



Air & Waste

Management Association

News for people with environmental vision

The Georgia Chapter

Second Quarter/ 2003

State Administrative Appeals: A Valued Public Forum for Environmental Decision-Making

By Justine Thompson, Executive Director, Georgia Center for Law in the Public Interest

Since the enactment of federal environmental laws such as the Clean Water Act, the Endangered Species Act and the Clean Air Act, environmental litigation by members of the public has become commonplace both in Georgia and across the nation. Here in Georgia, landmark cases such as Sierra Club v. Martin, 168 F.3d 1 (11th Cir. 1999) (halting timber sales in Georgia), Sierra Club v. Hankinson, 939 F. Supp. 865 (N.D. Ga. 1996) (requiring the establishment of TMDLs), and others, have resulted in significant changes in how the State's natural resources are managed and protected. In the past, these and other matters have typically been resolved through our federal court system. While federal court has been the preferred forum for environmental litigation in the past, recently, many important environmental cases have found their way to a very different forum, Georgia's Office of State Administrative Hearings (OSAH).



OSAH Activities Increasing

Georgia law provides that any person who is "aggrieved or adversely affected" by any order or action of the Director of the Environmental Protection Division (EPD), including the issuance of a permit by the Director, may obtain a hearing on the Director's order or action in front of an administrative law judge. O.C.G.A. §§ 12-2-2(c)(2); Department of Natural Resources ("DNR") Rule 391-1-3-.02(1). This statutory right to appeal EPD's actions has been available to Georgia's citizens for years, but recently, use of this right has increased. While an average of only twenty-nine appeals occurred annually between 1995 and 1998, the average has now jumped to forty, annually.¹

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Keep Us Up-to-Date!

We hope that you find value in the publications and activities provided by the Georgia Chapter. In order to keep this information coming, we count on you to keep us up-to-date on your contact information. If you anticipate changing e-mail addresses, or have a preferred way for us to reach you, please drop us a line or visit our web site and follow the instructions to Subscribe (www.gaawma.org). Also, if any of your colleagues would appreciate joining the Chapter, please send them our way.

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Air & Waste Management Association Newsletter is a quarterly publication of The Georgia Chapter of the Air & Waste Management Association.

Our mission is to promote a cleaner, safer environment in Georgia by focusing on air and waste issues. We achieve our mission through information transfer, technology exchange, education and environmental leadership.

Comments or questions about this newsletter or any of the functions of Air & Waste Management Association are encouraged.

Articles printed in the Air & Waste Management Associations Newsletter are intended solely to provide the reader with information on topical issues and to spur discussion on these issues. They do not constitute legal advice and do not attempt to offer solutions to specific problems. Neither Air & Waste Management Association nor any of the contributors to this newsletter are responsible for any loss or damage incurred by any part as a result of reliance on any information provided herein.

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AIR & WASTE MANAGEMENT
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Scholarship Opportunities

The Air & Waste Management Association will award two \$1500 scholarships at the AWMA Southeastern Section conference, which will be held July 30 through August 1, 2003 in Savannah. The scholarships will be awarded during the lunch session on July 30, 2003. We seek to award the scholarships to two graduate students conducting research on a topic related to air quality, waste management, pollution prevention, environmental policy/compliance, sustainability, or a related topic. Any interested students engaged in this type of research should submit a brief descriptive abstract (one page or less) no later than Thursday, July 3, 2003.

The recipients will be recognized at the conference, and will have an opportunity to briefly describe their research to conference attendees. The scholarships will be awarded in a lump sum to the recipient at the conference.

The abstracts should be e-mailed to riroutma@southernco.com. The abstracts should briefly describe the thrust of the research, research mechanics, and the benefits. Please include your mailing address. Should you have any questions, please contact Rochelle Routman at 404-506-7780.

