BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

PINOVA, INC.,	:	
	:	
Petitioner,	:	
	:	
v.	:	**Docket No.:**
	:	**OSAH-BNR-HW-1343555-63-Miller**
JUDSON H. TURNER, Director of the Environmental Protection Division, Department of Natural Resources, State of Georgia,	:	
	:	
Respondent.	:	

FINAL DECISION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DETERMINATION AND DENYING PETITIONER'S CROSS MOTION FOR SUMMARY DETERMINATION

I. SUMMARY OF PROCEEDINGS

This matter is an appeal by the Petitioner, Pinova, Inc. ("Pinova") of a decision by the Respondent, Judson H. Turner, Director of the Environmental Protection Division of the Georgia Department of Natural Resources ("Director") to retain Pinova as the co-permittee of Hercules, Inc. ("Hercules") on Hazardous Waste Facility Permit No. HW-052 ("Permit"), which was issued pursuant to Subtitle C of the Resource, Conservation, and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§ 6901 to 6992k, as amended by the Hazardous and Solid Waste Amendments of 1984; RCRA's implementing regulations, found at 40 C.F.R. Parts 124 and 260-72; the Georgia Hazardous Waste Management Act ("HWMA"), O.C.G.A. §§ 12-8-60 through 12-8-83; and the HWMA's implementing rules and regulations, found at Ga. Comp. R. & Regs. Chapter 391-3-11.

The Permit was originally issued in 2007, with Hercules as the sole permittee. At that time, the permitted facility consisted of a 276-acre tract containing a hazardous waste container storage area, five former toxaphene surface impoundments, and thirty-nine solid waste management units ("SWMUs") undergoing corrective action. In 2010, after Pinova acquired a 152-acre tract of the Hercules property which included thirty-three of the thirty-nine SWMUs, the Permit was amended to add Pinova as a co-permittee. Pinova now wishes to be removed from the Permit, arguing that because its tract contains only SWMUs, which would not trigger RCRA/HWMA permitting requirements when considered in isolation, it is not a proper co-permittee. In contrast, the Director contends that the boundary of the permitted facility was established when the Permit was issued, and that Pinova's ownership of a portion of the originally-permitted property requires it to retain its co-permittee status.

On December 21, 2012, Pinova initiated the instant proceedings by filing its Petition for Review of Hazardous Waste Permit HW-052 (D&S),[1] challenging the Director's refusal to remove Pinova from the Permit following a five-year permit review completed in December 2012. The parties have jointly stipulated to the facts and submit that the only issue to be resolved is whether the Director is authorized to require Pinova to be named as a co-permittee.

On July 24, 2013, the Director moved for summary determination in his favor. Pinova filed a response and cross-motion for summary determination on July 17, 2013. Following oral argument on August 30, 2012, the Director and Pinova filed supplemental briefs on September 10 and 20, 2013, respectively.[2] After careful consideration of the parties' motions and arguments and for the reasons set forth below, the Director's Motion for Summary

[1] The matter was filed with the Office of State Administrative Hearings ("OSAH") on June 7, 2013.

[2] Pinova raised objections to Attachments A, B, and C of the Director's Post-Hearing Brief, on the grounds that they were not properly authenticated. Finding merit in the objections, the Court has not considered Attachments A, B, and C in reaching its decision in this case.

Determination is **GRANTED**, and Pinova's Cross-Motion for Summary Determination is **DENIED.**

II. STANDARD ON SUMMARY DETERMINATION

Summary determination in this proceeding is governed by OSAH Rule 15, which provides, in relevant part:

> A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination.

