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Thomas J. Bois II and Bernard J. Luther, Groundwater and Soil Contamination: Technical Preparation and Litigation Management

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BOOK NOTES

THOMAS J. BOIS II AND BERNARD J. LUTHER, GROUNDWATER AND SOIL CONTAMINATION: TECHNICAL PREPARATION AND LITIGATION MANAGEMENT, John Wiley and Sons, Inc., New York, Chichester, Brisbane, Toronto, Singapore (1996); 786pp; $135.00; ISBN 0-471-13346-9, hardcover.

Contamination lawsuits involve complex scientific and legal issues crossing the boundaries of various disciplines. Familiarity with these issues will allow consultants and attorneys to work together toward the resolution of contamination cases. *Groundwater And Soil Contamination: Technical Preparation And Litigation Management* is designed to help consultants and lawyers understand technical concepts and environmental laws in order to thoroughly represent their mutual clients. The authors have combined their expertise to create a useful reference that places key information and litigation management considerations at the reader's fingertips.

The treatise is organized in an easy to use fashion which makes it a quick reference guide. The treatise is divided into two parts: a technical overview presented in nine chapters, and ten chapters covering litigation management. The treatise also contains an extensive appendix with supporting documentation, such as sample forms, that would be helpful in initiating and developing contamination cases.

Chapter one, in the technical overview section, contains a description of sixteen key pollutants typically found in contamination problems. Information on the sources, the characteristics, the hazards, the clean-up techniques, and the EPA tests for specifying the contaminant are discussed in layperson's terms for each listed contaminant. Chapter two takes on the common problem of buried tanks and their contribution to site contamination.

Chapter three is broken into twenty-one subparts all dealing with identifying contamination problems. It covers how to conduct Phase I through Phase III environmental assessments and lists state databases to aid in the completion of environmental assessments. Sampling requirements and techniques are also discussed. Chapter four, selecting an environmental consultant, is divided into six sections. Key factors such as credibility, reliability, and site closure records are valuable considerations in selecting a consultant. This section also provides a summary of the types of consultants that may be involved in contamination cases.

Chapter five is devoted to factors affecting remediation. This includes five levels of regulatory agency enforcement in contamination

cases. Soils types are defined, and methods of remediation of contaminants in specific soil types are discussed. Aquifers and related groundwater hydrology are covered thoroughly in chapter six. Groundwater testing models used to predict flow rates, future distribution, and current age of contaminants are also covered. Models are an important part of litigation because they provide three dimensional depictions of subsurface site conditions that help consultants, attorneys, and clients visualize the scope of the problem. In addition, models help explain details of the contamination problem to juries.

Treatment technologies vary, and in chapter seven the authors define various methods and describe their probable use in clean up. Site closures are covered with a lengthy discussion on contaminant plumes. Chapter eight is devoted to recognizing hydrocarbon fuels and to estimating their age of release. Recognizing hydrocarbons is important in estimating the mixing ratio which allows for allocation of responsibility. The date of hydrocarbon release is important for insurance purposes. This chapter provides information on the basic chemistry of hydrocarbons, the crude oil refining practice, and types of refined products.

The last chapter in Part I provides case studies of what can go wrong during clean up. Seven case studies are presented, each providing a lesson to be learned regarding the different types of clean up actions.

Part II, Litigation Management, begins by detailing pre-litigation considerations in chapter ten. Nineteen sections cover initial aspects, such as selecting cases, coordinating professionals, retaining clients and the role of legal counsel, and estimating fee and agreements. The role of experts is thoroughly explained. Other pre-litigation concerns include investigation of potentially responsible parties and verification of statutes of limitations.

Chapter eleven discusses defense tactics including the statute of limitations, causation, contribution, indemnity, and philosophical considerations. The statute of limitations is discussed for negligence, strict liability, products liability, fraud, nuisance and trespass, breach of contract or lease, and indemnity. State statutes of limitations are provided in the appendix.

Chapter twelve starts with the history of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). CERCLA is discussed in terms of five key areas which impact litigation: CERCLA elements; potentially responsible parties; defenses; recovery rights; and jurisdictional issues. The prima facie elements of CERCLA claims are provided, and the components of liability, standing, and the National Contingency Plan are discussed. A large portion of the chapter is devoted to potentially responsible parties in individual or corporate capacity. Lender, trustee, beneficiary, conservator, and executor liability are also discussed. Innocent landowner, exemption releases, statute of limitations, and ambient defense are each defined and the authors discuss how the defenses may be established. Recovery rights

under CERCLA are discussed including attorney's fees, the exclusion of jury trials, contribution and indemnity rights, and settling potentially responsible party's actions for contribution and cost recovery. Finally, jurisdictional issues of derivative claims, pendant jurisdiction, and exclusive jurisdiction are covered.

