

**Joint Hazardous Sites Response Act
Reauthorization Study Committee
2001**



**House Research Office
Georgia House of Representatives**



The General Assembly

Atlanta, Georgia 30334

January 11, 2002

The Honorable Roy Barnes, Governor
The Honorable Mark Taylor, Lieutenant Governor
The Honorable Thomas B. Murphy, Speaker of the House
Members, Georgia General Assembly

In accordance with House Resolution 174, 2001 Regular Session, we respectfully submit the final report of the Joint Hazardous Sites Response Act Reauthorization Study Committee.

The Study Committee met four times this past year and successfully concluded its work. Presented in the enclosed report are the Study Committee's findings and recommendations. Chief among the Study Committee's findings and recommendations is that the fees used to fund the State Superfund cleanup program should be reauthorized with an appropriate increase beyond their sunset date of July 1, 2003.

Thank you for the opportunity to study this important issue and present the enclosed report.

Sincerely

Representative Tom E. Shanahan
Co-Chairperson

Senator Carol Jackson
Co-Chairperson

**Joint Hazardous Sites Response Act
Reauthorization Study Committee**

Members of the Committee

**Senator Carol Jackson, Co-Chair
Representative Tom Shanahan, Co-Chair**

Senator Bob Guhl

Representative Bill Jackson

Senator Billy Ray

Representative Jim Stokes

Mr. Gerald Pouncey

Mr. Tommy Stalnaker

Mr. Mack Belue

Mr. Steve Levetan

Mr. Darahyl Dennis

Mr. Claude Terry

Mr. Harold Reheis, Director, GaEPD

Committee Staff

Paula Golden, Secretary
House Natural Resources Committee

Brad Borum, Policy Analyst
Senate Research

K. Gardner Sapp, Research Analyst
House Research Office

Prepared by K. Gardner Sapp

Table of Contents

Letter of Transmittal	. . . . .	ii
Committee Members and Staff	. . . . .	iii
Table of Contents.	. . . . .	iv
Report of the Joint Committee	. . . . .	5
Recommendations of the Joint Committee	. . . . .	8

Introduction and Purpose

The Hazardous Site Response Act (hereinafter referred to as "the Act") was created by the Georgia Hazardous Waste Management Act of 1979 and expanded in 1992 to its current form. The Act authorized the Georgia Environmental Protection Division (GaEPD) to locate, catalog and clean up sites that had been contaminated by hazardous chemicals and which presented a threat to human health as a result of that contamination. These sites are sites that have not been placed onto the federal superfund list for various reasons – the most likely reason being the relative severity of the contamination and, therefore, those sites are not covered under federal superfund cleanup funding. The Act enabled GaEPD to use Hazardous Waste Trust Fund (HWTF) proceeds to contract with entities capable of cleaning these sites in instances where the owners were either financially unable or unwilling to perform the clean up work themselves. The HWTF was established along with the Act and the funds are collected from any entity, including industries and governmental agencies, that produces, handles or disposes of hazardous waste, solid waste or other materials specified in the Act. Currently, there are 533 sites on the Georgia Hazardous Site Inventory with 124 sites having been completely investigated and cleaned up to date. Clean ups and site investigations are currently underway at 82% of the remaining 533 sites.

The Georgia General Assembly passed the Act with a sunset provision dated June 30, 2003, upon which date the authority to collect the hazardous materials fees will expire. To address the Act's impending sunset provisions, the Georgia General Assembly passed House Resolution 174 on March 21, 2001, which created the Joint Hazardous Sites Response Act Reauthorization Study Committee (hereinafter referred to as "the Committee"). The Governor signed House Resolution 174 into law on April 27, 2001, designated as Act #36, 2001.

The Committee consists of the following appointees:

- Three members from the Senate (one of whom shall be co-chairperson) appointed by the President of the Senate;
- Three additional members appointed by the President of the Senate: one who represents the interests of environmental groups, one who represents the interests of business and industry and one who represents the interests of municipal corporations;
- Three members from the House (one of whom shall be co-chairperson) appointed by the Speaker of the House;
- Three additional members appointed by the Speaker of the House: one who represents the interests of environmental groups, one who represents the interests of business and industry and one who represents the interests of counties;
- The Director of the Georgia Environmental Protection Division, who shall serve as a member and provide information but shall have no vote on any matter before the Committee.