Ga. Comp. R. & Regs.616-1-2-.15(1). On a motion for summary determination, the moving party must demonstrate that there is no genuine issue of material fact, such that the moving party "is entitled to a judgment as a matter of law on the facts established." Pirkle v. Envtl. Prot. Div., Dep't of Natural Res., OSAH-BNR-DS-0417001-58-Walker-Russell, 2004 Ga. ENV. LEXIS 73, at *6-7 (Oct. 21, 2004) (citing Porter v. Felker, 261 Ga. 421 (1991)); see generally Piedmont Healthcare, Inc. v. Ga. Dep't of Human Res., 282 Ga. App. 302, 304-05 (2006) (noting that summary determination is "similar to a summary judgment" and elaborating that an administrative law judge "is not required to hold a hearing" on issues properly resolved by summary adjudication).

Further, pursuant to OSAH Rule 15:

> When a motion for summary determination is made and supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination in the hearing.

Ga. Comp. R. & Regs. 616-1-2-.15(3); see Lockhart v. Dir., Envtl. Prot. Div., Dep't of Natural Res., OSAH-BNR-AE-0724829-33-RW, 2007 Ga. ENV LEXIS 15, at *3 (June 13, 2007) (citing Leonaitis v. State Farm Mutual Auto Ins. Co., 186 Ga. App. 854 (1988)).

III. FINDINGS OF UNDISPUTED MATERIAL FACT

As stated in the Joint Stipulation of Exhibits and Statement of Undisputed Facts filed on June 21, 2013 ("Joint Stipulation"), the following facts are undisputed:

1.

The Georgia Environmental Protection Division ("EPD") is authorized to administer its own hazardous waste program in lieu of the federal program established under RCRA, 42 U.S.C. §§ 6901 through 6991k, as amended by the Hazardous and Solid Waste Amendments of 1984. The U.S. Environmental Protection Agency ("EPA") has authorized Georgia's program pursuant to RCRA § 3006(b) and deemed it to be equivalent to and consistent with the federal program. Georgia's authority is contained in the HWMA, O.C.G.A. §§ 12-8-60 through 12-8-83, and its implementing rules and regulations, Ga. Comp. R. & Regs. Chapter 391-3-11, as amended. (Joint Stipulation ¶ 1.)

2.

In 1987, Hercules owned and operated a chemical manufacturing plant located at 2801 Cook Street, Brunswick, Glynn County, Georgia. Within that facility, Hercules owned and operated a hazardous waste container storage area and five hazardous waste toxaphene surface impoundments. Hercules submitted a Part B application for a hazardous waste permit. The Director, in turn, issued a hazardous waste permit, HW-52(S) to Hercules on December 31, 1987, for a ten-year term covering the operation of a hazardous waste container storage area (the "1987 HW Permit"). (Joint Stipulation ¶ 2 and Exhibits 1, 2.)

3.

In 2007, the Director renewed the hazardous waste permit issued to Hercules for a ten-year term covering post-closure care of the five former hazardous waste toxaphene surface

impoundments, operation of a hazardous waste container storage area, and site-wide corrective action requirements for 39 SWMUs (the "2007 HW Permit"). (Joint Stipulation ¶ 3 and Exhibit 4.)

4.

On October 7, 2009, Pinova (then known as Opco-P, Inc.) made inquiry to EPD regarding the regulatory implications of its potential acquisition of certain assets of Hercules' chemical manufacturing plant located in Brunswick, Georgia. Namely, Pinova inquired as to whether it would have to become a permittee along with Hercules for the whole facility under the Georgia HWMA if it only purchased a portion thereof, a portion which specifically did not include treatment, storage and disposal units, but did include certain SWMUs undergoing corrective action as required by the 2007 HW Permit. (Joint Stipulation ¶ 4 and Exhibit 5.)

5.

On October 23, 2009, EPD responded to Pinova's October 7, 2009 inquiry, indicating that Pinova would have to become a co-permittee along with Hercules for the entire permitted facility even if Pinova purchased only a part of the permitted facility. EPD further indicated that this could be done through a Class 1 permit modification with approval of the Director, pursuant to Ga. Comp. R. & Regs. 391-3-11-.11(7)(d) and 40 C.F.R. § 270.42(a). (Joint Stipulation ¶ 5 and Exhibit 6.)

