens seeking to attend meetings of governmental bodies or to inspect governmental records is the presumption that the meetings and records *are open*. For instance, O.C.G.A. § 50-14-1(b) states: "Except as otherwise provided by law, all meetings ... shall be open to the public ..." Similarly, O.C.G.A. § 50-18-70(b) provides: "All public records ... except [as otherwise provided] shall be open for a personal inspection by any citizen of this state at a reasonable time and place; and those in charge of such records shall not refuse this privilege to any citizen." The Attorney General has, historically, helped citizens enforce their rights under the Sunshine Laws and has issued numerous opinions concerning them. In 1998, the General Assembly of the State of Georgia amended both the Open Meetings Act and the Open Records Act to give the Attorney General specific authority to enforce the Sunshine Laws (O.C.G.A § 50-14-5 and § 50-18-73, as amended) in his discretion.

The purpose of this chapter is to provide a brief, general, and non-technical discussion of Georgia's Sunshine Laws, so that the citizens of Georgia may better participate in open government.

Both the Open Meetings Act and the Open Records Act apply to all entities that are "agencies" of the state or local government in Georgia. In addition, the Open Records Act applies to associations whose members are themselves

"agencies" if the association itself receives a substantial part of its budget from agencies.

The term "agency" is broadly defined in O.C.G.A. § 50-14-1(a)(1) to include the following:

- Every state department, agency, board, bureau, commission, public corporation, and authority;
- Every county, municipal corporation, school district, and other political subdivision;
- Every department, agency, board, bureau, commission, authority, and similar body of each county, municipal corporation, or other political subdivision of the state;
- Every city, county, regional, or other authority established pursuant to state law; and

- Non-profit organizations that receive more than one-third of their funds from a direct allocation of state funds from the governing authority of an agency.

All private entities that carry out governmental functions are subject to the Sunshine Laws. Records prepared or maintained by a private entity in cooperation with public officials, or contemplating the use of public resources and funds are considered public records and are subject to the Open Records Act.

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It is the public policy of Georgia that all agencies of our State should conduct business in the open and employ records that are available to every citizen.

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## Open Records

### A. What Records Are Available To The Public?

Georgia's Open Records Act provides the public with broad access to governmental records and documents.<sup>5</sup> The public has a right to see, inspect, and copy all "public records." "Public records" are broadly defined to include the following:

- Documents;
- Papers;
- Letters;
- Maps;
- Books;
- Tapes;
- Photographs;
- Computer-based or generated information; and
- Similar material prepared and maintained or received in the course of the operation of a public office or agency.<sup>6</sup>

Public records also include records received or maintained by a private person, firm, corporation, or other private entity

in the performance of a service or function for or on behalf of a public office or agency, unless the records are otherwise protected by specific statute or court order from disclosure.<sup>7</sup>

The Open Records Act specifically designates “computer records” as public records subject to the Open Records Act. The Open Records Act mandates that if a county maintains a computerized index of county real estate deed records, the index must be printed and made available for public inspection no less than every 30 days.<sup>8</sup> And, courts have held that government may not keep details of litigation settlements secret.<sup>9</sup>

The Open Records Act provides some limited exceptions.<sup>10</sup> Under the Open Records Act, these exclusions are subject to a narrow construction and only that portion of a public record to which the exclusion is directly applicable is exempted.<sup>11</sup>

The Open Records Act mandates that public records be available to “any citizen of this state” and has been interpreted to require the same access for non-residents as well.<sup>12</sup> It is irrelevant what the purpose of a particular request is. However, a party to a proceeding governed by the Georgia Administrative Procedures Act may not employ the Open Records Act to access public records pertaining to the proceeding without the prior approval of the presiding administrative law judge.

## **B. The Open Records Process**

Open records requests may be made to any custodian of the desired records. A written request is not required, but is advisable to eliminate any dispute as to what was requested or when the request was made. A sample open records request is attached as Appendix C-2 to this handbook.

The records custodian is allowed a “reasonable amount of time” to determine whether the records requested are subject to access under the Open Records Act. However, the custodian must respond to all requests within three business days.

If the records exist and are subject to inspection but are not available within three business days, a written description of such records and a timetable for their inspection and copying must be provided within that time period. Records maintained by computer shall be made available where practicable by electronic means, including Internet access, subject to reasonable security restrictions preventing access to nonrequested or nonavailable records.<sup>13</sup>

If access to a record is denied in whole or in part, the records custodian must provide in writing the specific legal authority exempting such record from disclosure.<sup>14</sup>

## **C. Appropriate Fees for Copies of Records**

Public agencies may charge a reasonable fee for copying public documents but usually may not charge more than

\$0.25 per page.<sup>15</sup> Agencies may also charge those requesting documents for search, retrieval and other administrative costs. Hourly charges for administrative tasks may not exceed the salary of the lowest paid, full-time employee who, in the discretion of the custodian of the records, has the necessary skill and training to perform the request. No charge may be made for the first quarter hour of administrative time. And, agencies must provide copies of the requested documents “in the most economical mean available.” The Georgia Supreme Court has held that no fee may be charged when a person seeks only to inspect records that are routinely subject to public inspection, such as deeds, city ordinances, and zoning maps.<sup>16</sup> An agency also may not charge for time its attorneys spend advising whether records should be disclosed.

## **D. Penalties for Non-Compliance**

Anyone who “knowingly and willfully” fails or refuses to timely provide access to records not subject to exemption is guilty of a misdemeanor punishable by a fine not in excess of \$100.00.<sup>17</sup>

Any person, firm, corporation, or other entity may bring a civil action to enforce compliance with the Open Records Act. Moreover, the Attorney General may bring a civil or criminal action to enforce compliance with the Open Records Act, and may participate administratively to resolve an open government dispute.<sup>18</sup>

## **Open Meetings**

Georgia’s Open Meetings Act<sup>19</sup> requires that state and local governmental bodies conduct their business so citizens can review and monitor their elected officials and others working on their behalf. The Open Meetings Act requires that government meetings be open to the public. The Open Meetings Act also requires governmental bodies to provide reasonable notice of *all* meetings.

### **A. What Meetings Are Open?**

Because of the Open Meetings Act, each of the following must transact business in the open:

- City Councils;
- County Commissions;
- Regional development authorities;
- Library boards;
- School boards;
- Commissions or authorities, such as hospital authorities, established by state or local governments;
- Planning commissions;
- Zoning boards;

- Most committees of the University System of Georgia (such as those involving grievances, disciplinary matters, athletic matters, and other student-related matters not specifically related to education); and
- Non-profit corporations operating public hospitals.

In short, the Open Meetings Act applies to nearly every group that performs any function of a government entity. Very few governmental bodies are exempt from coverage. The following, however, are not explicitly covered by the Sunshine Laws and Georgia courts have determined that they are not required to comply with the Law, although they may do so:

The Georgia General Assembly or its committees (although, under the State Constitution, legislative sessions must be open to the public);<sup>20</sup> and

Judicial proceedings including judicial branch agency and committee meetings (although under State and Federal constitutional law, most court proceedings must be open to the public).<sup>21</sup>

## B. What Actions Are Open To The Public?

Most meetings of entities covered by the Open Meetings Act must be open to the public. Whenever a quorum of the members of an agency (again, broadly defined) meets for the discussion or presentation of official business or policy or takes official action, the meeting must be open to the public. This means public officials may not exclude the public from fact-finding and purely deliberative sessions simply because no final action is taken or anticipated. Even meetings conducted by written, telephonic, electronic, wireless or other virtual means must be open.

Courts have held that committee meetings relating to policy or official business must be open to the public. The courts have also stated that a committee needs to be exclusively composed of members of the agency to be deemed an “agency” subject to the Open Meetings Act.<sup>22</sup> Any official action of any type taken at a meeting that is not open is invalid, and may be set aside if an action is brought promptly.<sup>23</sup>

Although some law enforcement meetings and some meetings involving personnel discussions are exempt from the Open Meetings Act, it does not generally exempt agency adjudicative sessions. It also does not exempt budget sessions; coroner’s inquests; or meetings regarding business or industry relations, federal programs, financial data, gifts, trusts, honorary degrees, licensing examinations, negotiations, collective bargaining of public employees, national or state security (subject to the law enforcement exemption), or student discipline and other student-related matters, not specifically related to education. Federal and state laws, however, prohibit disclosure of the identity of students in certain instances.

The Open Meetings Act provides exceptions for certain closed meetings and some confidential actions.<sup>24</sup> Like the exceptions to the Open Records Law, exceptions to the Open Meetings Law should be narrowly construed so as not to undermine the general purpose of the law. The most commonly used exceptions are for personnel matters (but only for discussion and deliberation by the government entity, not votes); attorney-client discussion of actual suits or claims; and acquisition of real estate. Agencies may also close a meeting for the discussion of matters made confidential by statutes other than the Open Meetings Act.<sup>25</sup>

## C. How Should Government Provide Access?

The public must be given full access to all open meetings and may make video and audio recordings of all open meetings.<sup>26</sup>

In addition to mandating open meetings, the Open Meetings Act requires that agencies provide notice to the public in advance of *all* meetings, even emergency meetings.<sup>27</sup> That means agencies must make information available to the general public by posting a notice containing the information in a conspicuous location at the agency’s regular meeting place. The notice must do more than simply meet the technical requirements of the Open Meetings Act. It must be sufficient to reasonably apprise a concerned party of an upcoming meeting and must not be misleading.

Meetings that are not held at the regularly posted time and place require more rigorous notice procedures. Agencies must give “due notice” of all such special or emergency meetings held at a time or place other than at the time and place prescribed for regular meetings. Such notice includes the posting at least 24 hours in advance, at the regular meeting place, and oral notification to the newspaper that serves as the legal organ for the county. In counties where the legal organ is published less than four times a week, due notice also requires that notice be given to any local media outlets that make a written request to be so notified. Such outlets must be notified at least 24 hours in advance of the called meeting. In those rare circumstances where a meeting must be held upon less than 24 hours notice, either the county’s legal organ or a newspaper having a circulation at least as high as that of the legal organ must be notified.

