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Georgia Brownfields

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Research Guides

Georgia Brownfields

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Introduction

Brownfield sites are defined as "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant" in Public Law 107-118 (H.R. 2869) – 'Small Business Liability Relief and Brownfields Revitalization Act' of 2002. Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) further specifies that brownfield sites include land that have been "contaminated by a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)" or sites that have been "contaminated by petroleum or a petroleum product." In the U.S., there are over half a million brownfield sites. These sites, because of their contamination, are regulated by environmental laws. Therefore to understand and function in the world of brownfields, one must first become proficient with the environmental laws, rules and regulations which place restrictions on lands containing hazardous materials, controlled substances and petroleum based substances.

These environmental restrictions can produce endless and unpredictable liability for land owners, potential developers, and lenders. Because of this, contaminated properties were not being developed or cleaned up due to the cost and potential for liability. The surrounding community became negatively impacted and often saw declines in property values (and by extension, a reduction in tax income), more abandoned sites and a shift in development to greenfields. Thus, regulations meant to protect human health and the environment began to discourage the redevelopment and reuse of contaminated lands. However, in the past two decades specific brownfield legislation and programs began being enacted by the federal and state governments to help encourage land development, alleviate such unpredictability and limit liability associated with brownfield environmental requirements.

Overview

Federal Environmental and Brownfields Requirements

Federal environmental regulations which detail how to deal with contaminated lands include the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA) and the Clean Air Act (CAA). These laws are executed by the Environmental Protection Agency (EPA) and have the harsh requirement of strict, joint and several liability. The EPA in ensuring compliance with these acts, also issues agency rules and programs to protect and remediate contaminated sites.

Congress in 1986 passed the Superfund Amendments and Reauthorization Act (SARA) as an amendment to CERCLA. SARA provided innocent landowners (who could prove that a third party contaminated their property) relief from liability of remediation activities. This began the trend towards encouraging brownsfield development since the Act created some limits to liability. The EPA followed in 1995 with the Brownfields Economic Redevelopment Initiative. Since then both Congress and the EPA have sought to promote brownfield reuse and redevelopment. Most states have also followed suit as greenspace became limited and the reuse of brownfields became a necessity.

Georgia's Environmental and Brownfields Requirements

Georgia adopted similar environmental protection legislation to CERCLA, to regulate contaminated sites and to require certain remediation standards. That legislation - the Georgia Hazardous Site Response Act (HSRA), was enacted in 1992. HSRA provided the Georgia Environmental Protection Division (EPD) with the authority to identify and cleanup sites that were not listed under the federal CERCLA designation. Similar, to its federal cousin CERCLA, HSRA required that Georgia owners with contaminated property notify the EPD for an assessment of the risk posed by the contamination. If there was a high risk to the community, the site was listed on the hazardous site inventory (HSI). Stringent guidelines for clean up would then be required.

As the trend on the federal level turned towards assisting brownfield redevelopment, the Georgia legislators also put forth legislation to encourage potential buyers to purchase, redevelop or reuse hazardous sites. In 1996, the Georgia General Assembly enacted the Hazardous Site Reuse and Redevelopment Act (Brownfields Act). The Georgia Brownfields Act helped to limit liability for potential Brownfield purchasers of abandoned or unrepaired properties and thereby provided some incentive for developers to buy contaminated sites.

The protection afforded by the Brownfields Act was only modest at best. The Act did not limit the liability of those financing the transaction when a contaminated site was being

purchased. The Act also did not clearly define what property would be exempted from liability. In 1998, the Brownfields Act was amended to expand the initial protection. The amended Act now specifically indicated that properties listed on the Hazardous Site Inventory in addition to abandoned or unrepaired properties would qualify for the liability protection. The amended Act also now included lenders when limiting liability.

In 2002 and 2005, the Georgia legislator amended the Brownfields Act again – expanding the liability protection. In addition, in 2003, the Ad Valorem Taxation passed and included language pertaining to tax exemptions for Brownfield redevelopment and reuse. The Georgia General Assembly passed the Georgia Uniform Environmental Covenants Act in 2008 and the Georgia Voluntary Remediation Program Act in 2009. Both of these Acts furthered the encouragement of Brownsfield redevelopment and reuse in Georgia.

Scope

This research guide looks at legislation and regulations that impact brownfield redevelopment in Georgia. The guide also includes federal and state environmental requirements for contaminated properties since these requirements serve as a baseline for the redevelopment process. The secondary sources included in this guide list materials on the evolution of brownsfields and links to examples of successful brownfields redevelopment projects.

About The Author

Maria Brathwaite Souder is a third year student at the Georgia State University College of Law. She is a graduate of the Georgia Institute of Technology with a Bachelors and Masters Degree in Mechanical Engineering. She also received her MBA from the University of West Georgia. In 1999, she began working for Georgia Power Company as an Engineer and has held various leadership roles at several generating plants. She is currently the team leader for Generation Compliance in the Environmental Affairs Department.

As a student, Ms. Souder has worked as a Summer Associate for Troutman Sanders, LLP in their Environmental Practice Group. She is a member of the Law Review and has received the Space Study V fellowship for study of land use and the environment in Brazil as well as the Attorney's Title Guaranty Fund Scholarship. She intends to pursue a career in environmental law.