“SAVE THE DATE”



Air & Waste Management A s s o c i a t i o n

Karen Dorman, Chair

GEORGIA CHAPTER

“BROWN BAG LUNCHEON”

Date: Friday, June 13
11:30 to 1:30

Speaker: Nancy Gilbreath, Environmental Engineer
Southern Company Services, Earth Science
and Environmental Engineering

Topic: ***The SPCC Amendments Rule: A Georgia Power
Company Perspective***

Location: EPD Tradeport Training Room
Directions will be provided in a future mailing.

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According to Harold Reheis, Director of the Environmental Protection Division (EPD), these recent administrative appeals have placed a financial strain on the agency. During the October 2002 Board of Natural Resources meeting, Reheis provided the Board with an overview of appeals of EPD actions and expressed concern about the increasing costs related to defending these appeals.² When asked about this issue, Administrative Law Judge Jessie Altman likewise noted that there has been an increase in contested environmental cases referred to OSAH. She also indicated that these cases are significantly different from the routine cases typically handled by OSAH. Specifically, these recent cases are “more complex factually and legally, and if litigated, take longer to hear and decide.”³ According to Judge Altman, “[i]f there has been any impact to OSAH recently it has been the need to add newer ALJs to [OSAH’s] specialized rotation list to handle these cases.”⁴

OSAH and the Regulated Community

While the financial impact of increased OSAH appeals is important to consider, the debate regarding the use of OSAH as a forum for environmental litigation has taken an unfortunate turn in recent months. Specifically, the discussion has become a vehicle for criticism of third-party appeals by Georgia’s citizens. As an initial matter, this focus on third-party appeals by Georgia’s citizens ignores the type of appeals that are actually being filed. Administrative appeals are being filed both by members of the public *and* by the regulated community. For example, in the past three years, there have been a total of eighty-nine appeals filed by permittees or other members of the regulated community.⁵ During that same time period, there have been only twenty-nine⁶ appeals by members of the public seeking to strengthen or otherwise modify permits or other actions taken by EPD. Thus, the regulated community has filed an overwhelming majority (approximately 75%) of all appeals while members of the public have initiated less than 1 in 4 appeals.

OSAH and the Public

Nevertheless, due to the inaccurate impression that the public is abusing the administrative appeal process, policy makers may seek to limit public access to administrative forums under the guise of cutting costs. If anything, the increase in the number of appeals perceived by EPD reflects an increasingly informed citizenry. As Georgians become more aware of the impact of environmental decision-making on both Georgia’s economic future and the public health of its citizens, it follows that there would be a corresponding increase in actions taken by the public to ensure that government policies reflect the needs and desires of Georgia’s citizens to protect their quality of life. For example, it can hardly be disputed that Georgia has struggled in its efforts to meet health-based air quality standards. In fact, metro-Atlanta has not met air quality standards in the 31 years since Congress passed laws to protect the health of our citizens and reduce harmful air pollution. Currently, metro-Atlanta is a “non-attainment” area for ozone, meaning that the ozone levels fail to meet health criteria as required by federal law. Furthermore, according to the American Lung Association’s Report *State of the Air 2002*, the metropolitan Atlanta area ranks 6th in the nation for the most ozone-polluted cities. The metro-Atlanta area is also home to five of the twenty-five most ozone-polluted counties in the nation: Fulton, DeKalb, Douglas, Fayette and Rockdale counties. Given the serious nature of Georgia’s air pollution problems, it should be expected that the public affected by this pollution should seek to participate fully in the administrative process provided by law.

Georgia’s citizens have also become increasingly aware of the need to protect our water resources. With highly-publicized negotiations continuing between Alabama, Florida and Georgia to allocate water in Apalachicola-Chattahoochee-Flint (ACF) and Alabama-Coosa-Tallapoosa (ACT) basins, and the impact of the recent drought on both water quality and quantity, the public’s concern regarding the future of our water resources has only increased. As a result, the increase in administrative appeals reflects the desire of the public to voice concerns regarding current water management policies.