The elements of the Resource Conservation and Recovery Act ("RCRA") are laid out in chapter thirteen, beginning with RCRA history. In addition to the elements of RCRA, the elements of claims, relief available, and the nature of liability are discussed. The procedural aspects of standing and notice of suit are also presented. The chapter closes with sections on parties' liabilities and defenses, recoverable costs, and jurisdictional elements.

Chapter fourteen provides an alphabetical list of state environmental statutes. Statutes involving water pollution, hazardous substance management, waste, waste control, underground tank storage, well head protection, solid waste, water quality, groundwater pollution, property transfer regulations, enforcement, penalties, and allowable private citizen suits are discussed.

The common law causes of action for contamination claims are covered in chapter fifteen. These include negligence, negligence per se, trespass, nuisance, strict liability, products liability, fraud, deceit, misrepresentation, contract actions, indemnity, declaratory relief and defenses.

Chapter sixteen is devoted to insurance coverage. The authors stress the importance of insurance, especially for individuals and small to medium businesses. Topics discussed include policies providing specific environmental coverage, exclusions of sudden and accidental pollution, absolute pollution, and response costs.

Chapter seventeen discusses six aspects of discovery including: general limitations; depositions; interrogatories; demand for inspection of documents, land, and other things; and discovery devises. Environmental discovery in technical areas is covered stressing the need for an attorney to be knowledgeable of the technology involved and the supporting documents which may be discoverable. A typical list of documents is provided.

The final chapters discuss damages and settlement. In addition to the types of damages that may be sought, and basis for recovery, the author mentions settlement and other trial alternatives. Three areas in particular are highlighted: plaintiff's settlement strategies; defendant's settlement strategies; and other settlement methods such as alternative dispute resolution, mediation, and arbitration.

The appendix is quite extensive providing useful information such as listings of state and territorial environmental offices, EPA offices, sample letters, and forms. Coverage runs from the initial attorney/client interviews through settlement agreements and mandatory settlement conferences.

Groundwater And Soil Contamination: Technical Preparation And Litigation Management is a practical guide that will provide the reader with

the step by step process for handling groundwater and soil contamination studies and litigation. Mr. Bois and Mr. Luther have detailed information in such a manner that the book provides a valuable reference source for novices, as well as experts in the field.

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MARK K. BRIGGS, RIPARIAN ECOSYSTEM RECOVERY IN ARID LANDS: STRATEGIES & REFERENCES, University of Arizona Press, Phoenix, Arizona (1996); 220pp; $45.00; ISBN 0-8165-1644-8, hardcover.

This guidebook deals with the technical aspects of riparian ecosystem recovery. However, as the author states, it is written so that those who do not have a background in natural resources can utilize the information. A wide variety of people, including developers, public officials, landowners, educators and students, will find this book to be a good resource for understanding and overcoming the decline of the riparian ecosystem in arid lands.

Chapter one gives an overview and explains how riparian ecosystems have changed over the years. The author explains some strategies for recovering different areas, and emphasizes the importance of evaluating site conditions and matching appropriate strategies to the specific needs of the site.

The remainder of the book focuses on the details of site evaluation. It discusses some issues to consider before making decisions to prevent damage to these delicate areas, or to return those which are damaged to a viable state. The author makes it very clear that what is good for one area will not necessarily provide the appropriate solution for all areas—each situation is unique. To illustrate his point, Briggs presents case studies, explains issues, and describes recovery plans in specific situations. This approach shows the reader how to apply different strategies to different situations.

Briggs also discusses how to evaluate damaged riparian areas from the watershed perspective. He gives the reader insight into taking advantage of aerial photographs and documented information, and provides information on where to obtain these materials. A chapter is devoted to evaluating the effects of land use activities within the immediate riparian environment and how to determine if these land uses, such as livestock grazing, and recreation, are causing the decline of the riparian ecosystem.

The factors influencing natural recovery in riparian ecosystems are discussed in great detail and some successful plans are explained. Briggs next discusses the importance of water availability for successful riparian recovery plans. This chapter explains groundwater decline, and emphasizes the importance of comparing past and present groundwater conditions in order to develop realistic recovery objectives and strategies.

Drainage of riparian ecosystems is discussed in terms of channel dynamics, strategies for evaluating channel stability and how to develop recovery projects along unstable alluvial stream channels. The