Disclaimer

This research guide is designed as an overview and starting point for the research of Georgia Brownsfields. It does not provide legal advice or opinion. The author does not guarantee the accuracy, thoroughness, or usefulness of the information provided. The guide is current as of November 2010 and laws, rules or regulations could have changed since the completion of this guide. Additionally, secondary sources are updated periodically and links or annotations may change. For legal questions, please consult an attorney. For questions on how to proceed with your research, please contact the Georgia State University reference librarians.

Acronyms

BRERA	Brownfields Revitalization and Environmental Restoration Act
CAA	Clean Air Act
CAP	Corrective Action Plan
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CSR	Compliance Status Report
CWA	Clean Water Act
EPA	Environmental Protection Agency
EPD	Environmental Protection Division
GUECA	Georgia Uniform Environmental Covenants Act
HSI	Hazardous Site Inventory
HSRA	Hazardous Site Response Act
NPL	National Priorities List
PRP	Potentially Responsible Parties
RCRA	Resource Conservation and Recovery Act

SARA	Superfund Amendments and Reauthorization Act
TSCA	Toxic Substances Control Act
VRP	Voluntary Remediation Program

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Primary Sources

Federal Statutes

USC

42 U.S.C. §§ 9601 – 75 (1980) - Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Congress passed CERCLA in 1980. CERCLA is the only liability based statute addressing a problem of pollution that was already created, waste that was already disposed off and CERCLA also addresses the need to prevent future harm. The Act presents a huge obstruction towards brownfields redevelopment because of the potential for liability to anyone who has had some contact with the contaminated site.

§9607 - Liability is the heart of CERCLA where there is joint and several retroactive liability. This section notes that there are four classes of potentially responsible parties (PRPs) – property owner, operator, generator of the contamination or transporter, that are held to this high level of liability. This section also dictates what response is necessary to correct the contamination (remediation or removal).

§9611 - This section allows the creation of a national contingency plan and directs the preparation of the national priority list (NPL). Properties listed would have to be clean up under CERCLA standards.

§9604 - Power is given to both the state and federal governments to clean up a site in this section of CERCLA. Therefore in Georgia, the EPD would investigate a contaminated site, set up a meeting with PRPs, set a clean-up schedule after a remedial investigation or feasibility study and proceed with the decontamination of the property.

Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. No. 99-499). This Act is an amendment to CERCLA. SARA provides a limit in liability for innocent landowners in ***§ 9601(35)***. If the owner of a contaminated property can show that

1. the contamination was caused (unknown to the owner) by a third party;
2. that the owner demonstrated care with respect to the hazardous substance; and
3. performed due diligence with respect to the acts or omission of that third party;

then, the owner would not be liable for clean-up activities. Under SARA, a developer can now have limited liability if the land that is purchased is contaminated as long as that developer is innocent. This relaxation of liability is a step in the direction of brownfield redevelopment.

Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996 (Pub. L. No. 104-208). In 1996, Congress created incentives for redeveloping brownfields via the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act. This Act was another amendment to CERCLA and it essentially codified the EPA's lender liability rule. Before the Act was passed, the EPA as a rule, would allow lenders who did not participate in the management of a contaminated facility protection from liability under CERCLA and RCRA. This Act should therefore help developers get financing for the redevelopment of brownfields.

Brownfields Revitalization and Environmental Restoration Act of 2002 (BRERA) (Pub. L. No. 107-118). BRERA was passed as Title II of the Small Business Liability Relief and Brownfields Revitalization Act and was an amendment to CERCLA. The Act had two main provisions that assisted in Brownfield redevelopment. First is the funding assistance to state government for specific brownfields redevelopment and cleanups. Second, under ***§9607(r)***, two new defenses to CERCLA liability were provided - the bona fide prospective purchaser defense and the contiguous landowner defense. The bona fide prospective purchaser defense allowed new purchasers to buy property that was contaminated without the liability for cleanup. The purchaser must demonstrate that they did not prevent cleanup activities and that the release took place before the property was purchased. The contiguous landowner defense relieves a property owner from liability if the owner can show that their property became contaminated because of their neighbor's pollution. The owner has to show that a due diligence process was performed before the site was purchased and the contamination only was discovered after purchasing the site.

42 U.S.C. §§ 7408 – 7671 (1970) - Clean Air Act (CAA) (amended in 1990). Hazardous air pollutants under the CAA ***§ 7512*** are incorporated into CERCLA as regulating disposal and clean-up. On a brownfield site, older buildings or structures that are in need of demolition, may contain those hazardous air pollutants (e.g. asbestos). The CAA restricts how these pollutants can be handled and what permits are required.

33 U.S.C. §§ 1251 – 1387 (1972) - Clean Water Act (CWA). Similar to the CAA, the CWA's list of hazardous water pollutants are also incorporated into CERCLA. In addition ***§1321***, gave instructions on how to handle liability from releases of oil and hazardous substances into waterways (which are typical with brownfields).

15 U.S.C. §§ 2601 – 92 (1976) - Toxic Substances Control Act (TSCA). TSCA regulates toxic chemicals. It relates to brownfields because petroleum products which may contaminate sites may also contain polychlorinated biphenyls. In addition, TSCA also regulates lead exposure which may be found in the paint of older buildings.

42 U.S.C. §§ 6901 – 92k (1976) - Resource Conservation and Recovery Act (RCRA). In 1976 this statute was passed to amend the Solid Waste Disposal Act. RCRA regulates any waste but specifically tracks hazardous waste through its life cycle from generation to disposal. The primary focus of the Act was on safe land disposal (to prevent superfund sites and midnight dumpers) and on the reduction of waste. RCRA impacts brownfield redevelopment if the property (1) is contaminated with a regulated waste; (2) contains underground storage tanks or (3) may present an imminent or substantial endangerment to human health or the environment.