Prior to all meetings, including emergency meetings, the agency holding such meetings must make an agenda of all matters expected to be considered available upon request and must post the agenda at the meeting site as far in advance as possible within two weeks prior to the meeting.<sup>28</sup>

Minutes of all public meetings must be kept in writing and made available to the public for inspection no later than immediately following the next regular agency meeting. Such minutes must contain, at a minimum, the names of the

members present at the meeting, a description of each motion or other proposal made, and a record of all votes. These minutes are subject to the Open Records Act after approval, unless voluntarily released before approval.

Lastly, the Open Meetings Act does not *require* that any meetings be closed. Agencies may close meetings only as permitted by a *specific exemption* provided by law. A meeting may not be closed to the public except by a majority vote of those agency members present. That portion of a meeting prior to closure by majority vote must be open to the public. An agency must state the specific reasons for closure of the meeting in the official minutes and the person presiding over such meeting must execute a notarized affidavit stating under oath that the closed portion of the meeting was devoted to matters within the exceptions provided by law and must identify the specific relevant exception.<sup>29</sup>

#### D. Penalties for Non-Compliance

Anyone who “knowingly and willfully” conducts or participates in a meeting without complying with every part of the Open Meetings Act is guilty of a misdemeanor punishable

by a fine not in excess of \$500.<sup>30</sup> Additionally, public officials who participate in closed meetings in violation of the Open Meetings Act can be subject to recall.<sup>31</sup> In addition, failure to give adequate notice can result in the invalidation of the proceedings, the issuance of legal injunctions, and the requirement to pay the objecting party’s legal costs.<sup>32</sup> Moreover, the Attorney General may bring a civil or criminal action to enforce compliance with the Open Meetings Act.

## CONCLUSION

It is the public policy of Georgia that all agencies of our State should conduct business in the open and employ records that are available to every citizen. Experience has shown that openness is the best policy in government; both to help assure honest and forthright decisions by governmental officials, and to continue the perception that governmental decisions are made in the brightness of Georgia’s sunshine.

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1. 5 U.S.C. § 552b.
  2. *Government in the Sunshine Act—S. 5 (Public Law 94-409)*, 94th Cong. 2nd Sess. (1976) (statement of Senator Chiles, introducing S. 3881 on Aug. 4, 1972).
  3. 5 U.S.C. App. 1, §§ 1-15.
  4. 421 S.E.2d 278 (Ga. 1992).
  5. O.C.G.A. § 50-18-70.
  6. O.C.G.A. § 50-18-70(a).
  7. O.C.G.A. § 50-18-70(a); *Hackworth v. Atlanta Bd. of Educ.*, 447 S.E.2d 78 (Ga. App. 1994).
  8. O.C.G.A. § 50-18-70(c).
  9. *Mullins v. City of Griffin*, 886 F. Supp. 21 (N.D. Ga. 1995).
  10. See O.C.G.A. § 50-18-72.
  11. *City of Brunswick v. Atlanta Journal-Constitution*, 447 S.E.2d 41 (Ga. App. 1994).
  12. O.C.G.A. § 50-18-70(b); 1993 Op. Atty. Gen. 93-27.
  13. O.C.G.A. § 50-18-70(g).
  14. O.C.G.A. § 50-18-72(h).
  15. O.C.G.A. § 50-18-71(c).
  16. *McFrugal Rental v. Garr*, 418 S.E.2d 60 (Ga. 1992); *Theragenics Corp. v. Dept. of Natural Resources*, 536 S.E.2d 613 (Ga. App. 2000).
  17. O.C.G.A. § 50-18-74(a).
  18. O.C.G.A. § 50-18-73.
  19. O.C.G.A. § 50-14-1(e)(2).
  20. *Coggin v. Davey*, 211 S.E.2d 708 (Ga. 1975).
  21. 1979 Op. Atty. Gen. 79-25; *Page v. Lumpkin*, 292 S.E.2d 815 (Ga. 1982); *In re Motion of Atlanta Journal-Constitution*, 519 S.E.2d 909 (Ga. 1999).
  22. See *Jersawitz v. Fortson*, 446 S.E.2d 206 (Ga. App. 1994).
  23. See O.C.G.A. § 50-14-1(b).
  24. See O.C.G.A. § 50-14-3.
  25. See 1995 Op. Atty. Gen. U95-22.
  26. O.C.G.A. § 50-14-1(c).
  27. O.C.G.A. § 50-14-1(d).
  28. O.C.G.A. § 50-14-1(e)(1).
  29. O.C.G.A. § 50-14-4(b).
  30. O.C.G.A. § 50-14-6.
  31. *Steele v. Honea*, 409 S.E. 2d 652, 654 (Ga. 1991).
  32. O.C.G.A. § 50-14-5(a), (b); *Howard v. Sumter Free Press, Inc.*, 531 S.E.2d 698 (Ga. 2000).

## 16. Submitting Public Comments

When Congress enacted the Clean Water Act, the Clean Air Act, the National Environmental Policy Act, and a host of other environmental laws, it recognized the critical need for public involvement to realize the goal of protecting our natural resources. While these and other environmental laws place the burden of actually implementing and enforcing the law onto various state and federal agencies, Congress intentionally provided for significant public oversight of how agencies manage our natural resources and make decisions that will affect public health. In fact, in enacting the range of federal environmental statutes, Congress made it clear that it intended environmental decision-making to be subject to public scrutiny and occur in a “fishbowl-like” atmosphere. To aid in achieving that goal, federal law requires federal agencies to inform the community about major decisions that impact the environment and public health, and allow the public the opportunity to comment on those decisions. Most of these requirements likewise apply to permits that are issued by state agencies.

Lawmakers have given you and your community the opportunity to influence how the government manages our resources and protects public health, but it is up to you to take advantage of this opportunity. Below is a list of steps that will allow you to become involved in government decision-making and make your community a better place to live.

### PUBLIC OVERSIGHT OF PERMITTING DECISIONS

As discussed in Chapters 10-14, a private or public entity usually must obtain a permit before it can impact our envi-

ronment or emit pollutants that may endanger public health. For example, a developer must obtain a “land disturbing activity permit” before it undertakes the construction of a housing development; a power plant must obtain a permit before it emits pollutants into the air; and a county must ob-

tain a permit to discharge wastewater from its wastewater treatment plant. In many cases, the polluter must obtain several permits—a power plant may need a land disturbing activity permit to construct the plant, an air quality permit to emit pollutants into the air, and a water quality permit to discharge “cooling water” (the hot water that results from the combustion process) into the river. In addition, these permits typically expire and must be renewed from time to time. Under federal and state law, most permitting decisions for either new or renewing permits are subject to public review.

Here are some steps that you can take to become more involved in the permitting decisions that may impact your neighborhood.

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In enacting the range of federal environmental statutes, Congress made it clear that it intended environmental decision-making to be subject to public scrutiny and occur in a “fishbowl-like” atmosphere.

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### Find Out About Proposed Projects

In order to be involved in a permitting process, the first step is to know when a decision is going to be made. Here are some steps you can take to stay informed.

First, you can sign up to be on public notice lists. Most agencies will send you, free of charge, a list of all proposed new and renewal permits. You can contact the agency and ask to be placed on these lists. Usually, they are not limited to a particular geographical area other than the state of Georgia, but the lists usually indicate the county in which the facility seeks to operate. When you receive the list,

review them for proposals in your community. Usually you will only have 30 days to comment on a permit so make sure to review the notice when you receive it. For Georgia, the most important source for finding proposed permits is the Environmental Protection Division's (EPD) Environet database. You can add your name to this list by calling 888-373-5947. You can also go online to [www.gaepd.org/pls/enfo/notice\\_search.q\\_field](http://www.gaepd.org/pls/enfo/notice_search.q_field) and in the drag down box for "EPD Notice Type" select "Permit-Proposed." On this same site you can specify searches for certain types of permits or permits in your area.

You should also try to learn what is happening in your community from other sources. Because you will likely have only 30 days to comment on a permit, it is better to know far in advance that a permit may be issued in your neighborhood.

One of the easiest ways to learn of a potential project is by reading the local newspaper. Newspapers frequently contain announcements that a new plant is moving into town, or that an existing plant plans to expand. Also, some laws require that a permittee place a public notice of its plans in the newspaper—but these notices are usually very small and located in the back of the paper so you will need to look closely.

You can also learn about projects simply by being aware of what is happening in your community. If you see a large tract of land for sale, notice bulldozers, or other similar activities, it may be that a new polluter is coming to your neighborhood.

Finally, try talking to local industry and government officials. One of the best ways to know about the future plans of industry or the government is to ask them! Work with your neighborhood coalition, your church, or other neighbors and ask for a meeting to discuss the operation of facilities in your town. This has the added benefit of letting the polluters know that the community is watching them and will hold them accountable. Industries that are closely watched by the community are more likely to be good neighbors.

## Evaluate the Permit

Once you know about a proposed permit, it is important to learn more about how it will impact your community. You can take several steps to understand more about the permit's effects.

First, review the public file. Public agencies are required to allow you access to the file. Some agencies will charge you to make copies. EPD allows members of the public to obtain proposed permits and/or up to 25 pages of documents for free. After that, there is a 10 cent charge per page. (See "Accessing Public Records and Meetings," Chapter 15 of

this handbook, for more information about your rights to access government records.)

Next, get help from experts. Call local, state, and national groups to find someone who may have expertise with the issues confronting your community. We have provided some contact information in "Contact Information," Appendix B to this handbook. Spend some time on the Internet or at the library learning more about the issue.

Talk to your neighbors. They may have a wealth of information about a particular facility or the impact that it may have on the community. Industries that are renewing a permit may have had a history of environmental problems in the area.

Finally, explore near the site to find out what is significant. For instance, there may be special areas—parks, schools, playgrounds, or other important places—that could be impacted by the project. There may be streams that would be impacted by water pollution but that have not been considered. Or, there may be sensitive populations, such as children or the elderly, that are near the site. Document anything that may be important or special. Take care, though, that you *do not trespass!* Not only is trespassing illegal, but it may harm your ability to make your case that the project should not be permitted. Instead of focusing on the pollution, the focus will be on your illegal trespassing.

## Submit Your Comments

Once you've compiled your information, it is time to comment on the proposed project. Public comments can be submitted in any format, typed or handwritten. The public notice should tell you the date that the comments are due and where to send the comments. It is important to submit comments by the stated deadline; some statutes foreclose the opportunity to challenge agency decisions if you do not submit comments within this period.