It is also significant that citizens have generally been successful when challenging EPD actions through the administrative process. While EPD boasts of a high success rate with respect to administrative actions, the statistics with respect to the category of citizen appeals does not support EPD’s position. Despite EPD’s successful defense of five of its decisions in the past three years following a full hearing, it is axiomatic that any measure of success must also include settlements that result in favorable outcomes for the petitioners. With respect to third-party appeals, the majority of claims result in settlements that include permit modifications or providing other relief requested by the petitioner. When one includes settlement, members of the public enjoy an approximate 75% success rate.⁷

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Public Access is Guaranteed

Even assuming that the public's efforts were not successful, a conclusion contrary to statistical evidence, public access to the administrative process is guaranteed by law. As discussed above, Georgia law specifically provides for the right to challenge decisions by the Director through the administrative process. O.C.G.A. §§ 12-2-2(c)(2); DNR Rule 391-1-3-.02(1). More significantly, this right is frequently guaranteed by *federal* law and cannot be abrogated by state action. States, such as Georgia, that administer the Clean Water Act's National Pollution Discharge Elimination System (NPDES) program are required to provide for judicial review of NPDES permits. Moreover, that process must be "sufficient to provide for, encourage, and assist public participation in the permitting process." 40 C.F.R. § 122.30. Furthermore, a state must provide an opportunity for review that is "the same as that available" with respect to federally-issued NPDES permits. *Id.* Given the comprehensive process provided for federally-issued permits, it is unlikely that Georgia's administrative process could be limited. Similarly, in *Virginia v. Browner*, 80 F.3d 869 (4th Cir. 1996), the U.S. Court of Appeals for the Fourth Circuit upheld the United States Environmental Protection Agency's denial of the State of Virginia's right to issue air pollution permits because Virginia did not give the public adequate access to judicial review of permits. *See also* 61 FR 34733, 34735 (July 3, 1996)(explaining that if a state court reaches a decision that renders the state Title V program less stringent than the federal Title V program, EPA will take appropriate action to withdraw the program from the state).

While public participation in the administrative process is here to stay, the financial impact of that participation must be addressed. The question remains: how can we reduce the financial impact of increased litigation on State resources? Sara Clark, a long-standing member of the DNR Board, believes that the suitable approach would not be to limit appeals, but to reduce the public's need to resort to the administrative process. Ms. Clark views the increase in appeals as an attempt by members of the public to seek and obtain a place at the table and symptomatic of the need to build bridges between DNR and the general public. Donald D.J. Stack of Stack & Associates, an attorney who has brought numerous administrative actions on behalf of members of the public, agrees and hopes that "[t]he Director and his staff will heed the message being sent to them in the form of these administrative appeals: namely that the citizens of this State are of the opinion that no one is hearing their collective voices."

DNR Efforts to Increase Public Involvement

Fortunately, the DNR Board has already begun to address these issues in a relatively comprehensive manner. Last year, the DNR Board convened a task force to develop recommendations for improving public participation. After over a year of deliberations, DNR's Public Involvement Task Force, comprised of members of the non-profit community, the regulated community and agency representatives, developed recommendations that focus on engaging the public and the regulated community in environmental decision-making. These recommendations include a specific process for permitting designed to increase communication among agency representatives and the public. Some of these recommendations are common sense, such as allowing members of the public to ask questions during hearings. While seemingly simple, such small steps are the foundation for meaningful dialogue between the public and the State. However, this meaningful dialogue will only occur if DNR and EPD take seriously their commitment to public participation in government decision-making.

Equally important is EPD's obligation to meet objective, health-based environmental standards such as air quality standards for smog or water quality standards for mercury and bacteria. Until the citizens of the State of Georgia are convinced that EPD is complying with its mandate to protect the public health and economic well-being of the inhabitants of Georgia by ensuring clean air and water, then EPD should expect administrative appeals to continue. However, once EPD has ensured us that these objective environmental standards have been met, then surely the number of administrative appeals would dramatically decrease.