To determine if the property had a regulated waste, then consider the following questions:

(1) Is it solid under ***§6903(27)***?

(2) If a solid, then is it excluded under ***§6903(27)***?

(3) Do the definitions governing the handling of solid waste apply? E.g. §6903(28) – disposal; or ***§6903(3)***.

(4) If a solid, is it a hazardous waste under ***§6903(5)***?

(5) Do exceptions such as ***§6921(i)*** for example apply?

To determine who is regulated consider:

(1) ***§6921(a)***

a. Is it a characteristic waste?

b. Is it a listed waste?

c. Is it derived from a hazardous waste?

d. Is it a mixture of hazardous waste?

Note that RCRA allows the regulation by both federal and state/local programs in ***§6926*** and ***§6941***.

Case Law

Circuit Court Cases

1. ***O'Neil v. Picillo,*** 883 F.2d 176 (1st Cir. 1989). This case involved whether hazardous waste generators can be held jointly and severally liable for the cleanup of a hazardous waste site. The court looked at CERCLA liability and the amendments of SARA and then upheld the determination of joint and several liability, because there was not enough evidence to support dividing removal costs.

2. ***United States v. Monsanto Co.,*** 858 F.2d 160 (4th Cir. 1988). This CERCLA case established that properties owners are liable for the cleanup caused by their tenants and that just using a volumetric measurement was not a good way to determine liability (different hazardous waste of the same volume may have different effects on the environment).

3. ***State of N.Y. v. Shore Realty Corp.,*** 759 F.2d 1032 (2d Cir. 1985). The state incurred response costs for the initial cleanup of a hazardous waste storage site and under CERCLA sought to recover. The court held that the property owner was indeed liable and responsible for the costs. However, injunctive relief was not available under CERCLA but under the New York nuisance laws.

District Court Cases

1. ***Briggs & Stratton Corp. v. Concrete Sales & Svcs.***, 20 F. Supp. 2d 1356 (M.D. Ga. 1998). This case established that when a property owner has a contractual relationship with a third party (lease tenant), then the property owner is not relieved from liability under CERCLA nor HRSA. The innocent owner defense is not applicable to that type of relationship. The property owner still has a contract with the parties who were responsible for the release of hazardous substances. It does not matter what the landlord knew or did not know about the activities of the lease tenant.

2. ***Southfund Partners III v. Sears, Roebuck & Co.,*** 57 F. Supp. 2d 1369 (N.D. Ga. 1999) (applying Georgia law). The court held that HSRA made the property owner liable for a hazardous substance releases from an underground storage tank. Essentially, the owner "contributed" to the release even though the owner did not actively participate with the events.

Georgia Cases

1. ***Couch v. Parker,*** 280 Ga. 580, 630 S.E.2d 364 (Ga. 2006). The EPD can determinate the scope of remedial measures via consent orders under HSRA and impacted neighbors with contamination on their land did not have standing to challenge if the consent order reached far enough. However the homeowners still had legal remedies against the entity responsible for the release.

2. ***McElmurray v. Augusta-Richmond County***, 274 Ga. App. 605, 618 S.E.2d 59 (Ga. App. 2005), cert. denied, (Apr. 25, 2006). Case alleging the violation of HSRA. Liability standard under HSRA is strict.

3. ***Sprayberry Crossing Partnership v Phenix Supply Co.,*** 274 Ga. App. 364; 617 S.E.2d 66 (Ga. App. 2005). A shopping center owner claimed the supplier of chemicals to the dry cleaners spilled the solvent and over time contributed to the soil and groundwater contamination. The claim was brought under the HSRA.

4. ***Reheis v. Baxley Creosoting & Osmose Wood Preserving Co.***, 268 Ga. App. 256, 601 S.E.2d 781 (Ga. App. 2004). Held that there are procedural due process protections in HSRA where the EPD has to allow a person to comply with a consent order before the EPD steps in, cleans up the site, and holds that person individually liable for the cleanup costs.

5. ***Barranco v. Welcome Years, Inc,*** 260 Ga. App. 456, 579 S.E.2d 866 (Ga. App. 2003). This case involved a sales contract where the buyer after signing the contract discovered that a release had occurred on the property. The seller notified the EPD but the fact that the EPD did not request additional remediation at that time did not release the seller from obligations under HSRA.

Georgia Statutes

O.C.G.A. §§ 12-8-90 – 97 (1992) - Georgia Hazardous Site Response Act (HSRA).

Even though there were hundreds of contaminated sites in Georgia, only a few were designated for cleanup under the federal statute CERCLA. To allow for the remediation of the remaining sites, the Georgia Legislator passed HSRA in 1992. HSRA gave the state agency, the EPD, authority to go after contaminated property owners to ensure clean up. The EPD would have to be notified of a release by the property owner and then assess the site to determine the risk to the community. If there was a great enough risk, then the site would be placed on the hazardous site inventory (HSI). The property owner would be required to investigate and cleanup the site to certain standards that were negotiated with the EPD.

Section 12-8-95 allows the EPD to collect fees and fines relating to releases and the need for cleanup activities. The funds from these fees and fines are to be placed in a trust which serves as a resource to fund the cleanup of abandoned contaminated properties.