You should give your comments careful thought. Keep in mind your ultimate goal. Is it to stop the facility from being built at all, or is it to ensure that particular safeguards are put into place? What you say in your comments and how you say it will depend on your goal.

Your comments should include all of your concerns about the proposed facility, including information you have obtained from other sources. Even if you don't know the answer, you can ask questions about possible impacts of the facility.

Remember that as a member of the community, you are likely to know more about the project and the surrounding areas than the government agency does. Tell them about local

resources that will be impacted, playgrounds, other pollution sources, or whatever information you think will be helpful. Say why these resources are important.

Finally, be sure to include your name, address, and telephone number so that the agency can respond to your comments.

## Strength in Numbers: Community Organizing

It is hard for one voice crying out alone, no matter how eloquently, to have an impact on a project. Organizing the community is imperative in the fight for clean air, water, or land. Through group mobilization, citizens can bring a stronger voice for environmental justice. This voice is a powerful tool for positive change. Never doubt the strength of numbers throughout this whole process. Putting pressure on the agency will result in better government accountability and consequently will produce more corporate responsibility.

For advice on how to organize your community, see “Understanding Grassroots Organizing,” Chapter 6 of this handbook. Specifically in the context of this chapter, you should try to encourage your neighbors, community groups, or local churches to submit comments on a proposed facility. If you were successful in getting a public hearing, ask the local newspaper to include the notice and bring your friends to the hearing.

Part of your job will be education. Many citizens, for instance, do not know that even if a particular facility is complying with its permit, it still may be legally discharging cyanide, lead, copper, and zinc into the river. This information is a powerful device to rally a community to prevent the facility from being built.

## PUBLIC OVERSIGHT OF RULEMAKING

Most environmental laws are extremely broad, and agencies are required to issue rules to carry out the overall plan. From time to time, both federal and state agencies will propose rules that may impact your community, and you have a right to comment on them just as you do with permits.

All proposed EPA rules are online at [www.regulations.gov/fdmspublic/component/main](http://www.regulations.gov/fdmspublic/component/main); select the Environmental Protection Agency as the Agency. You can also submit comments on any proposed rules through this site.

Proposed Georgia EPD rules are available at [www.gaepd.org/Documents/rules\\_proposed.html](http://www.gaepd.org/Documents/rules_proposed.html). You can also get them mailed to you by adding your name to the EPD Environet database by calling 888-373-5947.

The guidelines for comments on permits apply equally to proposed rules.

## PUBLIC OVERSIGHT OF ENFORCEMENT DECISIONS

When a polluter violates an environmental law, the EPD can take action to require the polluter to come into compliance with the law. Typically, EPD will give notice to the polluter that it has violated the law through a Notice of Violation or some other method such as a formal letter. If EPD believes that the violations are sufficiently serious, it may issue a Consent Order. A Consent Order is a negotiated agreement between EPD and the polluter to address the polluter’s illegal activities. A typical consent order will include 1) statements describing the violations, 2) plans to fix the problem, and 3) penalties that must be paid to the State. As a citizen, you have a right to tell EPD whether you believe the Consent Order is sufficient.

You can find proposed Consent Orders on EPD’s website by going to [www.gaepd.org/Documents/enforcement.html](http://www.gaepd.org/Documents/enforcement.html), then clicking on “Proposed Orders.” You can also get the EPD to send all proposed Consent Orders directly to you for \$50 a year. To join the mailing list simply call the EPD at (404) 657-5947 or, if you are located inside Georgia but outside the Atlanta calling area, at (888) 373-5947.

As with other public comments, be thoughtful. Consent Orders have a few unique considerations, as well. Questions you should address include:

1. Does it address the problem?
2. Is the fine adequate?
3. Has the community been involved?
4. Is it just one more in a long series of consent orders?

Any comments must be mailed to the address indicated on the Proposed Order. As always, be sure to comply with stated deadlines for submitting comments.

## PUBLIC OVERSIGHT OF LAWMAKING

You also have the right to know what your elected officials are doing on your behalf to protect the environment of your community. Contact your local officials to find out what is happening in your community. To find your state representatives go to [www.sos.state.ga.us/cgi-bin/Locator.asp](http://www.sos.state.ga.us/cgi-bin/Locator.asp), fill out the requested information, and follow the links to your representative. Also, find your county commissioners at [www.accg.org](http://www.accg.org) and city council at [www.gmanet.com/home/default.asp](http://www.gmanet.com/home/default.asp). Ask to be informed of agenda items.

## 17. The Environmental Justice Complaint

As discussed in “The Modern Environmental Justice Movement,” Chapter 2 of this handbook, it has become increasingly apparent over the past three decades that landfills, manufacturing plants, coal-fired power plants, and other hazards are usually sited in neighborhoods with primarily low-income and/or minority residents. In order to address these issues, the Environmental Protection Agency (EPA) has established procedures for addressing discrimination in its practices by filing a complaint under Title VI of the Civil Rights Act of 1964. This chapter explains the process of filing a Title VI Environmental Justice Complaint with EPA and what can be expected as a result.

### FRAMEWORK OF TITLE VI AND ENVIRONMENTAL JUSTICE COMPLAINTS

Title VI of the Civil Rights Act of 1964 seeks to ensure equal treatment under the law and consistent and effective enforcement of the law regardless of race, color, or national origin.<sup>1</sup> The premise comes from the Fourteenth Amendment of the U.S. Constitution, which states that no person shall be denied the equal protection of the law.

Most federal government agencies have adopted Title VI regulations to ensure that employment decisions, funding decisions, and project implementations do not treat people unfairly due to race, color, or national origin. The EPA refers to its Title VI goals as “Environmental Justice.”

EPA describes Environmental Justice as “the fair treatment and meaningful involvement of all people regardless of

race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”<sup>2</sup> According to EPA, fair treatment means that “no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.”<sup>3</sup> Meaningful involvement means that:

- (1) people have an opportunity to participate in decisions about activities that may affect their environment and/or health;
- (2) the public’s contribution can influence the regulatory agency’s decision;
- (3) their concerns will be considered in the decision making process; and
- (4) the decision makers seek out and facilitate the involvement of those potentially affected.<sup>4</sup>

To help achieve this goal, EPA regulations provide that “[a]ny person who believes that he or she or a specific class of persons has been discriminated against in violation of this part may file a complaint. The complaint may be filed by an authorized representative.”<sup>5</sup> This complaint is known as the “Environmental Justice Complaint.”

An Environmental Justice Complaint must be filed against “a program or activity receiving EPA assistance,” also known as a “recipient.”<sup>6</sup> Recipients may be state or local governments or private parties.<sup>7</sup> EPA as-

sistance includes any grants, loans, cooperative agreements, donations of Federal property or use of Federal property, services of EPA personnel, or any other arrangement providing financial value to a recipient.<sup>8</sup>

### Make Sure Your Complaint Meets All of EPA’s Title VI Requirements

1. THE COMPLAINT MUST BE MADE IN WRITING.
2. THE COMPLAINT MUST DESCRIBE A DISCRIMINATORY ACT THAT VIOLATES EPA’S TITLE VI REGULATIONS.
3. THE COMPLAINT MUST BE FILED WITHIN 180 DAYS OF THE ALLEGED DISCRIMINATORY ACTION.
4. THE COMPLAINT MUST ALLEGE DISCRIMINATORY ACTS COMMITTED BY AN ORGANIZATION THAT HAS RECEIVED FUNDING FROM EPA.

Filing a complaint compels the EPA to investigate your claim and decide if the program is discriminatory. Depending on the findings, EPA could force the program to substantially change or shut down altogether.<sup>9</sup>

In light of the restrictions on direct actions under Title VI discussed in Chapter 2, the Environmental Justice Complaint is the last remaining hope for those trying to address environmental injustices under the civil rights laws. It should be noted, however, that these complaints have met with very limited success. As of August 27, 2007, 197 complaints had been filed; of those, 48 were still pending, 12 had been informally resolved (without information as to whether they were resolved in the complainant's favor), three were referred to another agency, and the remaining 134 were resolved against the complainant.<sup>10</sup>

## **DETERMINING WHETHER YOU HAVE BEEN DISCRIMINATED AGAINST WITHIN THE MEANING OF THE REGULATIONS**

Under EPA's Title VI regulations, "[n]o person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance on the basis of race, color, national origin, or [for programs receiving assistance under the Clean Water Act only] on the basis of sex."<sup>11</sup> This prohibited discrimination need not be intentional; a mere discriminatory effect is sufficient to support an Environmental Justice Complaint.<sup>12</sup>

Discriminatory effect, as the term suggests, means simply that a program or activity has a disproportionate impact on a person or group of people who are protected because of their race, color, national origin, or sex. Discriminatory intent requires that the recipient intend to affect a person or group based on these factors. Discriminatory intent is harder to prove than discriminatory effects. According to the U.S. Department of Justice:

Evidence of discriminatory intent may be direct or circumstantial, and may be found in various sources including statements by decisionmakers, the historical background of the events in issue, the sequence of events leading to the decision in issue, a departure from standard procedure (*e.g.*, failure to consider factors normally considered), legislative or administrative history (*e.g.*, minutes of meetings), a past history of discriminatory or segregated conduct, and evidence of a substantial disparate impact on a protected group.<sup>13</sup>

Because of the difficulty in proving discriminatory intent, many Environmental Justice Complaints only try to show discriminatory effects.

## **GUIDELINES FOR FILING AND PURSUING AN ENVIRONMENTAL JUSTICE COMPLAINT**

If you believe you have been discriminated against, either intentionally or in effect, and therefore wish to file an Environmental Justice Complaint, you must follow the procedures set out in EPA regulations. If you fail to follow these procedures, EPA may not consider your complaint.

### **Step One: Determine Whether the U.S. Environmental Protection Agency or Another Agency is the Responsible Party**

The EPA is the federal government agency responsible for protecting the environment by managing the nation's pollution prevention programs and statutes. For example, EPA works to prevent air pollution, control hazardous and solid waste disposal, and maintain water quality in our natural water bodies and drinking water. Before filing an Environmental Justice Complaint, make sure the discriminatory act you are alleging impacted the environment and, consequently, that impact hurt you or your community.<sup>14</sup> If the harm was not to the environment, another agency is probably the place to complain.