6.

On or about January 26, 2010, Pinova and Hercules jointly filed an application for modification of the existing 2007 HW Permit to add Pinova as an owner/operator of the facility and to make Pinova a co-permittee along with Hercules. No changes were requested to the definition of the permitted facility. (Joint Stipulation ¶ 6 and Exhibit 7.)

7.

On January 27, 2010, EPD approved this application and issued Permit No. HW-052 (D&S), as modified, with both Hercules and Pinova as co-permittees (the "2010 HW Permit"). No changes were made in the 2010 HW Permit to the definition of the permitted facility. (Joint Stipulation ¶ 7 and Exhibit 8.)

8.

On January 28, 2010, Pinova acquired the portion of the Brunswick, Georgia, property from Hercules shown as Tract 1A on Exhibit 9.[3] To facilitate this 2010 sale, the property was subdivided into three legal parcels (Tracts 1A, 1B, and 1C). The active manufacturing part of the property, along with certain SWMUs undergoing corrective action, is located on Tract 1A. Hercules retained ownership of Tracts 1B and 1C, which contains the five hazardous waste toxaphene surface impoundments undergoing post-closure care, the hazardous waste container storage area, and the remaining SWMUs undergoing corrective action. (Joint Stipulation ¶ 8 and Exhibit 9, Attachment A.)

9.

Since the 2010 acquisition of Tract 1A, Pinova has not engaged in the treatment, storage or disposal of hazardous waste in a manner that would require it to seek or obtain a hazardous waste permit. (Joint Stipulation ¶ 9.)

10.

Since January 29, 2010, Pinova has been named a co-permittee on the 2010 HW Permit, which includes requirements for the post-closure care of the five hazardous waste toxaphene

[3]Two small portions of the Plant had also been transferred in 2004 and 2008 to the Glynn County Memorial Hospital.

surface impoundments, operation of a hazardous waste container storage area, and the SWMUs. (Joint Stipulation ¶ 10 and Exhibit 8.)

11.

At the time of the transfer of Tract 1A to Pinova, 33 of the 34 SWMUs acquired by Pinova were still subject to corrective action and undergoing corrective action as required by the 2010 HW Permit. (Joint Stipulation ¶ 11.)

12.

Under the terms and conditions of the January 28, 2010, Environmental Liabilities and Indemnification Agreement between Hercules and Pinova (then known as Opco-P, Inc.), Hercules retained the responsibilities for compliance with the 2010 HW Permit. Neither EPA nor EPD is a party to the Environmental Liabilities and Indemnification Agreement. (Joint Stipulation ¶ 12 and Exhibit 10.)

13.

In the spring of 2012, Pinova representatives began discussions with EPD regarding the 2010 HW permit, namely: (1) the definition of the facility; and (2) removal of Pinova as a co-permittee. In furtherance of these discussions, on May 29, 2012, Pinova submitted a written request that EPD modify the facility definition and remove Pinova as a co-permittee. (Joint Stipulation ¶ 13 and Exhibit 11.)

14.

On or about August 2, 2012, Pinova and Hercules filed an application for modification of the 2010 HW Permit with EPD. Consistent with prior communications with EPD, this application requested that the definition of the facility that is subject to the 2010 HW Permit be modified to specify that it was limited to Tracts 1B and 1C and that Pinova be deleted as a co-

permittee. Pinova requested that the permit modification be considered only "an administrative and informational change" that could be processed as a Class I modification, not necessitating advance approval of the Director. The application noted that if EPD disagreed with this modification procedure it should so inform Pinova. (Joint Stipulation ¶ 14 and Exhibit 12.)

15.

Independent of Pinova's August 2, 2012 permit application, and pursuant to a five-year review process mandated by Ga. Comp. R. & Regs. 391-3-11-.11(9)(a), on August 10, 2012, EPD issued a Notice of Intent to Modify Permit No. HW-052 (D&S) regarding sampling and other requirements. The modified permit was drafted with both Pinova and Hercules as co-permittees. EPD asked for public comments on this proposed action. (Joint Stipulation ¶ 15 and Exhibit 13.)