UPDATE

This article first appeared in the Fall/Winter 2002 issue of the State Bar of Georgia, Environmental Law Section newsletter. Since that time, other appeals have been resolved in favor of third-party challengers. For example, a Georgia Superior Court Judge

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reversed the ALJ's finding that a permit issued to Gwinnett County to discharge 40 million gallons per day of treated wastewater into Lake Lanier was valid. The challenge to the permit was brought by Upper Chattahoochee Riverkeeper, Sierra Club and Lake Lanier Association. An administrative appeal by the Altamaha Riverkeeper to the City of Sandersville's wastewater discharge permit was likewise resolved. Prior to a hearing, the City agreed to incorporate a zinc limit into its permit as originally sought by Altamaha Riverkeeper. In addition, the original article failed to mention an administrative appeal which occurred in the year 2000 resulting in an agreement (resolving both a federal suit and an administrative appeal) in which Georgia Power would construct a \$40-50 million dollar cooling tower to prevent fish kills in Lake Sinclair.

(Endnotes)

¹ Litigation Summary, Environmental Protection Division, October 2002 (EPD Litigation Summary) (on file with author).

² Id.

³ Letter from Jessie R. Altman to Justine Thompson, October 22, 2002 (on file with author).

⁴ Id.

⁵ These actions include twenty-five appeals by permittees challenging their Title V air quality permits, twenty-four appeals of enforcement orders by recipients of those orders, eighteen appeals of vehicle emission revocations and suspensions by inspectors, eleven appeals of denied permits or applications for license variances, three appeals of dam classifications by dam owners, and eight other appeals of permitting decisions by the permittees.

⁶ EPD Litigation Summary. While this Summary states that there were thirty appeals in the past three years by third-party citizens (twenty-eight of which are identified by name), one of those cases was merely a remand following a decision on appeal and was not included in the total number of appeals considered for this article.

⁷ These statistics do not include two cases identified in EPD's Litigation Summary which are still pending, two which were withdrawn and one which was never filed. One case that is still pending follows a voluntary reissuance of the permit by EPD to cure errors in the public participation process raised by the petitioner. As such, this case could be considered as an example of a favorable outcome for the petitioner but was not included in these statistics. The statistics do include two cases which were not identified by name in EPD's Litigation Summary which resulted in settlement agreements. Two additional cases were not included because at the time this article went to press, OSAH had been experiencing computer problems for at least 10-12 days making it impossible to confirm the outcome of the two cases. Although the outcome of these two cases is unknown at this time, assuming that EPD was successful in both of those cases, the settlement success rate would be closer to 69%.

GA Chapter Environmental Awards Taking Year Off

The A&WMA Georgia Chapter Environmental Awards are taking a year off. The Chapter will be hosting the entire Southern Section in Savannah in July/August, and this conference will take the place of our annual Chapter Conference. Our Chapter specific scholarships will go on as planned, but we will not be issuing our Annual Environmental Awards this year. Candidates for these awards should keep up the good work, and be ready to apply for these awards when they are offered again in 2004.



AIR & WASTE MANAGEMENT
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♦
GEORGIA CHAPTER

An Invitation to Exhibit

2003 Annual Meeting & Technical Conference

Air & Waste Management Association – Southern Section

Hosted by the Georgia Chapter

July 30 – August 1, 2003

Savannah Marriott Riverfront

Savannah, Georgia

APPLICATION FOR EXHIBIT BOOTH SPACE

2003 Annual Meeting & Technical Conference
Air & Waste Management Association – Southern Section
Hosted by the Georgia Chapter
July 30 – August 1, 2003
Savannah Marriott Riverfront
Savannah, Georgia

PLEASE TYPE OR PRINT ALL INFORMATION

Company Name: _____

(as it will appear on booth identification sign)

Primary Exhibitor: _____

(Name as it will appear on badge)

Title: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: (____) _____

Fax: (____) _____

Email: _____

BOOTH LOCATION PREFERENCE

Please write in the booth numbers in order of preference (See Booth Layout). In the event that your preferred booth space is not available, we will contact you to let you select from the booth spaces remaining.