### **Step Two: Make Sure Your Complaint Meets All of EPA's Title VI Requirements**

Your complaint must comply with four requirements for the EPA to act upon your claim. If *all four* requirements are not met, EPA will not accept your allegations for investigation.

1. *The Complaint must be made in writing.*<sup>15</sup>

Although the Department of Justice (DOJ) makes a standard complaint form available on the Internet at [www.usdoj.gov/crt/cor/complaint.htm](http://www.usdoj.gov/crt/cor/complaint.htm), you must send a print out of the completed complaint by mail. Complaints filed electronically will not be accepted.

2. *The Complaint must describe a discriminatory act that violates EPA's Title VI regulations.*<sup>16</sup>

In other words, the complaint must give a detailed description of discrimination that is based on race, color, or national origin. Be as specific as possible when describing the discrimination, as this is the foundation of your complaint. If possible, state the dates and locations of all discrimina-

tory acts; who or what organization was involved; who was affected; the discriminatory effects the program has had on you, your group, or your community; and any other information that may be pertinent. If you believe the recipient had a discriminatory intent, also describe what was done, why you believe this shows discriminatory intent, and how you have gained knowledge of this.

3. *The Complaint must be filed within 180 days of the alleged discriminatory action.*<sup>17</sup>

A discriminatory act may be a town hall meeting where the affected community was not represented, the passing of a zoning ordinance, the date a landfill site was approved, etc. You must file your complaint within 180 days after that action occurred, not just after you first noticed the effects of the discriminatory act. It is best to file the complaint well before the deadline, in case there is some complication concerning its receipt by the proper office.

If your community was not aware of the discriminatory act within six months of its occurrence, you may still file a complaint by requesting a waiver of the filing requirement. Be prepared to explain why you were unaware of the discriminatory act and why you waited until after the deadline to file the complaint.

4. *The Complaint must allege discriminatory acts committed by an organization that has received funding from EPA.*<sup>18</sup>

Not every organization involved in a project may have received funding from EPA. Under Title VI, EPA is only responsible for its own actions and for those of organizations over which it has some financial control. At a subcontractor level, EPA-funded organizations may not be responsible for the actions of non-EPA funded organizations, even if everyone is working on the same project. Moreover, EPA cannot be held responsible for the actions of other federal-level agencies, such as the Army Corps of Engineers or the Department of the Interior. Such agencies are directly responsible under Title VI; thus, a complaint would need to be filed with the agency in charge of the project.

All four of these requirements must be met for EPA to investigate your complaint. If you fail, for example, to file the complaint within 180 days or clearly allege how the act was discriminatory, EPA will deny your complaint without investigating your allegations. It may seem unfair, but EPA is allowed to make such a summary denial under federal regulations.

If you realize after the complaint has been sent that it does not meet all of the requirements, you are allowed to amend it before EPA renders a decision. To avoid complications

and possible denial, the amended complaint should also be filed within the 180-day deadline. This is one reason to file a complaint as soon as possible after the discriminatory act.

## Step Three: File the Complaint

While your complaint will be directed at EPA, it is easiest to use the comprehensive complaint form from the Department of Justice's website, discussed above. If you answer the questions in detail and keep in mind the requirements for a complaint, you should be able to file an effective complaint.

Once you have completed the form, file it with the Department of Justice's Civil Rights Division at the following address:

Coordination and Review Section—NYA  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Do not forget to sign and date the completed form.

You should also send a copy of the completed form to EPA's Office of Environmental Justice. Be sure to clarify that the original has been filed with the DOJ's Office of Civil Rights (OCR), and the copy you sent to EPA is a "courtesy copy." This puts EPA on notice that an Environmental Justice Complaint has been filed against it, and sets the filing date as the one on the form submitted to DOJ. The Office of Environmental Justice's mailing address is:

U.S. Environmental Protection Agency  
Office of Environmental Justice—Title VI Complaint  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

## WHAT TO EXPECT AFTER YOUR COMPLAINT IS FILED

OCR must notify you it has received your complaint within five days of receiving it.<sup>19</sup> OCR will also notify EPA that an Environmental Justice Complaint has been filed against the agency.<sup>20</sup> After acknowledging receipt of the complaint, OCR will initiate complaint processing procedures.<sup>21</sup>

## Preliminary Investigation

Within twenty calendar days of acknowledging the complaint, OCR will review the complaint for acceptance; rejection; or, if EPA is inappropriate, referral to the appropriate Federal agency.<sup>22</sup> Please keep in mind that "accepting" a complaint does not mean that OCR has decided to grant any remedy you request in the complaint.

## Complaint Acceptance

If the complaint is accepted, OCR will notify you.<sup>23</sup> In addition, OCR will notify EPA of the allegations and give the agency the opportunity to make a written submission responding to, rebutting, or denying the allegations in your complaint.<sup>24</sup> EPA has thirty calendar days from receipt of OCR's notification to respond.<sup>25</sup>

## Complaint Dismissal

If OCR's investigation reveals no violation, it may dismiss the complaint.<sup>26</sup> If this occurs, OCR will notify you and EPA. Once a complaint is dismissed, the decision is final. There are no procedures to file a challenge to the dismissal.

## Complaint Resolution

Once the complaint is accepted, the resolution process begins. Whenever possible, complaints are resolved informally. When a complaint cannot be resolved informally, OCR will mail a post-review notice to those responsible for the

discriminating program within 180 days of the start of the investigation. This notice will include preliminary findings, recommendations for achieving voluntary compliance, and an explanation of the recipient's right to engage in voluntary compliance negotiations.<sup>27</sup>

After receiving the post-review notice, the recipient may either agree to OCR's recommendations or submit a written response demonstrating that the preliminary findings by OCR are incorrect or that compliance may be achieved in a way not suggested by OCR. The recipient has 50 days after receiving the preliminary notice to take either of these steps. If neither action is taken in that period, OCR writes a formal determination of noncompliance and sends it to both the recipient and the Assistant Attorney General.<sup>28</sup>

Finally, the recipient has ten days from receipt of the formal determination of noncompliance to come into voluntary compliance. If it does not, OCR *must* begin proceedings to deny, suspend, annul, or terminate EPA's assistance to that program.<sup>29</sup>

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1. 42 U.S.C. § 2000d.  
2. EPA's Environmental Justice website, [www.epa.gov/compliance/basics/ejbackground.html](http://www.epa.gov/compliance/basics/ejbackground.html) (last visited October 31, 2007).  
3. *Id.*  
4. *Id.*  
5. 40 C.F.R. § 7.120.  
6. 40 C.F.R. §§ 7.30, 7.35, 7.120.  
7. 40 C.F.R. § 7.25.  
8. *Id.*  
9. 40 C.F.R. §§ 7.115, 7.120.  
10. EPA's Civil Rights website, [www.epa.gov/civilrights/docs/t6staug2007.pdf](http://www.epa.gov/civilrights/docs/t6staug2007.pdf) (last visited October 31, 2007).  
11. 40 C.F.R. § 7.30.  
12. 40 C.F.R. § 7.35(b), (c); *see also* EPA's Civil Rights website, [www.epa.gov/civilrights/t6complnt.htm](http://www.epa.gov/civilrights/t6complnt.htm) (last visited October 31, 2007).  
13. U.S. Department of Justice, Civil Rights Division, *Title VI Legal Manual*, § VIII.A (January 11, 2001), available at [www.usdoj.gov/crt/cor/coord/vimanual.htm](http://www.usdoj.gov/crt/cor/coord/vimanual.htm) (last visited October 31, 2007) (citing *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 266-68 (1977)).

14. This does not apply to Title VI Complaints alleging that EPA practices discrimination in its employment practices.  
15. 40 C.F.R. § 7.120(b)(1).  
16. 40 C.F.R. § 7.120(a), (b)(1).  
17. 40 C.F.R. § 7.120(b)(2).  
18. 40 C.F.R. § 7.15.  
19. 40 C.F.R. § 7.120(c).  
20. *Id.*  
21. 40 C.F.R. § 7.120(d).  
22. 40 C.F.R. § 7.120(d)(1)(i).  
23. 40 C.F.R. § 7.120(d)(1)(ii).  
24. *Id.*  
25. 40 C.F.R. § 7.120(d)(1)(iii).  
26. 40 C.F.R. § 7.120(g).  
27. 40 C.F.R. § 7.115(c).  
28. 40 C.F.R. § 7.115(d).  
29. 40 C.F.R. § 7.115(e).

## 18. Administrative Appeals in Georgia

Administrative appeals provide citizens a means for righting wrongs that have been made by a government agency—in this context, usually the Environmental Protection Division (EPD)—for failing to comply with its obligations under environmental or other laws. Administrative hearings are commonly used to review a permit or set of permits that have been issued by the EPD to a particular company to use (or pollute) some public good.

Unfortunately, a general concern for the environment as a citizen is not enough to get a hearing against the EPD. In order to have standing (the ability to bring a case), you must be “aggrieved or adversely affected” by the permit.<sup>1</sup> To satisfy this requirement you must suffer an actual injury from the contested activity and the injury must be the kind of injury that the laws governing the permits serve to protect.<sup>2</sup> You do not have standing to sue if the EPD decides not to issue a permit, nor can you contest any intermediate aspects of the permit process.<sup>3</sup> In addition, depending on the statute, you may not be able to file an appeal if you did not participate in the public comment period for the permit. It is recommended to seek legal advice with regard to the standing issue of your case before filing a petition for review.

A citizen who is “aggrieved or adversely affected” by a permit issuance or some other action of the EPD may qualify for an administrative hearing before an administrative law judge (ALJ).<sup>4</sup> In Georgia, an appeal must be filed with the EPD, which then forwards it the Office of State Administrative Hearings (OSAH) for assignment to an ALJ and a hear-

ing.<sup>5</sup> The permit appeal must be filed with the EPD within 30 days from the day it is mailed to the permit holder.<sup>6</sup> If an appeal is not filed within 30 days from the day of issuance, the EPD action will become final (non-appealable).<sup>7</sup> This is true even if you did not know the permit was issued, so

it is important to keep tabs on permits you think may be issued soon.