16.

On or about September 13, 2012, Pinova submitted comments pursuant to EPD's August 10, 2012 Notice of Intent to Modify. In these comments Pinova restated its position regarding its status on the 2010 HW Permit and the definition of the facility, and again asked that it be deleted as a co-permittee. (Joint Stipulation ¶ 16 and Exhibit 14.)

17.

On October 12, 2012, EPD acknowledged receipt of Pinova's May 29, 2012 letter and the permit modification application, filed August 2, 2012, and indicated that EPD was seeking advice from the Department of Law prior to responding. (Joint Stipulation ¶ 17 and Exhibit 15.)

18.

On October 29, 2012, as a part of the August 2, 2012 permit application process, Pinova gave notice to all parties on the facility mailing list, as provided in Ga. Comp. R. & Regs. 391-3-

11-.11(7)(d) and 40 C.F.R. § 270.42(a)(1)(ii), that a permit modification, which changed the definition of the facility and removed Pinova as a co-permittee, had become effective on August 2, 2012. (Joint Stipulation ¶ 18 and Exhibit 16.)

19.

On December 4, 2012, EPD reissued Permit No. HW-052 (D&S) (the "2012 HW Permit"), but it did not remove Pinova as a co-permittee as Pinova had requested. (Joint Stipulation ¶ 19 and Exhibit 17.)

20.

In EPD's response to comments, EPD informed Pinova that it was still considering Pinova's comments to EPD's August 10, 2012 Notice of Intent to Modify. (Joint Stipulation ¶ 20 and Exhibit 17.)

21.

On December 21, 2012, Pinova timely filed the present case with the Director. (Joint Stipulation ¶ 21.)

IV. ANALYSIS

A. Statutory and Regulatory Framework

RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984, provides a statutory framework for the regulation of hazardous waste from cradle to grave. 42 U.S.C. § 6902. To further the statute's dual purposes of protecting human health and the environment, Congress explicitly sought to establish "a viable Federal-State partnership" by allowing states, subject to authorization by EPA, to operate their own hazardous waste management programs in lieu of the EPA-administered federal hazardous waste management program. 42 U.S.C. § 6902(a)(7) and (b), 6926. State programs must be "equivalent to," "consistent with," and no

"less stringent than" the federal program. 42 U.S.C. §§ 6926(b), 6929. However, states are authorized to impose permitting requirements that are more stringent than those of the federal program. 42 U.S.C. § 6929. Thus RCRA establishes "only a floor, and not a ceiling, beyond which states may go in regulating the treatment, storage, and disposal of solid and hazardous wastes." Old Bridge Chem., Inc. v. New Jersey Dep't of Envtl Prot., 965 F.2d 1287, 1292 (3d Cir. 1992). Once authorized, any action taken by a state pursuant to its program "shall have the same force and effect" as an action taken pursuant to the federal program. 42 U.S.C. § 6926(d).

Georgia's hazardous waste management program, which is set forth in the HWMA and its implementing regulations, has been authorized since August 1984. 49 Fed. Reg. 31417 (Aug. 7, 1984); 40 C.F.R. § 271.1. Georgia has therefore assumed permitting responsibility for "treatment, storage and disposal facilities within its borders and for carrying out all other aspects of the RCRA program," as well as primary enforcement responsibility. 49 Fed. Reg. 31417 (Aug. 7, 1984). Since its initial authorization, Georgia has received approval for various changes to its program, including revisions that followed the Hazardous and Solid Waste Amendments of 1984. See 78 Fed. Reg. 25579, 25580-81 (May 2, 2013). The HWMA and its implementing regulations have incorporated, by reference, the RCRA regulations in all respects pertinent to this case. See Ga. Comp. R. & Regs. 391-3-11-.01(2), 391-3-11-.02, 391-3-11-.10, and 391-3-11-11(1). Because the state and federal hazardous waste permitting schemes are inextricably intertwined, citations and references herein may be to either RCRA or the HWMA, or both.