The Committee was created to undertake a study of the conditions, needs, issues, and problems regarding the Hazardous Waste Trust funding shortfall, including a review of experience with the Hazardous Sites Response Act to determine what improvements might allow for more cost effective results, and to recommend any actions or legislation which the committee deems necessary or appropriate. In the event the committee makes a report of its findings and recommendations, with suggestions for proposed legislation, if any, such report shall be made on or before December 1, 2001. The committee shall stand abolished on December 1, 2001.

Membership, Meetings and Hearings

The following is the Committee membership:

Senator Carol Jackson, Co-Chair	Mr. Tommy Stalnaker
Representative Tom Shanahan, Co-Chair	Mr. Mack Belue
Senator Bob Guhl	Mr. Steve Levetan
Representative Bill Jackson	Mr. Darahyl Dennis
Senator Billy Ray	Mr. Claude Terry
Representative Jim Stokes	Mr. Harold Reheis, Director, GaEPD
Mr. Gerald Pouncey	

The Committee met a total of four times: August 22, 2001, September 20, 2001, October 11, 2001 and November 5, 2001. During these meetings, the Committee heard commentary on the history of the Act, the status of hazardous site clean-ups that have been performed, the status of on-going site clean-ups, the past and current financial status of the program and predictions of future costs associated with site cleanups - as well as the likely addition of newly discovered sites to the Hazardous Site Inventory and the burden that clean up of those sites will place on the Hazardous Waste Trust Fund. In addition to hearing commentary from the members who were charged with representing environmental groups, business and industry, municipal corporations and county concerns, the Committee also heard concerns expressed by other persons and group representatives who attended the meetings.

Discussion

At the heart of the Committee's charge was the reauthorization of the fees. In discussions, the general consensus was inclined toward reauthorization of the fees. It was readily apparent that the benefits of the Act were desirable and necessary for the protection of the public's health and environment and that the reauthorization of the fees was necessary to continue to reap these benefits.

Among the concerns expressed during the meetings, the projected revenue shortfall for the HWTF was the most serious. Projected shortfall figures ranged in amount dependent upon what decisions the General Assembly would make regarding the fee reauthorization (whether the

General Assembly would reauthorize the existing fees or increase fees or choose not to reauthorize the fees at all). Further, the projections take into consideration the addition of new sites to the Hazardous Site Inventory. The projected costs varied depending on who made the calculations and whether an inflationary adjustment was made. Projected costs for the Hazardous Site Program for fiscal years 2003 through 2013 total nearly 270 million dollars. Of that total, approximately 125 million dollars is expected to be used for currently listed sites, approximately 100 million dollars is projected for the remediation of permitted landfills that are not currently listed on the Hazardous Site Inventory, 10.8 million dollars is expected to be appropriated to the Pollution Prevention Assistance Division, and roughly 34 million dollars is expected for operational costs. If the General Assembly chooses to do nothing and the fee collection is not reauthorized, there will be some revenue generated from fines – which is a source of revenue for the fund without reauthorizing the act to allow for the assessment of fees - but the total projected shortfall to the program would total nearly 245 million dollars. If the General Assembly decides to reauthorize the fee collection at the current rate, the total projected revenue shortfall is expected to be nearly \$162 million. Among several ideas suggested to aid the funding shortfall, three options exist: an increase in the fee structure; a direct appropriation by the Legislature to the program; or a lowering of cleanup standards to reduce the number of sites on the hazardous site inventory.

In addition to the trust fund revenue shortfall there is concern that counties and municipalities that operate publicly owned landfills pay a disproportionate amount into the HWTF in the form of fees for the disposal of solid waste, but there is little received benefit. In addressing the issue regarding the disproportionate cost that counties and municipalities pay into the fund, GaEPD indicated that of all the old landfills that exist, 99% of those are unlined and will ultimately need to be cleaned up. Of those unlined landfills, it is projected that 90% of them will show signs of contamination and will ultimately need to be placed on the Hazardous Site Inventory. The benefit to the counties and municipalities who pay into the fund will come when those county and municipal-owned landfills need cleanup. Currently, there is a waiting list for clean up cost reimbursements from the HWTF. The representatives of the counties and municipalities urged the Committee to consider dedicating a certain percentage of revenue collected by the HWTF.