Georgia law requires the ALJ to hold the hearing and issue a decision within 90 days after the appeal is filed, unless the ALJ finds “good cause,” which may extend the hearing for up to 60 additional days, or all parties agree to an extension that can be of any length.<sup>8</sup> During this time, the effectiveness of the permit is “stayed,” meaning that the permittee may not do the acts allowed by the permit until the stay expires.<sup>9</sup>

At the hearing the ALJ hears the case presented by the person injured by the permit and the EPD (who issued the permit). The permittee whose permit is being challenged often intervenes so that it may present evidence as well. Each side presents its own evidence, including any experts. The administrative proceeding is “de novo” in nature, which means that the

ALJ can look at evidence from its own perspective, even evidence that may not have been considered by the EPD in making its decision.<sup>10</sup> After all parties have had an opportunity to be heard the ALJ makes a decision.

Ultimately, the citizen bringing the suit must prove that the EPD violated the law to successfully invalidate the permit. There are two basic types of challenges that the citizen can bring: procedural and substantive.

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There are no requirements that you have an attorney to file an appeal. However, it is recommended that you contact an attorney because environmental laws and regulations can be complex.

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A few of the grounds for procedural challenges include:

- If EPD does not respond to your comments when it issues the final permit, you may have grounds for appeal. As discussed in previous chapters, the EPD must give the public an opportunity to comment and make suggestions on a proposed permit and must respond to those comments when it issues the permit. The EPD, however, does not always comply with these requirements. Therefore, it is a good idea to periodically check in with the EPD to see if the permit has been granted.
- Also as discussed in previous chapters, EPD must prepare documents explaining the reasons for granting the permit. If EPD failed to do so, you may have grounds for challenging the issuance of the permit.
- If substantial modifications were made to a permit without providing additional notice and comment procedures, you may have grounds for challenging the modified permit.

Substantive challenges are available if there are provisions of the permit itself that do not comply with Georgia law. The exact substantive reasons for appealing a permit will depend a great deal on the information that you uncover during your permit review, and the answers to questions regarding the impact of the proposed operations. Both procedural and substantive challenges can be included in a single appeal.

Whichever side loses the case has a right to appeal the ALJ's decision to the Superior Court of either Fulton County or the county in which the petitioner resides.<sup>11</sup> This new petition must be filed within 30 days after the ALJ has made his/her determination.<sup>12</sup> The court will conduct a review without a jury, based on the record made by the ALJ. It may also hear oral arguments and receive written briefs.<sup>13</sup>

There are different standards of review for the Superior Court, or any subsequent appellate court, should a party appeal the Superior Court's decision. If the issue concerns a factual dispute it is likely a losing battle for the appealing party because the higher courts must give strong deference to the ALJ's judgment.<sup>14</sup> But if there is a dispute as to the law, then the higher court reviews the case under a "de novo" standard (on a clean slate), and may find that the ALJ did not properly understand the law.<sup>15</sup>

There are no requirements that you have an attorney to file an appeal. However, it is recommended that you contact an attorney because environmental laws and regulations can be complex. No one wants to waste time or money, especially if you can win a battle simply by knowing the right strategies to employ.

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1. O.C.G.A. § 12-2-2(c)(2).

2. O.C.G.A. § 12-2-2(c)(3)(A).

3. *In re Davidson Mineral Props., Inc.*, Record No. DNR-EPD-SM-AH 1-92 (Final Decision/Order on Director's Motion to Dismiss, Apr. 5, 1993) (a citizen cannot sue EPD if it decides not to issue permit); *In re DeKalb County, Georgia NPDES Permits*, Record Nos. DNR-EPD-WQ-AH 1-82—4-82 (Aug. 15, 1983) (intermediate steps not reviewable).

4. O.C.G.A. § 12-2-2(c)(2).

5. *Id.*; Georgia Rule 391-1-1-.05.

6. O.C.G.A. § 12-2-2(c)(2); Georgia Rule 391-1-2-.06(2)(A).

7. O.C.G.A. § 12-2-2(c)(2); Georgia Rule 391-1-2-.06(2)(A).

8. O.C.G.A. § 12-2-2(c)(2)(A).

9. O.C.G.A. § 12-2-2(c)(2)(B). However, a stay will generally not be granted when the petition for review is filed in Superior Court. See O.C.G.A. § 50-13-19.

10. Georgia Rule 616-1-2-.21(3).

11. O.C.G.A. § 50-13-19(a), (b).

12. O.C.G.A. § 50-13-19(b).

13. O.C.G.A. § 50-13-19(g).

14. O.C.G.A. § 50-13-19(h).

15. O.C.G.A. § 12-2-1(d).

## 19. Citizen Suits

All of the major federal environmental statutes have sections—known as “citizen suit” provisions—allowing citizens to sue violators of the act.<sup>1</sup> Each of these provisions is slightly different, but they all have common features. Environmental litigation is intricate and full of pitfalls, so you should consult a lawyer before considering bringing a citizen suit.

### WHO MAY BE SUED

Typical citizen suit provisions allow the public to sue “any person” who is violating a requirement of the act.<sup>2</sup> Thus, a citizen suit may be brought against not only a permit holder who is violating the terms of its permit, but also against a person who does not hold a permit, or even against the federal government.

The Resource Conservation and Recovery Act’s citizen suit provision is unusual in that it also allows citizens to bring an action against any person whose actions relating to solid or hazardous waste may present “an imminent and substantial endangerment to health or the environment.”<sup>3</sup> Thus, this section allows citizens to bring claims against both past and present polluters, whether or not they violate a provision of the act.

In addition, typical citizen suit provisions allow an action against the Environmental Protection Agency (EPA) for failing to perform a nondiscretionary duty.<sup>4</sup> That is, if a law *requires* (as opposed to merely authorizes) EPA to do something but EPA does not do it, the public may sue.

The most common use of citizen suits, however, is against permit holders who have violated the terms of their permits. A typical Clean Water Act citizen suit, for example, might allege that a facility is discharging wastewater with higher levels of zinc than its permit authorizes.

### LIMITATIONS ON CITIZEN SUITS

There are, however, important limitations on the right to bring a citizen suit.

First, although none of the citizen suit provisions expressly say this, courts have interpreted them to require that the violation be “ongoing” at the time of suit.<sup>5</sup> To meet this requirement, the citizen must be able to show either that at least one violation occurs after the suit is filed or that, based on the pattern of violations before the filing, it is highly likely that violations will continue.

Second, if EPA or the state “has commenced and is diligently prosecuting”<sup>6</sup> enforcement against the polluter, citizens may not use the citizen suit provision. Whether the government is “diligently prosecuting” its enforcement depends on the individual situation. For instance, if the government orders the facility to take certain measures to protect water quality but then continuously extends the time period in which the facility must implement those mea-

sures, a court might find it is not “diligently prosecuting” and allow a citizen suit to proceed.

### ADVANCE PREPARATION

Before filing a citizen suit, you must do several things. First, and most importantly, you must be able to document the violation and its ongoing nature. You can do this several ways, such as by using the facility’s own reports to show violations, documenting the facility’s failure to file necessary reports, or using your own (or your expert’s) observations or tests. No matter how you establish a violation, it is always important to keep thorough records of your efforts so that your claims will have credibility. For instance, if you

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Citizen suit provisions can be very powerful tools to help clean up your neighborhood.

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are relying on water samples, you must establish a “chain of custody” and document the testing methods you used so that you can prove that the water came from the facility and is actually polluted.

Once you have the data you need for your claim, you must provide notice of your intent to sue. Typically, the environmental statutes require 60 days advance notice setting out the specific facts that violate the law or the terms of the permit and the basis for claiming they are violations.<sup>7</sup> For a situation in Georgia, this notice must be sent to the polluter, EPD, EPA Region IV (Atlanta headquarters), EPA Main Office (Washington, D.C.), and the U.S. Attorney General.<sup>8</sup>

If these government officials fail to take action and the polluter fails to achieve compliance within sixty days, then you can file a lawsuit. Under all the federal environmental statutes, the suit is to be filed in federal District Court.

## AVAILABLE RELIEF

Relief against the polluter as a result of a citizen suit may include penalties of up to \$32,500 per day per violation (payable to the U.S. Treasury, not to the citizen)<sup>9</sup> or injunc-

tive relief (orders requiring the polluter to do or not to do something).<sup>10</sup> Typical subjects of injunctive relief include requiring the polluter to comply with the terms of its permit; install pollution control measures; replace equipment; undergo training; undertake “supplemental environmental projects” (SEPs), which are projects implemented by the permit violator that are designed to benefit the community impacted by the illegal discharges; or any of a host of other actions. In all situations, the goal is to provide for future compliance with permit terms and to compensate for the damage caused by past noncompliance.

## CONCLUSION

Citizen suit provisions can be very powerful tools to help clean up your neighborhood. They can also be expensive, time-consuming, and stressful. Your best bet is always to convince the polluter to clean up voluntarily or the government to force the polluter to clean up. If they will not do that, the information in this chapter, and throughout this handbook, should help you decide whether it is worth it to go to court.

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1. *E.g.*, Clean Water Act (CWA) § 505, 33 U.S.C. § 1365; Clean Air Act § 304, 42 U.S.C. § 7604; Resource Conservation and Recovery Act (RCRA) § 7002, 42 U.S.C. § 6972; Comprehensive Environmental Response, Compensation, and Liability Act § 310, 42 U.S.C. § 9659; Safe Drinking Water Act § 1449, 42 U.S.C. § 300j-8; Toxic Substances Control Act § 20, 15 U.S.C. § 2619.

2. *E.g.*, CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1).

3. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B).

4. *E.g.*, CWA § 505(a)(2), 33 U.S.C. § 1365(a)(2).

5. *E.g.*, *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found.*, 484 U.S. 49 (1987) (Clean Water Act case). Because of slightly different statutory language, it remains uncertain whether this limitation applies to Clean Air Act citizen suits.

6. *E.g.*, CWA § 505(b)(1)(B), 33 U.S.C. § 1365(b)(1)(B).

7. *E.g.*, CWA § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A).

8. *E.g.*, *id.*; 40 C.F.R. § 135.2.

9. 40 C.F.R. § 19.4.

10. *E.g.*, CWA § 505(a), 33 U.S.C. § 1365(a).

## Appendix A: Internet Legal Resources

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Many of the statutes, regulations, ordinances, and cases governing environmental issues are available on the Internet. Below are a few resources to help you locate specific laws you may be interested in.