B. Overview of Hazardous Waste Permitting Requirements

Any owner or operator of a facility that treats, stores, or disposes of hazardous waste must obtain a permit under RCRA Subtitle C. 42 U.S.C. § 6925(a); 40 C.F.R. §§ 270.1(c), 270.2, 260.10; O.C.G.A. § 12-8-66; Ga. Comp. R. & Regs.391-3-11-.11(a). Furthermore, a

permittee incurs corrective action obligations for any release of hazardous waste or constituents at its facility, whether such release originated from a regulated hazardous waste management unit or a SWMU. To facilitate an understanding of this mandate, it is useful to define the relevant terms.

1. Definition of Solid Waste

RCRA defines "solid waste" as:

> any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880) [33 USCS § 1342], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) [42 USCS §§ 2011 et seq.].

42 U.S.C. § 6903(27). Solid waste also includes "any discarded material that is not excluded" by various regulatory provisions. 40 C.F.R. § 261.2(a)(1).

The regulations do not define the term "solid waste management unit" (or "SWMU"). See 40 C.F.R. § 260.10. However, based on a proposed federal rule, the term is understood to mean "[a]ny discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste." 61 Fed. Reg. 19432, 19442 (May 1, 1996).

2. Definition of Hazardous Waste

"Hazardous waste" is a subcategory of solid waste[4] which is defined by statute as:

> A solid waste or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may—

[4] Nonhazardous solid waste is regulated under RCRA Subtitle D.

(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

42 U.S.C. § 6903(5). Hazardous wastes fall into two broad categories. See 40 C.F.R. Part 261. The first category consists of "characteristic wastes," which are classified as such because they are ignitable, corrosive, reactive, and/or toxic. 40 C.F.R. §§ 261.20-24. The second category—"listed wastes"—consists of hundreds of enumerated wastes, separated into five subcategories that are considered hazardous because they present a danger to human health or the environment. 40 C.F.R. §§ 261.30-.35.

A "hazardous waste management unit" is:

> a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

40 C.F.R. § 260.10. An owner or operator of a hazardous waste management unit is required to hold a permit "during the active life (including the closure period) of the unit," subject to certain exclusions.[5] 40 C.F.R. § 270.1(c). A post-closure permit is generally required if clean closure is not possible, i.e., wastes or contamination remain in place. Id.

[5] Although Pinova undertakes hazardous waste management activities on its property, it is exempt from RCRA/HWMA permitting requirements because the waste is accumulated and stored on-site for less than ninety days. See Pinova's Motion at 15; 55 Fed. Reg. 30798, 30806 (July 27, 1990).

3. Definition of Facility

The term "facility" is defined as:

> (1) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. . .
>
> (2) For the purpose of implementing corrective action under 40 CFR 264.101 or 267.101, all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA. . . .

40 C.F.R. § 260.10. Under the first definition, the facility includes only the portion of the property that is actually used for the treatment, storage, or disposal of hazardous waste. This definition "is narrower in scope and applies to the non-corrective action-related provisions of RCRA Subtitle C." 58 Fed. Reg. 8658, 8664 (Feb. 13, 1993). The second definition, in contrast, applies only for corrective action purposes. 40 C.F.R. § 260.10. However, the definition of "facility" is broadened to include all contiguous property under the owner's or operator's control, regardless of whether or not a particular segment is used for the treatment, storage, or disposal of hazardous waste. Id.; 50 Fed. Reg. 28702, 28712 (July 15, 1985). This provision enables regulators to impose corrective action obligations for SWMUs that would otherwise be exempt from RCRA permitting requirements.

4. Definition of Owner or Operator

An "owner" of a facility is "the person who owns a facility or part of a facility," while an "operator" is "the person responsible for the overall operation of a facility." 40 C.F.R. § 260.10. The "person" who owns or operates the facility may be "an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body." Id.