Choice: #1: _____ #2: _____ #3: _____

ADDITIONAL SPONSORSHIP OPPORTUNITIES

____ Yes, we are interested in sponsorship opportunities for the breakfasts, breaks, luncheons, reception, golf tournament, and scholarships. Please send us more information.

EXHIBIT BOOTH SPONSORSHIPS/FEEES

IMPORTANT! Exhibit space is limited to 20 booths at this conference, with every space at premium dimensions.

Exhibit Booth

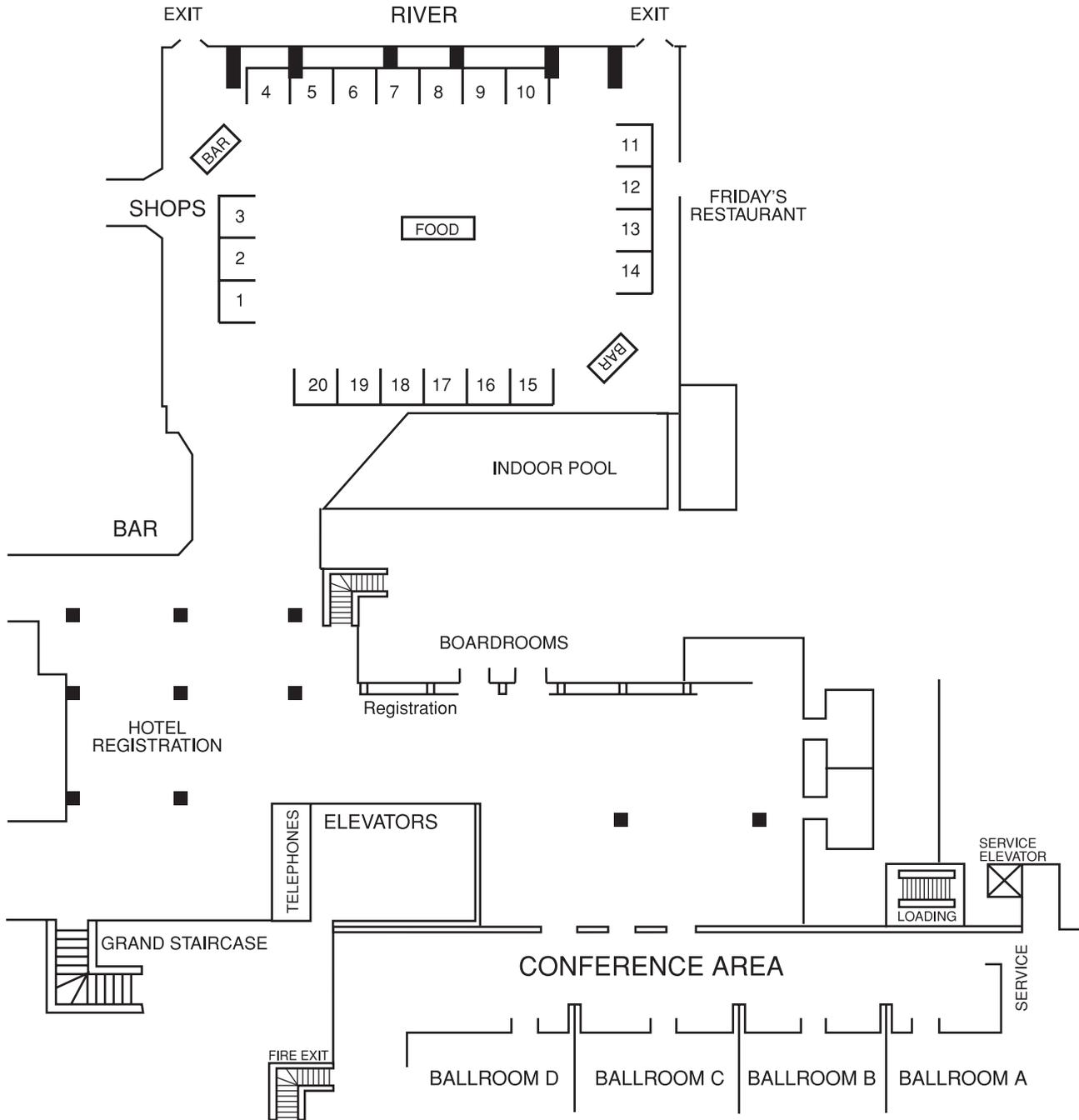
\$575 Early Bird Registration - Prior to June 27, 2003;