### FEDERAL

#### United States Code

Official website: [www.gpoaccess.gov/uscode/index.html](http://www.gpoaccess.gov/uscode/index.html)

User friendly version: [www.law.cornell.edu/uscode](http://www.law.cornell.edu/uscode)

#### Code of Federal Regulations

Official website: [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html)

User friendly version: [www.law.cornell.edu/cfr](http://www.law.cornell.edu/cfr)

### STATE

#### Official Code of Georgia Annotated

[www.lexis-nexis.com/hottopics/gacode/default.asp](http://www.lexis-nexis.com/hottopics/gacode/default.asp)

#### Georgia Regulations

[rules.sos.state.ga.us/cgi-bin/page.cgi?d=1](http://rules.sos.state.ga.us/cgi-bin/page.cgi?d=1)

#### Free Georgia Court Opinions

(coverage is limited)

[www.lexisone.com/caselaw/freecaselaw?action=FCLDisplayCaseSearchForm](http://www.lexisone.com/caselaw/freecaselaw?action=FCLDisplayCaseSearchForm)

### LOCAL

#### Municipal and County Codes

(where available)

[www.municode.com/resources/code\\_list.asp?stateID=10](http://www.municode.com/resources/code_list.asp?stateID=10)

## Appendix B: Contact Information

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### FEDERAL GOVERNMENT

#### Agency for Toxic Substances and Disease Registry

Region 4  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, GA 30303  
(404) 562-1788  
[www.atsdr.cdc.gov](http://www.atsdr.cdc.gov)

#### Centers for Disease Control

1600 Clifton Road NE  
Atlanta, GA 30333  
(404) 639-3534 / (800) 311-3435  
[www.cdc.gov](http://www.cdc.gov)

#### Natural Resources Conservation Service

355 East Hancock Avenue  
Stop Number 200  
Athens, GA 30601  
(706) 546-2272  
[www.ga.nrcs.usda.gov](http://www.ga.nrcs.usda.gov)

#### U.S. Army Corps of Engineers—Savannah District

100 W. Oglethorpe Avenue  
Savannah, GA 31401  
(912) 652-5822  
[serves portions of Georgia]  
[www.sas.usace.army.mil](http://www.sas.usace.army.mil)

#### U.S. Army Corps of Engineers—Jacksonville District

701 San Marco Blvd.  
Jacksonville, FL 32207  
(904) 232-2234  
[serves portions of Georgia]  
[www.saj.usace.army.mil](http://www.saj.usace.army.mil)

#### U.S. Army Corps of Engineers—Mobile District

P.O. Box 2288  
Mobile, AL 36628  
(251) 471-5966  
[serves portions of Georgia]  
[www.sam.usace.army.mil](http://www.sam.usace.army.mil)

#### U.S. Environmental Protection Agency

Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street SW  
Atlanta, GA 30303  
(404) 562-9900  
[www.epa.gov/region4](http://www.epa.gov/region4)

#### U.S. Fish and Wildlife Service

Southeast Region 4—Division of Diversity and Civil Rights  
1875 Century Blvd., Room 230  
Atlanta, GA 30345  
(404) 679-7077  
[www.fws.gov/southeast](http://www.fws.gov/southeast)

#### U.S. Food and Drug Administration

SE Region  
60 Eighth Street NE  
Atlanta, GA 30309  
(404) 253-1171  
[www.fda.gov](http://www.fda.gov)

### STATE GOVERNMENT

#### Georgia Department of Community Affairs

60 Executive Park South NE  
Atlanta, GA 30329  
(404) 679-4940 / (800) 359-4663  
[www.dca.state.ga.us](http://www.dca.state.ga.us)

**Georgia Department of Community Health**

2 Peachtree Street NW  
Atlanta, GA 30303  
(404) 656-4507  
[dch.georgia.gov](http://dch.georgia.gov)

**Georgia Department of Human Resources,  
Division of Public Health**

2 Peachtree Street NW # 15470  
Atlanta, GA 30303  
(404) 657-2700  
[health.state.ga.us/index.asp](http://health.state.ga.us/index.asp)

**Georgia Department of Human Resources,  
Division of Public Health, Environmental Health &  
Injury Prevention Branch**

2 Peachtree Street NW # 13  
Atlanta, GA 30303  
(404) 657-6534  
[health.state.ga.us/programs/environmental/index.asp](http://health.state.ga.us/programs/environmental/index.asp)

**Georgia Department of Natural Resources**

Coastal Resources Division  
One Conservation Way  
Brunswick, Georgia 31510  
(912) 264-7218  
[crd.dnr.state.ga.us](http://crd.dnr.state.ga.us)

**Georgia Department of Natural Resources**

Environmental Protection Division  
2 Martin Luther King Drive  
Suite 1152 East Tower  
Atlanta, GA 30334  
(404) 657-5947  
[www.gaepd.org](http://www.gaepd.org)  
[different subdivisions handle air, land and water issues]

**Georgia Department of Natural Resources**

Historic Preservation Division  
34 Peachtree Street NW  
Suite 1600  
Atlanta, GA 30303  
(404) 656-2840  
[www.gashpo.org](http://www.gashpo.org)

**Georgia Department of Natural Resources**

Wildlife Resources Division  
2070 U.S. Hwy. 278, S.E.  
Social Circle, GA 30025  
(770) 918-6400  
[georgiawildlife.dnr.state.ga.us/](http://georgiawildlife.dnr.state.ga.us/)

**Georgia Public Service Commission**

244 Washington Street SW  
Atlanta, GA 30334  
Toll-free in Georgia: (800) 282-5813  
Metro Atlanta: (404) 656-4501  
Email: [gapscc@psc.state.ga.us](mailto:gapscc@psc.state.ga.us)  
[www.psc.state.ga.us](http://www.psc.state.ga.us)

**GEORGIA ENVIRONMENTAL, SOCIAL JUSTICE,  
AND COMMUNITY INTEREST GROUPS****Action For A Clean Environment**

319 Wynn Lake Circle  
Alto, GA 30510  
(706) 778-3661  
[acegeorgia.org/home.html](http://acegeorgia.org/home.html)

**Altamaha Riverkeeper**

Post Office Box 2642, 200 Broad Street  
Darien, GA 31305  
(912) 437-8164  
[www.altamahariverkeeper.org](http://www.altamahariverkeeper.org)

**Atlanta Women's Action for New Directions (WAND)**

250 Georgia Avenue SE  
Suite 202  
Atlanta, GA 30312  
(404) 524-5999  
[www.atlantawand.org](http://www.atlantawand.org)

**American Civil Liberties Union (ACLU) of Georgia**

Post Office Box 54406  
Atlanta, GA 30308  
404-523-5398  
[www.acluga.org](http://www.acluga.org)

**Center for a Sustainable Coast**

221 Mallory Street, Suite B  
St. Simons Island, GA 31522  
(912) 638-3612  
[www.sustainablecoast.org](http://www.sustainablecoast.org)

**Chattooga Conservancy**

Post Office Box 2008  
Clayton, GA 30525  
(706) 782-6097  
[www.chattoogariver.org](http://www.chattoogariver.org)

**Coosa River Basin Initiative (CRBI)**

408 Broad Street  
Rome, GA 30161  
(706) 232-2724  
[www.coosa.org](http://www.coosa.org)

**ECO-Action (Environmental Community Action)**

The Grant Building  
44 Broad Street NW  
Suite 711  
Atlanta, GA 30303  
(404) 584-6499  
[www.eco-act.org](http://www.eco-act.org)

**Environment Georgia**

741 Piedmont Ave. NE, 2nd Floor  
Atlanta, GA 30308  
(404) 892-3573  
[www.EnvironmentGeorgia.org](http://www.EnvironmentGeorgia.org)

**Environmental Justice Resource Center  
at Clark Atlanta University**

223 James P. Brawley Drive  
Atlanta, GA 30314  
(404) 880-6911  
[www.ejrc.cau.edu](http://www.ejrc.cau.edu)

**Federation of Southern  
Cooperatives/Land Assistance Fund**

2769 Church Street  
East Point, GA 30344  
(404) 765-0991  
[www.federationsoutherncoop.com](http://www.federationsoutherncoop.com)

**Georgia Coalition for the Peoples' Agenda**

100 Auburn Avenue  
Atlanta, GA 30303  
(404) 653-1199  
[www.gcpagenda.org](http://www.gcpagenda.org)

**The Georgia Conservancy**

817 West Peachtree Street  
Suite 200  
Atlanta, GA 30308  
(404) 876-2900  
[www.georgiaconservancy.org](http://www.georgiaconservancy.org)

**Georgia First Amendment Foundation**

150 East Ponce de Leon Avenue, Suite 230  
Decatur, GA 30030  
(404) 525-3646  
[www.gfaf.org](http://www.gfaf.org)

**Georgia for Democracy**

2020 Howell Mill Road, Suite C108  
Atlanta, GA 30318  
[www.georgiafordemocracy.org/index.cfm](http://www.georgiafordemocracy.org/index.cfm)

**Georgia River Network**

126 South Milledge Avenue, Suite E3  
Athens, GA 30605  
(706) 549-4508  
[www.garivers.org](http://www.garivers.org)

**Georgia Water Coalition**

817 West Peachtree Street, Suite 200  
Atlanta GA 30308  
(866) 88W-ATER  
[www.georgiawater.org](http://www.georgiawater.org)

**Georgia Wildlife Federation**

11600 Hazelbrand Road NE  
Covington, GA 30014  
(770) 787-7887  
[www.gwf.org](http://www.gwf.org)

**Glynn Environmental Coalition**

P. O. Box 2443  
Brunswick, Georgia 31521  
(912) 466-0934  
[www.glynnenvironmental.org](http://www.glynnenvironmental.org)

**GreenLaw**

104 Marietta Street NW  
Atlanta, GA 30303  
(404) 659-3122  
[www.green-law.org](http://www.green-law.org)

**Hyde Park and Aragon Park Improvement Committee**

2024 Golden Rod Street  
Augusta, GA 30901  
(706) 790-0077  
[hopic.memphis.edu/index.htm](http://hopic.memphis.edu/index.htm)

**MICAH's Mission**

Ministry to Improve Childhood & Adolescent Health  
P.O. Box 275  
Winterville, GA 30683  
(706) 742-7826  
[babuice.myweb.uga.edu/MICAH](http://babuice.myweb.uga.edu/MICAH)