5. Corrective Action

Congress has vested environmental regulators with broad authority to compel site-wide cleanup of contaminated hazardous waste facilities through corrective action.[6] Pursuant to 42 U.S.C. § 6924(u), a Subtitle C permit must include "corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit . . . regardless of the time at which waste was placed in such unit." In this way, a permittee's corrective action obligations include SWMUs that would not ordinarily be subject to RCRA/HWMA regulation. 61 Fed. Reg. 19432, 19434 (May 1, 1996) (citing H.R. Rep. No. 198 (1983)). Further, a subsequent purchaser of SWMUs assumes responsibility for releases caused by a prior owner. 40 C.F.R. § 264.101(a); 50 Fed. Reg. 28702, 28714 (July 15, 1985). The facility's corrective action obligations extend "beyond the facility boundary where necessary to protect human health and the environment . . . ." 42 U.S.C. § 6924(v). Corrective action obligations continue until the concentration of hazardous constituents is reduced to below regulatory concentration limits. 40 C.F.R. § 264.100 (e)-(f).

C. The Director Is Authorized to Require Pinova to Remain on the Permit.

The central issue in this case is whether the Director may compel Pinova to share permittee status with Hercules based on Pinova's acquisition of a portion of the previously-permitted Hercules facility. The analysis ultimately turns on whether the boundary of a hazardous waste facility is defined when a permit is issued, or, conversely, whether the boundary must be re-drawn following the transfer of a portion of the facility not otherwise subject to RCRA/HWMA permitting requirements. For the reasons stated below, the Court finds that the Director correctly determined that the boundary of a facility is established when the permit is

[6] Generally, the corrective action process consists of site assessment, site characterization, interim actions, evaluation of remedial alternatives, and implementation of a remedy. 61 Fed. Reg. 19432, 19443 (May 1, 1996).

issued. Consequently, Pinova is properly designated a co-permittee, even though the purchased tract does not contain hazardous waste treatment, storage, or disposal units that would otherwise trigger HWMA/RCRA permitting requirements.

1. The Boundary of a Facility Is Established at the Time of Permitting.

A plain reading of the regulations dictates that the boundary of a facility undergoing corrective action is established when a permit is issued. As noted above, a "facility" for corrective action purposes is "all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA." 40 C.F.R. § 260.10 (emphasis added). Further, hazardous waste permits "shall contain conditions requiring corrective action for any releases into the environment of hazardous waste or hazardous constituents at the facility seeking a permit." O.C.G.A. § 12-8-66(e) (emphasis added); see also 42 U.S.C. § 6924(u); 40 C.F.R. 264.101. As Pinova correctly observes, neither Hercules nor Pinova is currently seeking a permit. Therefore, it is necessary to look back to the date that a permit was sought to define the boundary of the facility subject to corrective action requirements. Since a permit is sought[7] when an application is filed, it is the contents of the application, and the permit that is ultimately issued based on the contents of the application, that identify the contiguous property under the permit applicant's control.[8] The applicant, then, assumes corrective action responsibility for all contiguous property under its control at the time of permit issuance.

In this case, the boundary of the hazardous waste facility was established when the 2007 HW Permit was issued. At that time, Hercules incurred corrective action responsibilities for the

[7] The plain meaning of "seeking" is the present tense form of "seek," defined as "to try to obtain." Webster's Encyclopedic Unabridged Dictionary of the English Language 1733 (new deluxe ed. 1996).

[8] Contrary to Pinova's interpretation, nothing in the statute references the "maintenance" of a permit. The statute and regulations only refer to those "seeking a permit." See Pinova's Motion at 7.

container storage area and the five former toxaphene surface impoundments, each of which is a regulated hazardous waste management unit, as well as the thirty-nine SWMUs that were located within the facility boundary. Under Georgia law, permits are "effective for a fixed term not to exceed 10 years." Ga. Comp. R. & Regs. 391-3-11-.11(9); see also 42 U.S.C. § 6925(c)(3). After a permit is issued, it is a binding and enforceable document that may be modified only with the Director's approval.[9] 40 C.F.R. §§ 124.1(a), 124.5(a), 270.40, 270.41, 270.42. Therefore, the as-permitted 2007 boundary continues to define the facility today.