\$650 Late Registration - After June 27, 2003

8' Deep X 10' Wide booth space

One Full Registration

Half or Quarter-page ad in Conference Program



Prepared by:
 BLUE CHIP EXPO, INC.
 (843) 681-4545

Invitation to Exhibit

DEAR EXHIBITOR:

The Georgia Chapter of the Air & Waste Management Association would like to invite you to participate as an exhibitor at the 2003 Southern Section Annual Meeting & Technical Conference, July 30 – August 1, 2003 at the Savannah Marriott Riverfront in Savannah, Georgia.

As an exhibitor, you will have the opportunity to personally present your products and services to approximately 250 practicing environmental professionals in the southeast region.

A UNIQUE, LOW COMPETITION OPPORTUNITY

Because exhibit space is limited and will only be sold on a first-come, first-serve basis, you will have more opportunity to converse with potential contacts and clients you've been trying to meet. The conference will be self-contained to the Savannah Marriott Riverfront, thereby offering a more intimate atmosphere. In addition, all meals are included in the registration fees. All of these things mean that you will be 100% involved in all conference activities!

EXHIBIT SPACE ASSIGNMENT AND TERMS

Exhibit booths will be assigned on a first-come, first-serve basis. There will be 20 booths available. The best opportunity to reserve space is by immediate response! Applications must be fully completed and accompanied by full payment. Booth assignments will be made giving priority to the date of receipt of the application with full payment (postmark and time received will be recorded).

Booth space is expected to be fully reserved at an early date. Please indicate your booth choices (in order of preference) on the enclosed booth application. We will send you a confirmation letter indicating we received your payment and have assigned you a booth number. Upon receipt of your payment, we will try to provide you with your first booth choice, then second, and third.

EXHIBIT BOOTH SPONSORSHIPS/FEES

IMPORTANT! Exhibit space is limited to 20 booths at this conference, with every space at premium 8'D X 10'W dimensions. (See enclosed booth layout)

BOOTH ACCESORIES

Each exhibit booth will be provided with the following:

- Exhibitor identification sign
- Full draped back wall and side rails
- 6' topped and skirted table
- Two chairs
- One waste basket

CONFERENCE REGISTRATION

Each booth rental comes with one full registration. To register other members of your exhibit booth staff/firm, you will need to fill out the general conference registration form (which will be mailed out by the end of April 2003).

SERVICE KIT

Blue Chip Expo is the official exhibit decorator and service contractor for the conference. We will send a Blue Chip Exhibitor Service Kit to all fully paid exhibitors beginning in May 2003. This kit will contain information pertaining to additional services and equipment available at exhibitor cost. These optional items include setup/dismantling

labor, special signage, furniture rental, electrical requirements, telephone, materials handling, crate storage, etc.

LODGING AND EXHIBIT LOCATION

Make your lodging reservations early, as the conference is self-contained to the Savannah Marriott Riverfront in Savannah, Georgia.

