

# Airport Litigation & Settlement of Environmental Claims



CHRISTOPHER R. BARTH, ESQ.  
LOCKE LORD LLP  
CHICAGO USA  
SEPTEMBER 19, 2014

Locke  

---

Lord<sup>LLP</sup>

# U.S. Airport Environmental Law Litigation (Session #12)



## → U.S. Airport Historical Operations

- Many U.S. airports built or significantly expanded in 1940s as part of the U.S. war effort
- Pre-1940: Airfields outside major population centers focused on GA and air mail operations
- 1940s: U.S. Army Air Force operated and significantly expanded operations to include manufacturing and maintenance
- Post-1945 – 1960s: Continuing use of airports in support of U.S. military needs

**WELCOME TO  
WALA 2014**

Buenos Aires,  
Sept 17-19, 2014

Host



Main Sponsor

**SITA**

Organized by

abiaxair

# U.S. Airport Environmental Law Litigation (Session #12)



## → Impacts from Historical Operations

- Discharges, spills, and dumping of industrial chemicals:
  - Chlorinated solvents from degreasing operations
  - Waste paint
- Leaks from underground storage tanks
- Fuel farms and underground system leaks
- At many U.S. airports, largest source of historical contaminants from on-site or adjacent U.S. military operations

# U.S. Airport Environmental Law Litigation (Session #12)



## → Current U.S. Airport Operations Involving Environmental Risks

- Aircraft fueling and maintenance
- Ground service equipment fueling and maintenance
- Fuel farms, underground fuel systems, and underground storage systems
- Deicing
- Waste disposal and treatment
- Asbestos, PCBs, mold, and lead paint
- Natural resource impacts
- Airport expansion including acquisition of properties

**WELCOME TO  
WALA 2014**

Buenos Aires,  
Sept 17-19, 2014

Host



Main Sponsor

**SITA**

Organized by

abi~~ax~~air

# U.S. Airport Environmental Law Litigation (Session #12)



## → U.S. Laws Impacting Upon Airport Operations

### → Federal Government v. Individual States

→ Patchwork of laws

### → Various Federal Laws Including:

→ Clean Air Act (CAA) and Clean Water Act (CWA)

→ National Environmental Policy Act (NEPA)

→ Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (“Superfund”)

→ Resource Conservation & Recovery Act (RCRA)

### → State Laws Similar to U.S. Federal

→ Add a separate layer of compliance requirements

# U.S. Airport Environmental Law Litigation (Session #12)



- **Types of Environmental Lawsuits Faced by U.S. Airport Operators**
  - Regulatory actions by government agencies
    - Associated with airport expansion plans
    - Seeking enforcement of environmental laws and regulations
    - Fellow state / county government agencies
  - Litigation filed by residents living near airport
    - Noise
    - Takings / interference with enjoyment of property rights
    - Bodily injury claims
  - Qui Tam actions
  - Airport Fee Litigation

# U.S. Airport Environmental Law Litigation (Session #12)



## → Insurance Coverage Issues

### → Historical Insurance

- Types: Airport Owners & Operators, General Liability (excess and umbrella), 1st Party Property, Hangarkeepers
- Issue: 1970 – Present -- policies include AVN 46B or Environmental Disturbance exclusion
  - Exclude coverage for noise, pollution and contamination (subject to carve-out provision)

### → Current Insurance Products

- Pollution Legal Liability (various forms)

# U.S. Airport Environmental Law Litigation (Session #12)



## → Insurance coverage issues (continued)

- Self-insured retentions
- Capital cost v. “damages”
- Investigation v. remediation costs
- Fines, penalties, punitive damages
- Governmental oversight costs
- Long-term monitoring
- Loss of use claims
- Decrease in property values

**WELCOME TO  
WALA 2014**

Buenos Aires,  
Sept 17-19, 2014

Host



Main Sponsor

**SITA**

Organized by

abiaxair



# U.S. Airport Environmental Law Litigation (Session #12)



- ➔ Insurance coverage issues (continued)
  - ➔ Reputational harm
  - ➔ Natural resource damage claims
  - ➔ Defense v. indemnity
  - ➔ Legal costs

# U.S. Airport Environmental Law Litigation (Session #12)



## → Potential costs:

- Leaking fuel oil tanks: \$10,000 - \$50,000
- USTs: \$125,000 to over \$1 million
- Impacts to municipal drinking water wells : \$10+ million
  - Especially if contaminant is MTBE or LNAPL

**WELCOME TO  
WALA 2014**

Buenos Aires,  
Sept 17-19, 2014

Host



Main Sponsor

**SITA**

Organized by

abi~~ax~~air

# U.S. Airport Environmental Law Litigation (Session #12)



## → Settlement of Airport Environmental Litigation

### → Monetary v. compliance

→ Consent decrees

→ Noise abatement

→ Modification of expansion plans

→ Compensation and financial restitution

→ Damages

### → Legal restrictions on scope

### → Generally not confidential due to open records laws

WELCOME TO  
WALA 2014

Buenos Aires,  
Sept 17-19, 2014

Host



Main Sponsor

SITA

Organized by

abi~~ax~~air

# U.S. Airport Environmental Law Litigation (Session #12)



→ Questions?

**WELCOME TO  
WALA 2014** | Buenos Aires,  
Sept 17-19, 2014

Host



Main Sponsor

**SITA**

Organized by

abi~~ax~~air