The Committee considered incentives for recycling. Among other options, the Committee favored waiving the fees connected with hazardous waste or substances which were recycled or reused on-site or off-site. This would provide business and governments with an opportunity to pay lower or no fees as currently provided in the Act.

With regard to the pursuit of responsible parties for cleanup, the Committee discussed several scenarios. The placement of liens on real property and subsequent foreclosure, civil suits in pursuit of responsible parties, and sale of lien interest were among the options discussed. Concern was raised over the liability the State might incur if GaEPD were to enter into the real estate business. Apart from the liability associated with the ownership of contaminated or even remediated land, there exists the possibility that the State might not find a buyer for the property it wishes to sell (obtained through foreclosure). Upon consideration, the Committee opted to recommend giving GaEPD additional resources to more effectively pursue responsible parties for the cost of site cleanup, including more effective lien statutes and enhanced ability to pursue liability insurers for those responsible parties.

A few Committee members and some persons who testified before the committee mentioned the need for more effective brownfield legislation. The current Georgia Hazardous Site Reuse and Redevelopment Act may need to be modified to allow for site cleanup and private ownership immunity that may not currently be on the Hazardous Site Inventory and, perhaps, to provide more incentives – either tax or otherwise – to increase participation in this program.

Concerns were raised over the administrative cost to landfill owners of the collection of solid waste fees associated with the HWTF. Currently there is no allowance for the administrative costs associated with collection of those fees.

Finally, the Committee agreed that continued study of the Hazardous Sites Response Act, the Hazardous Waste Trust Fund and the Hazardous Site Inventory is necessary to closely monitor any actions taken by the General Assembly regarding the Act.

Recommendations

Having met and heard the concerns voiced regarding the Hazardous Sites Response Act and the issues surrounding the program, the Committee makes the following recommendations and submits the following to the members of the House and the Senate:

1. All solid waste fees, hazardous materials reporting fees, and hazardous substance reporting fees should be reauthorized for a ten (10) year period, commencing July 1, 2003, and terminating June 30, 2013.
2. Solid waste fees should be increased from \$.50 per ton to \$.65 per ton beginning July 1, 2003, and to \$.75 per ton beginning July 1, 2008.
3. Delete all fees in connection with hazardous waste or substances which are reused or recycled either on-site or off-site.
4. Increase all other hazardous waste and hazardous substance reporting fees by 15 percent over a ten year period, beginning July 1, 2003.
5. Authorize any entity, either public or private, responsible for collecting and reporting solid waste management fees to deduct and retain 2 percent of all such fees collected to offset the cost of collecting and reporting said fees.
6. Beginning July 1, 2003, at least 50 percent of annual revenues appropriated by the General Assembly from solid waste management fees should be made available to local governments for cleanup costs for publicly owned landfills.
7. That EPD be given additional resources to more effectively pursue responsible parties for cost of cleanup of sites on HSRA list, to include enforceable lien statutes as necessary and

Joint Hazardous Sites Response Act Reauthorization Study Committee

enhanced ability to pursue liability insurers for responsible parties.

8. Propose passage of more effective brownfield legislation for the purpose of providing incentives to encourage private cleanup of contaminated sites, whether or not such site is included on HSRA list, including tax incentives, some form of immunity for the private party purchaser, and a fee or cost structure designed to make the program self-supporting.
9. Creation of a Joint Study Committee for the purpose of studying methods designed to increase the cost-effectiveness of the HSRA program and to make recommendations to the General Assembly by December 15, 2002.
10. Urge EPD to continue to work with the Dept. of Defense to address concerns of DOD of fees charged to it under the HSRA program, and to potentially propose further recommendations to the General Assembly for consideration in the 2002 Regular Session.