Even though there is liability under HSRA, there is also some protection from being a PRP under ***§ 12-8-92(7)***. If an entity was not participating in the management of the contaminated site (e.g. a secured creditor), then they would not be liable for cleanup activities. ***Section 12-8-96.2*** also provides some protection for a purchaser of a contaminated site by only having a third party right of action for the contamination that the purchaser contributed to. ***Section 12-8-96.3*** eliminates some liability for developers and purchasers where they would be exempt from certain third-party claims for contribution or damages from a release. However, the new owner would still be required to clean up the property (***§ 12-8-96.3(c)***) and submit a corrective action plan (CAP) under ***§ 12-8-96.3(b)*** to get the property into compliance within twelve months.

O.C.G.A. §§ 12-8-200 – 210 (1996) - Georgia Hazardous Site Reuse and Redevelopment Act of 1996 (amended in 1998 and 2002).

This Act is known as the Georgia Brownfields Act. The purpose of the Act as described in ***§ 12-8-201*** is to encourage the clean up, reuse and redevelopment of contaminated sites. The Act has been amended twice, with each amendment providing more liability protection and encouraging brownfield redevelopment. The 1996 version of the Brownfields Act only limited the liability for abandoned or disused property where the purchaser did not contribute to the contamination as seen in ***§§ 12-8-204(A), 12-8-205(a)-(b)***. All the purchaser would have to do to qualify for this protection is to submit a CAP to the EPA for approval under ***§ 12-8-206*** and complete the cleanup within the specified timeframe.

The 1998 amendments included additional protection for purchasers and also added protection from liability for lenders. Purchasers were now not liable for remediation costs or damages for preexisting releases. Lenders who had foreclosed on contaminated property could now notify the EPD of either (1) the financial assurance of a prospective purchaser or (2) that the new title holder meets the requirement of the Act to be free from liability. The amendment expanded the properties covered by the Act to all sites included on the HSI but not on the NPL.

The 2002 amendments were made by the Georgia Legislator to further support brownfields redevelopment. The amendment allowed more properties to qualify for liability protection. Under ***§ 12-8-203***, the HSI site requirements was relaxed to include all qualifying properties. The liability protection language for purchasers and lenders was also expanded in ***§ 12-8-207***.

O.C.G.A. §§ 12-6A-1 – 12 (2008) – The Georgia Land Conservation Act of 1981 (amended in 2000, 2005, and 2008).

In 1981, the Georgia Legislator passed what become known as the Georgia Land Conservation Act (***O.C.G.A. § 36-22-1 et seq. (1981)***). The Act allowed for the conservation of land via a conservation easement. The legislators amended the Act in 2000, 2005 and re-designated the Act to ***§ 12-6A-1 et seq.*** in 2008. Conservation easements are the perpetual in nature and the terms of the easement are enforceable. Having a conservation easement means that any piece of land can be restricted to a certain use or maintained in a certain fashion. This provides for some flexibility to lands that are contaminated. If the contaminated property is cleaned up to a certain standard where only an industrial use is permitted, for example, a conservation easement could prevent any other use. A trust is set up to ensure that the property is maintained in a particular way but the owner still gets to use the property. The Land Conservation Council is created under the Act to oversee trusts that hold and enforce conservation easements.

O.C.G.A. §§ 36-44-1 – 23 (1985) – The Redevelopment Powers Law (1985) (amended in 2004).

The purpose of the Redevelopment Powers Law as defined in ***§ 36-44-2***, was to encourage the redevelopment of economically/socially depressed areas. Of course, contaminated properties (brownfields) tend to depress property values and create sore spots in a community. This law allowed local governments to join with private entities to come up with ways to revitalize the community.

One vehicle outlined in the law (***§ 36-44-8***) was the creation of a tax allocation district(TAD). A TAD would create a specified district where the value of the properties inside the TAD would stay the same for a period of time for tax purposes. The revenue from that base tax would be placed in the general fund. However, when the property is redeveloped, the value of the property would increase but the additional value would be taxed and the revenue placed in a special allocation fund. That special fund would be used to pay for certain amenities benefitting the properties in the TAD (e.g. bonds for sidewalks, sewers, street lights etc.). So in essence, a TAD would help finance a portion of the redevelopment effort. ***Section 36-44-22*** provides information on what is required to set up a TAD – from the General Assembly approving the local government's authority to the need for voters in the district approving the TAD project.

O.C.G.A. §§ 44-16-1 et seq. (2008) - Georgia Uniform Environmental Covenants Act of 2008 (GUECA).

GUECA allows the EPD flexibility to regulate the use of brownfields via an environmental covenant. The EPD has charge of the program and registers all covenants. However the enforcement of the covenant according to ***§ 44-16-11***, can be by any person as defined in ***§ 44-16-2. Section 44-16-2*** also provides the definition of an environmental covenant

as "a servitude arising under an environmental response project that imposes activity and use limitations."

Typically, when a contaminated site (brownfield) is to be clean up, there may be restriction on the long term use or activities that would be allowed on the property in the future. For example, residential housing may be prohibited or the EPD may require that the property have continual groundwater monitoring and remediation activities. The act works in that the environmental covenant and the corresponding restrictions would run with the land per ***§ 44-16-5(a)***. Even though a zoning ordinance may typically dictate the use of the property, ***§ 44-16-6*** restricts the use of the property to the terms of the environmental covenant.

O.C.G.A. §§ 12-8-100 – 108 (2009) - Georgia Voluntary Remediation Program Act of 2009 (VRP).