**Morehouse School of Medicine**

720 Westview Drive SW  
Atlanta, GA 30310  
(404) 752-1500  
[www.msm.edu](http://www.msm.edu)

**National Association for the Advancement of Colored People**

2034 Metropolitan Pkwy  
Atlanta, GA 30315  
(404) 761-1266  
[www.atlantanaacp.org](http://www.atlantanaacp.org)

**Newtown Florist Club**

1067 Desota Drive SE  
Gainesville, GA 30501  
(770) 718-1343  
[visitnewtown.tripod.com/index.htm](http://visitnewtown.tripod.com/index.htm)

**Ogeechee-Canoochee Riverkeeper, Inc.**

Post Office Box 1925  
Statesboro, GA 30459  
(912) 764-2017  
(877) 261-8021  
[www.ogeecheecanoocheeriverkeeper.org](http://www.ogeecheecanoocheeriverkeeper.org)

**Peoplestown Revitalization Corporation**

1044 Washington Street  
Atlanta, GA 30315  
(404) 521- 9070  
[www.peoplestown.com](http://www.peoplestown.com)

**Sapelo Island Cultural and Revitalization Society (SICARS)**

P.O. Box 6  
Sapelo Island, GA 31327  
(912) 485-2197  
[www.sapeloislandgeorgia.org/index.html](http://www.sapeloislandgeorgia.org/index.html)

**Satilla Riverkeeper**

Post Office Box 159  
Waynesville, GA 31566  
(912) 778-3126  
Toll-Free: 866-472-8452  
[www.satillariverkeeper.org](http://www.satillariverkeeper.org)

**Savannah Riverkeeper**

1226 River Ridge Road  
Augusta, GA 30909  
(706) 364-5253  
[www.savannahriverkeeper.org](http://www.savannahriverkeeper.org)

**The Sierra Club**

Georgia Chapter Office  
1401 Peachtree Street NE, Suite 345  
Atlanta, GA 30309-3023  
(404) 607-1262  
[www.sierraclub.org](http://www.sierraclub.org)

**The Southern Center for Studies in Public Policy**

223 James P. Brawley Drive SW  
Atlanta, GA 30314  
(404) 880-8085  
[www.scspp.org](http://www.scspp.org)

**Southern Christian Leadership Conference**

320 Auburn Avenue NE  
Atlanta, GA 30303  
(404) 522-1420  
[www.sclcnational.org](http://www.sclcnational.org)

**Southern Environmental Law Center**

127 Peachtree Street, Suite 605  
Atlanta, GA 30303  
(404) 521-9900  
[www.southernenvironment.org](http://www.southernenvironment.org)

### **The Turner Environmental Law Clinic**

Emory School of Law  
1301 Clifton Road  
Atlanta, GA 30322  
(404) 727-5542  
[www.law.emory.edu/turnerclinic](http://www.law.emory.edu/turnerclinic)

### **Upper Chattahoochee Riverkeeper**

3 Puritan Mill  
916 Joseph Lowery Blvd.  
Atlanta, GA 30318  
(404) 352-9828  
[www.ucriverkeeper.org](http://www.ucriverkeeper.org)

### **West Atlanta Watershed Alliance**

965 Laurelmont Drive SW  
Atlanta, GA 30311  
[www.wawaonline.org](http://www.wawaonline.org)

### **The Wilderness Society**

112 Krog Street, Suite 26  
Atlanta, GA 30307  
(404) 872-9453  
[www.wilderness.org](http://www.wilderness.org)

## **EXAMPLES OF COMMUNITY HEALTH AGENCIES IN SELECTED GEORGIA COUNTIES**

### **Bibb County**

#### **Macon-Bibb County Public Health**

171 Emery Highway  
Macon, GA 31217  
(478) 745-0411

#### **US Health & Human Services Department**

484 Mulberry Street  
Macon, GA 31201  
(478) 752-3415

#### **US Health & Human Services Department**

640 North Avenue # D  
Macon, GA 31211  
(478) 752-3415

### **Chatham County**

#### **Chatham County Health Department, Midtown Clinic**

1602 Drayton Street  
Savannah, GA 31416  
(912) 356-2441

#### **Chatham County Health Department**

2011 Eisenhower Drive  
Savannah, GA 31406-3905  
(912) 356-2441

#### **Chatham County Health Department, Eisenhower Clinic**

1395 Eisenhower Drive  
Savannah, GA 31406  
(912) 356-2441

#### **Chatham County Environmental Health Department**

420 Mall Blvd.  
Savannah, GA 31416  
(912) 356-2160

#### **Chatham CARE Center/Infectious Disease Clinic**

2 Wheeler Street  
Savannah, GA 31416  
(912) 356-2953

#### **Community Health Care Center**

310 Eisenhower Drive, Bldg. 5B  
Savannah, GA 31406  
(912) 692-1451

#### **Curtis V. Cooper Primary Health Care, Inc.**

106 E. Broad Street  
Savannah, GA 31401  
(912) 527-1000

#### **Curtis V. Cooper Primary Health Care, Inc.**

2 Roberts Street  
Savannah, GA 31408  
(912) 527-1100

#### **Curtis V. Cooper Primary Health Care, Inc.**

Robert Hitch Village  
840 Hitch Drive  
Savannah, GA 31401  
(912) 232-9696

## **Dougherty County**

### **Albany Area Primary Health Care, Inc.**

Administrative Offices  
204 N. Westover Blvd.  
Albany, GA 31707  
(229) 888-6559

### **Albany Area Primary Health Care, Inc., East Albany Medical Center**

P. O. Box 50098  
1712-A East Broad Avenue  
Albany, GA 31703  
(229) 639-3100

### **Albany Area Primary Health Care, Inc., East Albany Pediatric & Adolescent Center**

P. O. Box 50098  
1712-C East Broad Avenue  
Albany, GA 31703  
(229) 639-3103

### **Albany Area Primary Health Care, Inc., Rural Clinic**

2202 E. Oglethorpe Blvd.  
Albany, GA 31705  
(229) 431-1423 / (800) 393-1423

### **Albany Area Primary Health Care, Inc., South Albany Medical Center**

1300 Newton Road  
Albany, GA 31701  
(229) 431-3120

### **Dougherty County Health Department**

1710 S. Slappey Blvd.  
Albany, GA 31701  
(229) 430-6200

### **Southwest Health District**

231 W. Tift Avenue  
Albany, GA 31701  
(229) 430-1966

### **Southwest Health District**

1306 S. Slappey Blvd.  
Albany, GA 31701  
(229) 430-7870

### **Southwest Health District, Main Office**

1109 North Jackson Street  
Albany, GA 31701  
(229) 430-4127

### **US Health & Human Services Department**

1515 Dawson Road  
Albany, GA 31707  
(229) 430-8400

## **Fulton County**

### **Community Medical Center of Palmetto**

507 Park Street  
P.O. Box 469  
Palmetto, GA 30268  
(770) 463-4644

### **Fulton County Department of Health and Wellness, Adamsville Health Center**

3699 Bakers Ferry Road SW  
Atlanta, GA 30331  
(404) 699-4215

### **Fulton County Department of Health and Wellness, Aldredge Health Center (Main Center)**

99 Jessie Hill Jr. Drive SE  
Atlanta, GA 30303  
(404) 730-1211

### **Fulton County Department of Health and Wellness, Center for Health and Rehabilitation**

265 Boulevard NE  
Atlanta, GA 30312  
(404) 730-5835

### **Fulton County Department of Health and Wellness, Center Hill Health Center**

3201 Atlanta Industrial Parkway NW  
Atlanta, GA 30331  
(404) 699-6370

### **Fulton County Department of Health and Wellness, Dunbar Teen Clinic**

477 Windsor Street SW  
Atlanta, GA 30312  
(404) 893-0773

**Fulton County Department of Health and Wellness,  
Hapeville Health Center**

3444 Claire Drive  
Hapeville, GA 30354  
(404) 762-4025

**Fulton County Department of Health and Wellness,  
Lakewood Health Center**

1853 Jonesboro Road SE  
Atlanta, GA 30315  
(404) 624-0626

**Fulton County Department of Health and Wellness,  
Neighborhood Union Health Center**

186 Sunset Avenue NW  
Atlanta, GA 30314  
(404) 730-4665

**Fulton County Department of Health and Wellness,  
North Fulton Regional Health Center**

3155 Royal Drive  
Alpharetta, GA 30022  
(404) 332-1958

**Fulton County Department of Health and Wellness,  
Palmetto Health Center**

507 Park Street  
Palmetto, GA 30268  
(770) 463-3307

**Fulton County Department of Health and Wellness,  
Sandy Springs Health Center**

330 Johnson Ferry Road NE  
Atlanta, GA 30328  
(404) 303-6162

**Fulton County Department of Health and Wellness,  
South Fulton Health Center**

1225 Capitol Avenue SW  
Atlanta, GA 30315  
(404) 730-5406

**Fulton County Department of Health and Wellness,  
Willie J. Freeman College Park Regional Health Center**

1920 John E. Wesley Avenue  
College Park, GA 30337  
(404) 765-4155

**Southside Medical Center**

1046 Ridge Avenue SW  
Atlanta, GA 30315  
(404) 688-1350

**Southside Medical Center,  
South Atlanta/Cleveland Avenue Clinic**

2685 Metropolitan Parkway, Suite C  
Atlanta, GA 30048  
(404) 564-0377

**Southside Medical Center, Thomasville Heights Clinic**

1178 Henry Thomas Drive, Suite 141 & 142  
Atlanta, Georgia 30315  
(404) 622-0727

**West End Medical Centers at Bowen Homes**

950 Wilkes Circle NW  
Atlanta, GA 30318  
(404) 799-0851

**West End Medical Centers at John O. Chiles**

435 Joseph Lowery Blvd.  
Atlanta, GA 30310  
(404) 572-5850

**West End Medical Centers at Herndon Homes**

511 Johns Street NW  
Atlanta, GA 30318  
(404) 572-5850

**Glynn County**

**Glynn County Environmental Health**

1803 Gloucester Street, Room 217  
Brunswick, GA 31520  
(912) 264-3931

**Glynn County Health Department**

2747 4th Street  
Brunswick, GA 31520  
(912) 264-3961

**Glynn County Health Department**

Ryan White Clinic  
1716 Ellis Street  
Brunswick, GA 31520  
(912) 264-3236

## **Richmond County**

### **Richmond County Health Department**

950 Laney-Walker Blvd.  
Augusta, GA 30901  
(706) 721-5800

### **Richmond County Health Department, Environmental Health Section**

1916 North Leg Road  
Augusta, GA 30909  
(706) 667-4234

### **Richmond County Health Department, South Augusta Clinic**

2416 Windsor Spring Road  
Augusta, GA 30906  
(706) 790-0661

## Appendix C: Sample Forms

### C-1: Sample Freedom of Information Act (FOIA) Request

Via U.S. Mail & E-mail

DATE

ADDRESS

***RE: Freedom of Information Act Request***

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and relevant U.S. Environmental Protection Agency (EPA) regulations set forth in 40 C.F.R. §§ 2.100—2.108 (part 2, subpart A), I hereby request any and all information relating to **[subject]**.