2. A Subsequent Transfer of Ownership Does Not Alter the Facility's Boundary.

Pinova contends, nevertheless, that the boundary of the permitted facility at issue here must be revised based on the transfer of ownership that took place in 2010. In support of this argument, Pinova notes that the 2007 HW Permit does not explicitly define the boundary of the facility. See Pinova's Motion at 24. Instead, the 2007 HW Permit states that the terms used in the permit "shall have the same meaning as those in 40 C.F.R. [P]arts 124, 260, 264 and 270, unless this permit specifically provides otherwise." Joint Stipulation, Exhibit 8, Bates No. 1710. From this, Pinova argues that the facility's boundary is solely dependent on the regulatory definition of "facility;" and, since the tract of property Pinova purchased does not contain any regulated hazardous waste management units that would make it a "facility" within the meaning of 40 C.F.R. § 260.10, the Director is not authorized to require Pinova to share permittee status with Hercules. See Pinova's Motion at 24-29.

However, Pinova's argument is based on a strained, and somewhat circular, construction of the regulatory definitions. "Even if words are apparently plain in meaning, they must not be read in isolation. Instead, they must be read in the context of the statute as a whole." Pfeiffer v.

[9] The Director approved the 2010 permit modification that added Pinova as a co-permittee following its purchase of Tract 1A. Joint Stipulation, ¶ 6 and Exhibit 7. This modification did not alter the facility boundary.

DOT, 250 Ga. App. 643, 647 (2001) (internal citations and quotations omitted); see also Upper Chattahoochee Riverkeeper, Inc. v. Forsyth County, 318 Ga. App. 499, 502 (2012) (citing Pfeiffer, 250 Ga. App. at 647). Here, the 2007 HW Permit application included, and was required to include, topographic maps of the facility that showed its boundary,[10] as well as the locations of the regulated units and the SWMUs subject to corrective action. See 40 C.F.R. § 270.14(b)(19) (topographic map required); Joint Stipulation, Exhibit 3, Bates Nos. 217, 222. Absent specific contrary language in the final Permit, common sense dictates that the Permit was granted for the facility that applied for the Permit. More precisely, when the 2007 HW Permit was issued, the contents of the application—including the description of the facility, the topographic maps, and the legal boundary—established the boundary of the facility. See 40 C.F.R. § 270.14 (required contents of a Part B application). When Pinova subsequently bought a portion of the permitted facility, it became an "owner" within the meaning of 40 C.F.R. § 260.10, which required it to become a co-permittee with Hercules, the facility's other owner.

Moreover, allowing the post-permit parceling of a permitted facility's property to redefine its boundary, as Pinova proposes, would undermine the entire corrective action process established in RCRA and the HWMA. Georgia courts have held that "the cardinal rule in statutory construction is to ascertain the legislature's intention and effectuate the purpose of the statute . . . [and that] in construing language in any one part of a statute, a court should consider the entire scheme of the statute and attempt to gather the legislative intent from the statute as a whole." Palmyra Park Hosp., Inc. v. Phoebe Sumter Med. Ctr., 310 Ga. App. 487, 495-496 (2011) (citing Five Star Steel Contractors v. Colonial Credit Union, 208 Ga. App. 694, 696

[10] According to the application, "Figure B-2 is a topographic map showing the facility plant boundary, a 1,000-foot boundary contiguous to the legal plant boundary." Joint Stipulation, Exhibit 3, Bates No. 217. The boundary of the facility depicted in Figure B-2 includes the property that was later acquired by Pinova. See Joint Stipulation, Exhibit 3, Bates No. 222.