This Act streamlines and advances the voluntary remediation process by making the cleanup of sites under HSRA or under the Georgia Brownfields Act more efficient. The VRP essentially takes precedence over any conflicting language in HSRA and Georgia Brownfields Act. However, the VRP does not provide any liability protection. Persons would have to rely on the protections afforded under HSRA and the Brownfields Act.

VRP Properties. Any property that is listed on the HSI under HSRA, or is designated as a brownfields under the Brownfields Act or has had a release of a regulated substance can be enrolled under the VRP according to ***§ 12-8-105(1)***. However, ***§§ 12-8-105(2)(A), (B)*** restricts properties listed on the federal NPL, or under a EPA cleanup response, or permitted under RCRA or has an lien under ***§ 12-8-96(e)*** or ***§ 12-13-12(b)*** from being a part of a VRP. ***Section 12-8-105(2)(C)*** also restricts properties that require a Georgia hazardous waste facility permit and properties that only have petroleum releases from being in the VRP.

VRP Persons. Future purchasers as well as current property owners are included in the VRP. The VRP in ***§12-8-106(1)*** actually opens the program to any person who has a right to enter someone else's property to remediate (like a tenant or a third person whose contamination plume spread into neighboring properties).

VRP Enrollment. To enroll in the program, the applicant must follow ***§12-8-107*** and

1. Submit a voluntary remediation plan to the EPD
    a. The plan must be prepared by a licensed professional engineer/geologist
    b. The plant must document a process for bringing the property into compliance using VRP standards.
2. Pay the $5,000 application fee
3. Follow the VRP application form and checklist from the EPD's website.

VRP Standards. The cleanup standards under the VRP differ from the CAP under HSRA. There is the mechanism in ***§ 12-8-108*** for using technical risk-based remediation, for doing modeling and not having to be locked into type 1-4 reduction standard controls. And specifically, ***§ 12-8-108(9)*** provides an exception to having to use a specific standard of remediation if it is technically impracticable (as long as there is no danger to human health and the environment).

O.C.G.A. § 48-5-7 (2003) - Ad Valorem Taxation Act of 2003.

This act provides tax incentives for brownfields by giving a preferential assessment to the property value for tax purposes. The property first has to be certified as a brownfield site. ***Section 48-5-7.6*** gives guidance to the definition of a brownfields. The owner then has to apply to the county board of tax for the assessment according to ***§ 48-5-7.6***. The county is required to respond in 90 days according to ***§ 48-5-7.6(d)(1)***. The assessment essentially freezes the ad valorem value of the property for ten years, or until the certified cleanup costs have been recovered.

Georgia Laws

1. GA ADC 391-3-19; Ga Comp. R. & Regs. 391-3-19. These rules and regulations were developed to implement the Georgia Hazardous Site Response Act, ***O.C.G.A. §*** 12-8-90 et seq. The rules and regulations include definitions from federal statutes like CERCLA and SARA and incorporates EPA guidance publications like SW-846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods". It also details release notification, what substances and soil concentrations trigger the need for notification, how properties are listed on the HSI and the various classifications of the properties as well as risk reduction standards that are used for cleanup. In addition, it has provisions from the Georgia Brownfields Act ***O.C.G.A. § 12-8-200.***

2. GA ADC 391-3-11; Ga Comp. R. & Regs. 391-3-11. This section provides direction on Hazardous Waste. These rules were promulgated based on the authority given by HSRA ***O.C.G.A. § 12-8-90***, the Georgia Brownfields Act ***O.C.G.A. § 12-8-200*** and the Georgia Hazardous Waste Management Act ***O.C.G.A. § 12-8-60***. It details the notification of hazardous waste activities, standards applicable to generators of hazardous waste, enforcement and land disposal restrictions.

3. GA ADC 391-3-15; Ga Comp. R. & Regs. 391-3-15. Brownfields often contain underground storage tanks which need to be either removed or at least remediated. This EPD rule details how the UST Trust Fund is used to assist in cleanup situations. The section also includes corrective action plan requirements and third party responsibilities.

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Secondary Sources

Georgia Reports and Programs

1. Revitalizing Southeastern Communities: A Brownfields Toolkit. This toolkit provided by the EPA Region IV provides state entities with a host of resources needed to have a successful redevelopment in the Southeast. The toolkit contains examples of several successful projects and guidelines for the revitalization of communities.

2. The Voluntary Remediation Program does not have any formal guidance documents but the EPD is using the Frequently Asked Questions page as guidance.

3. EPD guidelines for a Model Environmental Covenant are found at http://www.gaepd.org/Documents /uec.html.

4. Carolyn Bourdeaux & John Matthews, *Georgia's Redevelopment Powers Law: A Policy Guide to the Evaluation and Use of Tax Allocation Districts* 3, Research Atlanta Inc., Georgia State University, Andrew Young School of Public Policy (2004). This report outlines how Tax Allocation Districts were used to redevelop communities in Georgia. Brownfield redevelopment sites like Atlantic Station, Atlanta GA is used as a case study in this report.

Federal Rules, Reports and Programs

1. Region IV State Report, EPA, (last visited Apr. 25, 2010). It provides a summary of all brownfield programs within Region IV (Al, Fl, Ga, Ky, Ms, NC, SC, Tn.) of the EPA. It includes a summary of the Georgia program and highlights some provisions under the Georgia Brownfields Act and HSRA that is helpful to redevelopment.

2. EPA Region IV Brownfields Program. This program provides funding to the states in Region IV to help with the redevelopment of brownfields. See the link to the EPA website for how to apply and additional resources available.