**[Describe documents requested].**

EPA is required to issue written documentation in response to information requests within twenty working days from the date the request is received and logged in by EPA, stating which records will, and which will not, be released and the reason for any denial of any portion of this request. 40 C.F.R. 2.104(a), (f).

To the extent that EPA can do so, I request to be furnished with electronic copies of the above requested documents so as to minimize the expense and burden of copying. In the event that files cannot be transmitted electronically, please send the requested documents to the following address:

**[Address]**

Pursuant to 40 C.F.R. § 2.107(l) and 5 U.S.C. § 552(a)(4)(A)(iii), I hereby request a fee waiver for all copying costs, mailing costs, and other costs related to locating and tendering the documents requested, because reduction or waiver of fees would be in the public interest. FOIA's fee standard mandates a waiver or reduction of fees associated with a request if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The public interest standard of the fee waiver provision of the FOIA should be "liberally construed" in favor of waivers. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *Pederson v. Resolution Trust Corp.*, 847 F. Supp. 851, 855 (D. Colo. 1994); *Etlinger v. FBI*, 596 F. Supp 867, 872 (D. Mass. 1984). The goal of the statute is to avoid the "roadblocks and technicalities which have been used by various Federal agencies to deny waivers. . . ." *Pederson*, 847 F. Supp. at 855.

CONTINUE NEXT PAGE

EPA considers six factors in acting on fee waiver requests. Each of these factors supports a fee waiver in this instance:

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government. **[Explain why you meet this test, even if obvious.]**
2. The disclosure should be “likely to contribute” to an understanding of government operations or activities. **[Explain why you meet this test, even if obvious.]**
3. The disclosure must contribute to the understanding of the public at large, as opposed to the requester or a narrow segment of interested persons. **[Explain why you meet this test, even if obvious.]**
4. The disclosure must contribute “significantly” to the public understanding of government operations. **[Explain why you meet this test, even if obvious.]**
5. The disclosure will not serve my commercial interest. **[Explain why you meet this test, even if obvious.]**
6. The public interest in disclosure far outweighs the commercial interest. **[Explain why you meet this test, even if obvious.]**

In light of the above, I believe that this request falls squarely within the guidelines for fee waivers pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and request that the FOIA request be processed promptly.

EPA staff may contact me at **[Phone Number]** or via email at **[E-Mail]**, to further discuss EPA’s response to this request.

Thank you very much for your consideration and prompt attention to this matter.

Sincerely,

YOUR NAME

## C-2: Sample Open Records Request

DATE

ADDRESS

**RE:** *Open Records Act Request, O.C.G.A. §§ 50-18-70, et seq.*

To Whom It May Concern:

Pursuant to O.C.G.A. §§ 50-18-70, et seq., I am requesting that you allow me access to any and all information including but not limited to reports, correspondence, facsimiles, electronic mail, and any other documents that pertain to the following:

**[Description: For example, name of Development, name of the developer, location of the development, or any other information that will identify the site.]**

As I am sure you are aware, Georgia law does not require Open Records Act requests to be in writing. Nevertheless, I have provided this letter to memorialize my request for any and all information relating to the aforementioned project/facility.

The information provided should include any and all information pertaining to implementation of the **[relevant law—for example: Georgia Erosion & Sedimentation Act, the General Construction Discharge Permit]** and any other laws and/or regulations/ordinances pertaining to **[the issues raised by the project or facility; for example, land disturbing activities]**. **[Provide examples of the documents you want, if possible; for instance:]** For example, please provide me with the Notice of Intent, the Erosion & Sedimentation Plan, any Notices of Violation, receipts demonstrating that the appropriate fees have been paid, other documents pertaining to compliance with the applicable laws, photographs of the site, inspection reports, and any other documents regarding the operation of this site.

If for any reason you determine that certain portions of the requested documents or information are exempt from disclosure under the Georgia Open Records Act, please delete any such allegedly exempt materials and furnish copies of those portions of the documents that are not exempt. If any documents are withheld or portions deleted, please identify those documents, the substance of such documents/deletions and the grounds for withholding such documents or making such deletions. Consent to such deletions in no way waives any right to appeal any determination that may be made concerning the applicability of any exemptions under the Open Records Act.

By law, you are required to make these records available to me within three days of this request. O.C.G.A. §§ 50-18-70(f) (specifying that the time for a response shall not “exceed three business days”).

Please send the requested documents to the following address:

**[Address]**

Thank you for your assistance and attention to this request. If for some reason you are unable to send me the requested information, please contact me at **[Phone Number]**. I look forward to hearing from you.

Sincerely,

YOUR NAME

# C-3: Sample Complaint Form

## COMPLAINT

I am hereby filing a complaint regarding the problems described below. I request that you or the appropriate member of your agency take action to remedy the situation as soon as possible. I also request that you contact me regarding the resolution of this complaint.

This Complaint is submitted by:

Name: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Description of the Problem:

Could this problem involve issues of public health?    \_\_\_ yes    \_\_\_ no

Category:            \_\_\_ erosion/sediment            \_\_\_ water quality            \_\_\_ sewage spills  
                         \_\_\_ buffers                            \_\_\_ stormwater/flooding            \_\_\_ land usage  
                         \_\_\_ rezoning land usage            \_\_\_ spills                            \_\_\_ air pollution  
                         \_\_\_ dumping                            \_\_\_ other

Description: \_\_\_\_\_  
\_\_\_\_\_

First noticed: \_\_\_\_\_

Is the violation ongoing? \_\_\_\_\_

Location: \_\_\_\_\_

Other Information: \_\_\_\_\_

Other government agencies reported to: \_\_\_\_\_

# C-4: Sample Pollution Logs

## OBSERVATION LOG SHEET

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

What did you observe? \_\_\_\_\_

---

---

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---

---

---

---

---

---

Did anyone else observe this? \_\_\_\_\_

---

For how long did you personally observe this activity? \_\_\_\_\_

---

Did the activity continue after you stopped observing it? For how long? \_\_\_\_\_

---

Do you think this activity poses a health risk to you or your community? \_\_\_\_\_

---

Why? \_\_\_\_\_

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## Appendix D: The 17 Principles of Environmental Justice

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*These are the 17 principles of environmental justice, as adopted October 27, 1991 at The First People of Color Environmental Leadership Summit. Consider introducing these principles, and requesting their adoption, to your community groups and local leaders.*

WE THE PEOPLE OF COLOR, gathered together at this multinational People of Color Environmental Leadership Summit, to begin to build a national and international movement of all peoples of color to fight the destruction and taking of our lands and communities, do hereby re-establish our spiritual interdependence to the sacredness of our Mother Earth; to respect and celebrate each of our cultures, languages and beliefs about the natural world and our roles in healing ourselves; to insure environmental justice; to promote economic alternatives which would contribute to the development of environmentally safe livelihoods; and, to secure our political, economic and cultural liberation that has been denied for over 500 years of colonization and oppression, resulting in the poisoning of our communities and land and the genocide of our peoples, do affirm and adopt these Principles of Environmental Justice:

1. Environmental justice affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction.
2. Environmental justice demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias.
3. Environmental justice mandates the right to ethical, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things.
4. Environmental justice calls for universal protection from nuclear testing, extraction, production and disposal of toxic/hazardous wastes and poisons and nuclear testing that threaten the fundamental right to clean air, land, water, and food.
5. Environmental justice affirms the fundamental right to political, economic, cultural and environmental self-determination of all peoples.
6. Environmental justice demands the cessation of the production of all toxins, hazardous wastes, and radioactive materials, and that all past and current producers be held strictly accountable to the people for detoxification and the containment at the point of production.
7. Environmental justice demands the right to participate as equal partners at every level of decision-making including needs assessment, planning, implementation, enforcement and evaluation.
8. Environmental justice affirms the right of all workers to a safe and healthy work environment, without being forced to choose between an unsafe livelihood and unemployment. It also affirms the right of those who work at home to be free from environmental hazards.
9. Environmental justice protects the right of victims of environmental injustice to receive full compensation and reparations for damages as well as quality health care.
10. Environmental justice considers governmental acts of environmental injustice a violation of international law, the Universal Declaration On Human Rights, and the United Nations Convention on Genocide.
11. Environmental justice must recognize a special legal and natural relationship of Native Peoples to the U.S. government through treaties, agreements, compacts, and covenants affirming sovereignty and self-determination.

12. Environmental justice affirms the need for urban and rural ecological policies to clean up and rebuild our cities and rural areas in balance with nature, honoring the cultural integrity of all our communities, and providing fair access for all to the full range of resources.
13. Environmental justice calls for the strict enforcement of principles of informed consent, and a halt to the testing of experimental reproductive and medical procedures and vaccinations on people of color.
14. Environmental justice opposes the destructive operations of multi-national corporations.
15. Environmental justice opposes military occupation, repression, and exploitation of lands, peoples and cultures, and other life forms.
16. Environmental justice calls for the education of present and future generations which emphasizes social and environmental issues, based on our experience and an appreciation of our diverse cultural perspectives.
17. Environmental justice requires that we, as individuals, make personal and consumer choices to consume as little of Mother Earth's resources and to produce as little waste as possible; and make the conscious decision to challenge and reprioritize our lifestyles to insure the health of the natural world for present and future generations.