(1993) and Ga. Soc'y of Ambulatory Surgery Ctrs v. Ga. Dep't of Cmty. Health, 309 Ga. App. 31, 35 (2011)) (internal quotations omitted). Here, Congress has "declare[d] it to be the national policy of the United States that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible." 42 U.S.C. § 6902(b). In furtherance of this policy, Congress has enacted expansive corrective action requirements, mandating, for instance, that owners and operators of hazardous waste facilities assume responsibility for historic contamination.[11] 42 U.S.C. § 6924(u). Reading the statutes as a whole, it is clear that requiring a subsequent purchaser like Pinova to assume RCRA/HWMA corrective action obligations is consistent with the intent of Congress and the Georgia General Assembly.

Finally, even if the statutory and regulatory provisions applied herein require interpretation beyond the plain meaning of their words, deference is owed to an agency's interpretation of the statutes and rules it is charged with administering.[12] As the Georgia Supreme Court has noted:

> [A]gencies provide a high level of expertise and an opportunity for specialization unavailable in the judicial or legislative branches. They are able to use these skills, along with the policy mandate and discretion entrusted to them by the legislature, to make rules and enforce them in fashioning solutions to very complex problems.

Bentley v. Chastain, 242 Ga. 348, 350-51 (1978). Consequently, courts "must defer to an agency's interpretation and enforcement of its own rules." Upper Chattahoochee Riverkeeper, 318 Ga. App. at 502 (quoting Walker v. Dep't of Transp., 279 Ga. App. 287, 292 (2006)); see also Ga. Dep't of Cmty. Health v. Gwinnett Hosp. Sys., 262 Ga. App. 879, 882 (2003). Here,

[11] As EPA has observed, "The clear intent of Congress in enacting Section 3004(u) was that the price for obtaining a RCRA permit for hazardous waste management is cleanup of the entire property at which the permitted waste occurs." 58 Fed. Reg. 8658, 8676 (Feb. 16, 1993).

[12] Deference is due only to the agency's interpretation of statutory and regulatory provisions, as distinguished from its application of technical knowledge to an expert permitting decision, which is not afforded deference. Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, 298 Ga. App. 753, 769 (2009).

then, the Director's interpretation of RCRA, the HWMA, and their implementing regulations is entitled to deference.[13]

In sum, Pinova became a co-owner of the hazardous waste facility defined in the 2007 HW Permit when it purchased a portion of the facility that contained SWMUs subject to the corrective action provisions of RCRA and the HWMA. Consequently, the Director correctly determined that Pinova, as a part-owner of the facility, must be included on the active permit.

V. DECISION

For the foregoing reasons, the Director is entitled to judgment as a matter of law. Accordingly, the Director's Motion for Summary Determination is **GRANTED**, and Pinova's Cross Motion for Summary Determination is **DENIED**.

SO ORDERED, this 21st day of October, 2013.

KRISTIN L. MILLER
Administrative Law Judge

[13] Pinova urges this Court to rely, instead, upon EPA's failed attempt to promulgate rules addressing the responsibilities of new owners who have acquired property containing SWMUs that are subject to corrective action but which would not otherwise trigger RCRA permitting requirements. See 55 Fed. Reg. at 30846-47 (July 27, 1990); 61 Fed. Reg. 19463 (May 1, 1996); 64 Fed. Reg. 54607 (Oct. 7, 1999). However, an incomplete rulemaking attempt is not a legal authority upon which this Court relies. Moreover, 1990 EPA's Advance Notice of Proposed Rulemaking, which was a request for comment on whether or how the existing statutory and regulatory scheme might be improved or clarified, does not dictate a conclusion that the existing scheme is inadequate to support the Director's action. Finally, it is undisputed that the Director may interpret the governing statutes and regulations more strictly (but not less strictly) than EPA. 42 U.S.C. §§ 6926(b), 6929; see Transcript of Oral Argument (August 30, 2013) at 30-31, 51.