3. Brownfields Economic Redevelopment Initiative. To assist in the redevelopment and reuse of brownfields, the EPA in 1995 rolled out the Brownfields Economic Redevelopment Initiative. It supports brownfield remediation and redevelopment via several pilot programs.

4. Brownfields Action Agenda. The EPA started this program to help support brownfields development efforts. The Brownfields Action Agenda committed the EPA to the following:

a. The EPA pledged to fund at least 50 brownfields pilots at up to $200,000 per pilot. The EPA has since invested over $20 million in over 100 projects.

b. The EPA reviewed the NPL list and began to delete properties off that list to help remove the stigma of being listed. Liability waivers were provided to prospective purchasers by the EPA.

c. The EPA provided guidance on the use of Comfort Letters to sellers and buyers of voluntary clean up sties (where the EPA assured the recipients that they would not take enforcement action at those sites).

5. RCRA Brownfields Prevention Initiative. In 2002, the RCRA Brownfields Prevention Initiative pushed for statutory and regulatory flexibility in RCRA to help speed up the site cleanup process, tackle redevelopment issues and help the agency and regulated entity come to a quick consensus.

Encylopedias

Georgia Jurisprudence

1. Mary Babb Morris, *Covenants and Restrictions*, 2 Ga. Jur. Property § 20:5.50 (2010). (1) Explains each section of the OCGA relating to environmental covenants.

2. Rachel Kane, *Hazardous Site Response Act*, 9 Ga. Jur. Environmental Law § 6 (2010). (1) Reviews the requirements under HSRA for cleanup. (2) Considers due process requirements in HSRA (before the EPD director can recover cleanup costs). (3) Includes a comparison of HSRA to CERCLA.

3. Mary Ellen West, *Environmental Insurance Coverage Issues - Evolution of Pollution Exclusion Clause*, 9 Ga. Jur. Environmental Law § 16:1 (2010). (1) Gives some background on the liability for a release under CERCLA and HSRA (that is joint and several). (2) Notes that because of such strict liability, a party who is merely connected with a release could be faced with huge liability even though they are not at fault for the release. (3) Provides options for environmental insurance because of such liability associated with environmental regulations.

New Georgia Encyclopedia

1. Brownfields, http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-3778 (last visited Nov. 10, 2010). This site provides a quick description of the Brownfields program in Georgia. It also gives examples of redevelopment projects.

Law Review Articles

1. Emilee Mooney Scott, ***Bona Fide Protection: Fulfilling CERCLA's Legislative Purpose by Applying Differing definitions of "Disposal,"*** 42 Conn. L. Rev. 957, 965 (2010).

CERCLA and its amendments are discussed in this article as an introduction to the liability of owning/purchasing/developing a contaminated property. The author considers the change in US cities from industrial centers and the move towards urban revitalization. The author then focuses on the liability protection afforded an "innocent landowner" under the CERCLA amendments and conflicting case law relating to the definition of "disposal" (where an innocent landowner has to show that they did not *dispose* of the contaminants on the property).

2. Anne Marie Pippin, ***Community Involvement in Brownfield Redevelopment Makes Cents: A Study of Brownfield Redevelopment Initiatives in the United States and Central and Eastern Europe***, 37 Ga. J. Int'l & Comp. L. 589 (2009).

The author considers the growth and urbanization of the US as a factor in spurring on the redevelopment of brownfields. She considers federal legislation that has propelled the brownfield program. The article then notes the benefits of brownfield redevelopment and the need for community involvement. The author finally looks at Central and Eastern Europe and the strides taken towards redevelopment there.

3. Amy Pilat McMarrow, ***CERCLA Liability Redefined: An Analysis of the Small Business Liability Relief and Brownfields Revitalization Act and Its Impact on State Voluntary Cleanup Programs***, 20 Ga. St. U. L. Rev. 1087 (2004).

The history of CERCLA and its amendments are noted in this article. The author considers the goals of CERCLA, its liability scheme and whether CERCLA has indeed accomplished its goals. The author then focuses on the amendments to CERCLA that have been beneficial to brownfields redevelopment and specifically considers changes in

the Georgia legislation relative to redevelopment efforts.

4. Hidi Gorovitz Robertson, ***Legislative Innovation in State Brownfields Redevelopment Programs***, 16 J. Envtl. L. & Litig. 1 (2001).

This article looks at the cleanup standards of brownfield sites in several state and the mechanisms used to promote redevelopment. Risk based cleanup standards from various state and federal programs are analyzed in the article and the link between cleanup standards to future property use and deed restrictions are also highlighted. The articles concludes by considering the external environmental implication of such cleanup standards.

5. Janet L. Bozeman, ***Project XL: Should it be Used to Wage War on Urban Sprawl?***, 16 Ga. St. U. L. Rev. 625 (2000).

The author presents the EPA's Project XL which has been used to help encourage the cleanup of contaminated property (the redevelopment of brownfields) while limiting liability. The author presents a critique on how the program should be used to revitalize urban areas.

6. Joan B. Sasine & Anne H. Hicks, ***Rehabilitating Environmentally Challenged Properties-Private Solutions for Informed Investors***, 441 PLI/Real 991 (1999).

This article specifically looks at the issues of brownfields in Georgia. It considers the potential for liability as well as the limits of the Georgia Brownfields Law. The authors critiques what they consider a lack of incentives provided in Georgia in 1999 for brownfield redevelopment. However, the authors highlight creative efforts from private industry to help accomplish brownfield redevelopment.