Room rates are \$109/night plus tax (single and double). Hospitality suites are available. When contacting Marriott, you must identify yourself as an A&WMA Conference Attendee to obtain this rate.

Savannah Marriott Riverfront
100 General McIntosh Blvd.
Savannah, Georgia 31401
(912) 233-7722

Parking at the Marriott is available at a rate of \$7 per vehicle, per day.

ADVERTISEMENTS (Conference Program)

Each exhibitor sponsorship includes a half page or quarter page advertisement in the conference program. All artwork for these advertisements must be provided in camera-ready form. Additional charges will be assessed for non-camera ready artwork or copy. The deadline for your camera-ready copy is June 1, 2003.

Advertisement Limitations:

	Size limitation
Half Page:	7"W X 4.5"L
Quarter Page:	3.5"W X 2.25"L

Black & White copy only (no color)

METHOD OF PAYMENT

Check (*Payable to A&WMA, Georgia Chapter*)
MasterCard – Visa – American Express

Mail Exhibit Form and Full Payment to:
A&WMA Georgia Chapter
Attn: Brian Queen
Analytical Services, Inc.
110 Technology Pkwy
Norcross, GA 30092

**\$575 Early Bird Registration - Prior to 06/27/03;
\$650 Late Registration - After 06/27/03**

Refunds: Monies will be refunded only if the total booth space is sold out by the time we receive your payment.

If you have any questions, contact Brian Queen at bqueen@asi-lab.com or (770) 734-4200.

EXHIBIT DATES AND HOURS

Tuesday July 29, 2003

12:00pm – 7:00pm Exhibitor Setup/Check in

Wednesday July 30, 2003

7:30am – 7:00pm Exhibit Hours+

Includes: Continental Breakfast
Morning/Afternoon Breaks
Luncheon
Reception

Thursday July 31, 2003

7:30am – 3:30pm Exhibit Hours

Includes: Continental Breakfast
Morning/Afternoon Breaks
Luncheon

3:30pm – 7:00pm Exhibit Tear Down

Message From The Chair

By Karen Dorman

Global Environmental Solutions

As many of you may know, the Georgia Chapter of the Air & Waste Management Association is hosting this year's **Southern Section A&WMA Annual Conference**. The conference will be held in **historic Savannah, Georgia from July 30 through August 1**. The Georgia Board and several very appreciated volunteers are in the midst of putting together the final touches on what will be an impressive line-up of speakers, topics, and activities including:

- Updates from **U.S. EPA Region 4 Division Directors** Winston Smith (Waste Management Division) and Beverly Banister (Air, Pesticides, and Toxic Management Division)
- **State Regulatory updates** from Georgia, Mississippi, Alabama, and Tennessee
- Special topic sessions on **Coastal Environmental Issues** and **Environmental Performance/Environmental Management Systems**, plus **air, waste, and water technical sessions**.
- **Speakers from industry**, such as Coca Cola, Delta Air Lines, and Georgia Power
- **Golf tournament** with a **low country boil** preceding the conference on **July 29**
- Plus the opportunity to network with your fellow environmental professionals from throughout the southeast, review the latest technologies and services offered by exhibitors, and enjoy historic Savannah!

A conference brochure will be distributed in the near future. Also, conference information and exhibitor opportunities will be posted on our website, www.gaawma.org/events/index.html. For further information, please contact either Karen Dorman at kdorman@gesinc.com or, for exhibitor information, please contact Brian Queen at bqueen@asi-lab.com.

See you in Savannah!

Corporate Sponsors



For more information see www.gaawma.org

Send your comments or questions to:
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AIR & WASTE MANAGEMENT
ASSOCIATION

GEORGIA CHAPTER

Mission

To promote a cleaner, safer environment in Georgia by focusing on air and waste issues. We achieve this through information transfer, technology exchange, education, and environmental leadership.



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