

KAZMAREK GEIGER & LASETER LLP

ENVIRONMENTAL ADVISORY

Update on the Georgia Environmental Protection Division's Plans for the New Voluntary Remediation Program

As most members of the regulated community have probably heard by now, Governor Purdue signed Georgia's Voluntary Remediation Program (the "VRP") into law on May 6, 2009. Once implemented, the VRP promises a number of important benefits including potential relief from the most stringent groundwater criteria through point-of-compliance monitoring, a true risk based approach to soil clean ups, and opportunities to revisit the original listing of sites placed on the hazardous site inventory, among others.

Like all other agencies of state government, however, the Georgia Environmental Protection Division ("EPD") finds itself under extreme budget pressure. As a result, EPD is attempting to discourage VRP applications. More particularly, EPD posted a website message for potential VRP applicants that says:

While the Environmental Protection Division appreciates your interest in participating in this program, EPD did not receive any funding in either the 2009 or 2010 state fiscal years to implement Georgia's Voluntary Remediation Program.

Until EPD receives sufficient funding and regulations pursuant to the Voluntary Remediation Program Act have been adopted, we are unable to accept participants in Georgia's Voluntary Remediation Program.

Parties with little urgency to progress towards regulatory closure will likely wait to see whether EPD evolves towards using the concepts embodied in the VRP law at those sites that would otherwise appear to qualify for participation under the program. However, there will likely be some parties directly and adversely affected by EPD's delay. Just as examples, some parties may face contractual obligations to achieve regulatory closure or may need such closure for financing or marketing purposes. At many sites, such closure would appear readily achievable under the new VRP but would be vastly more expensive (or even impossible) under the existing HSRA program.

For such parties, among the significant features of the VRP law are provisions allowing aggrieved parties to appeal decisions by EPD's director in the same manner afforded under the Georgia Administrative Procedures Act for actions by other state agencies. Therefore, it is not hard to imagine that a prospective applicant with a sufficiently pressing need for the sorts of relief promised by the VRP might challenge any refusal by EPD to accept an otherwise qualifying application.

If you have questions about how the evolving VRP might impact particular sites, please feel free to contact Scott Laseter, slaseter@kglattorneys.com, 404-812-0844, for further information.