7. Amy E. Major McGruder, ***Conservation and Natural resources Water Resources: Impose Civil Penalties Upon Public Water Systems for Certain Violations; Provide for Limitation of Liability Under the Georgia Hazardous Site Reuse and Redevelopment Act; Change Criteria for Exemption of Certain Property from Liability***, 15 Ga. St. U. L. Rev. 21 (1998).

This law review article provides the legislative history of the 1998 amendments to the Georgia Brownfields Act. It summarized what parts of the code were added or deleted in this version of the act and provides that sponsors of the bill in the Georgia House of Representatives and Senate.

8. Becky L. Jacobs, ***Basic Brownfields***, 12 J. Nat. Resources & Envtl. L. 265 (1997).

The author provides a history of environmental legislation noting the liability associated with the environmental requirements for contaminated lands. The author then considers the development of brownfield laws to help encourage redevelopment and bring lenders, developers and owners to the table.

9. Leslie Goff-Sanders, ***Brownfield Legislation: A Viable Option for the Southeast***, 12 J. Nat. Resources & Envtl. L. 141, 153 (1997).

The article considers the environmental challenges presented by contaminated property. The author then considers how the states of Georgia, Florida and Kentucky have introduced legislation to encourage brownfields redevelopment.

10. Andrea Lee Rimer, ***Environmental Liability and the Brownfields Phenomenon: An analysis of Federal Options for Redevelopment***, 10 Tul. Envtl. L.J. 63, 66 (1996).

The author in this article highlights the serious problem posed by the increased number of brownfields and the liability faced by owners. The author then looks at what would be needed to spur on redevelopment efforts including (1) limiting liability, (2) providing financial incentives, (3) using voluntary cleanup programs and considering future land use. This article was written before some federal legislation was passed to help promote brownfield redevelopment but it still provides some viable suggestions on how to continue moving forward with redevelopment.

11. Shannon Freeman, ***Waste Management: Change Certain Hazardous Substance Reporting Fees, Limit Liability of Subsequent Purchasers of Certain Property; Exempt Certain Persons from Third-Party Liability; Provide Corrective Action Plan for Certain Property,*** 13 Ga. St. U. L. Rev. 54, 59 (1996).

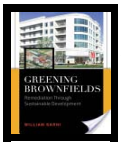
This article provides the legislative history of O.C.G.A. §§ 12-8-200 – 210 (1996) - Georgia Hazardous Site Reuse and Redevelopment Act of 1996. The author notes the potential negative economic impact of the HSRA legislation on Georgia and the need for the Act to help limit liability and promote redevelopment.

American Law Reports (ALRs)

Innocent Owner Status Under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Randy J. Sutton, JD, LLM, 12 A.L.R. Fed. 2d 161. This ALR discusses cases where property owners under CERCLA have attempted to use the innocent owner defense. This defense provides protection from liability if certain criteria is met.

William B. Johnson, Validity, construction, and application of state hazardous waste regulations, 86 A.L.R.4th 401. This ALR contains caselaw, statutes and rules on the state regulatory requirements pertaining to hazardous wastes or substances. It discusses state fund programs to pay for remedial action and also documents various requirements for the generation, transportation and treatment, storage or disposal of hazardous waste.

Treaties and Books



1. William Sarni, Greening Brownfields: Remediation through Sustainable Development (McGraw-Hill 2010).

The author looks at global trends relative to population growth and urbanization and the need for greening and land development. He then considers the environmental regulator drivers and includes an international perspective and includes pieces on Japan, China and the European Community. The author then goes into the process of how to make brownfield sites more sustainable including the financial considerations and incentives. Several case studies are highlighted including Atlantic Station in Georgia.

2. John C. Spinrad, David L. Hoffman, Georgia State Laws ***in*** Brownfields Law and Practice, (Michael Gerrard ed. Matthew Bender Publishing Company 2010).

The authors provide a summary of laws and programs relating to brownfields in Georgia. Topics include eligibility limitations to certain persons and properties, Brownsfield

requirements for dealing with HSRA sites, the five cleanup standards in Georgia and the VRP.

3. Brownfield Sites III: Prevention, Assessment, Rehabilitation and Development of Brownfield Sites (C. A. Brebbis & Ulo Mander, eds., WIT Press 2006).

This book provides the foundation on how to handle brownfield sites from an international perspective via a compilation of articles. It specifically includes a piece called Brownfields and Urban Design: Learning from Atlantic Station, which describes lessons learned from the redevelopment of a steel mill in Atlanta, Georgia.

4. Robert V. Percival et al., Environmental Regulation Law, Science, and Policy (5th ed. 2006).

The authors take an in depth look at federal environmental regulations in this book. The statutes addressed in the book includes CAA, CWA, RCRA, CERCLA, TSCA etc. The authors also highlight how those regulations have been shaped by case law.

5. Brownfields: A Comprehensive Guide to Redeveloping Contaminated Property (Todd S. Davis, ed., 2nd ed., American Bar Association 2002).

This books provides a comprehensive guide to brownfields. It is broken into several chapters with different authors providing information on a wide variety of topics. The book includes what to consider if purchasing a brownfields site, the financing issues, valuation of the property, insurance consideration for the transaction and property and the role of the community in redevelopment efforts. The book also considers state specific brownfield laws and programs. Author Gerald L. Pouncy tackles the status of brownfields in Georgia starting on page 534.

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Interest Groups and Associations

Interest Groups and Associations

National Brownfield Association – Georgia Chapter

The Georgia chapter of the National Brownfield Association (NBA), focuses on encouraging the responsible redevelopment of brownfields via awareness of the economic and environmental benefits to the local community. The association includes government, businesses and individuals who all play a role in the success of brownfield projects. The GNBA also is involved in sustainable redevelopment and encouraging green buildings on brownfield sites.

Georgia Industry Environmental Coalition

This is a not-for-profit organization comprising of several Georgia industries that are subject to environmental regulations. The purpose of the coalition is to be a voice for Georgia's industry with respect to environmental regulations and policies. The members encourage such regulations that are "founded on protection of human health and the environment, sound science, and cost/benefit principles." The organization also supports its members by holding workshops relative to environmental regulations and specifically Georgia Brownfields. The most recent was the VRP Workshop held in July 2010.

National Association of Local Government Environmental Professionals (NALGEP)

This organization is made up of government professionals who have responsibilities around environmental compliance. The group has been involved with brownfield redevelopment for over ten years.

NAIOP

This is the Commercial Real Estate Development Association. The association is made up of developers, owners and other professionals who are involved in office space and industrial real estate. The organization also provides training opportunities for members and has engaged in the support of Brownfield redevelopment.

International City/County Management Association

The association encourages the transparency and efficiency of local governments. Even though it is an international association, it helps US local governments with specific programs. Some of the programs the association has been involved in include the Center for Performance Measurement and the Smart Growth Network. The association is also a sponsor of the 2011 Brownfields Conference.

Association of State and Territorial Solid Waste Management Officials

This association allows state officials to communicate in a forum where ideas/programs could be shared with the goal of having effective programs for waste and materials management. They encourage sustainable practices which includes brownfields. The association also seeks to affect national waste and materials management policies. They have a good CERCLA and Brownfields center with information on state site assessments, state workshops, and operations and maintenance costs of superfund sites.

Smart Growth America

This organization is made up of other national, state and local organizations working. Their focus is to improve the way we construct and layout communities. Some Georgia organizations participating in this organization include the Atlanta Neighborhood Development Partnership, The Georgia Conservancy and the Livable Communities Coalition.

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Computerized Research

Search Engines

1. Google – the google advanced search function allows a search by key words and within a date range. Google directory also allows you to narrow your search to just the law section.

2. GPO Access - this government database contains the United States Code, the Federal Register and legislative history of US laws.

3. Loislaw – the low cost option for legal document searches.

4. LexisNexis – a vast search engine which has features to allow you to just focus on environmental documents when performing your search using RODS or ALLEPA databases.

5. Westlaw – an all inclusive search engine with the option to set databases such that only Georgia items will be retrieved after a search.

Search Terms

Brownfield Redevelopment

Conservation Easement

Contiguous Landowner Defense

Due Diligence

Environmental Covenant

Environmental Release

Hazardous Site Inventory

Innocent Landowner

Lender Liability

Prospective Purchaser Defense

Qualified Brownfields Property

Regulated Substance

Revitalization

Helpful Internet Sites

1. About Brownfields, Brownfields and Land Revitalization, U.S. EPA, http://www.epa.gov/brownfields/about.htm (last visited Oct. 20, 2010).

2. Shannon Ridley, Brownfields Redevelopment, Georgia Environmental Protection Division, http://www.atlantaga.gov/client_resources /government/planning /brownfields/4%20-%20ga%20state%20epd.pdf (last visited Oct. 20, 2010).

3. Brownfield Redevelopment and Public Health, Georgia Division of Public Health, http://health.state.ga.us/pdfs/hazards/brownfld-bro.final.pdf (last visited Nov. 4, 2010).

4. Brownfields Center at the Environmental Law Institute.

5. Project XL, EPA, http://www.epa.gov/projectxl/complete.htm (last visited Nov. 5, 2010).

6. Georgia Land Conservation Program, Conservation Easements FAQs, http://glcp.georgia.gov/00/channel_title/0,2094,82613131_82971403,00.html (last visited Nov 5, 2010).

7. Georgia's Brownfields Program Presentation, Department of Natural Resources, http://www.rpcgb.org/brownfields/Georgia%20Brownfield%20Program.pdf (last visited Oct. 20, 2010).

8. Jacoby Development Corp. & CRB Realty and Lawrence D. Frank, An Application for Designation Under Project XL, The Redevelopment of Atlanta Steel Site in Central Atlanta, 34, http://www.epa.gov/ProjectXL/atlantic/091198.pdf (last visited May 4, 2010).

9. Governor signs Georgia Voluntary Remediation Program Act: Contaminated Site Standards Become More Flexible, May 11, 2009, http://www.seyfarth.com/dir_docs/news_item/d3e4f100-860f-4c24-9a6a-493901a9af3e_documentupload.pdf.

10. Voluntary Remediation Program Frequently Asked Questions, Georgia Environmental Protection Division, http://www.gaepd.org/Files_PDF/VRP/VRPFAQ.pdf (last visited Nov. 4, 2010).

11. Superfund Liability: A Continuing Obstacle to Brownfield Redevelopment, Report of the Brownfield Acquisition Task Force 11, http://www.resourcesaver.com/file/toolmanager/CustomO93C337F72956.pdf (last visited Oct. 2, 2010).

12. Do We Have the Hazardous Site Response Act?, GIEC, http://www.giec.org/documents/5-30EPDHSRAPres.pdf (last visited Nov. 1, 2010).

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