

## AEG Presentation, Charlotte

January 2012

### “Money For Nothing, Contamination for Free”

John Adams Hodge, P.G., Attorney

John Adams Hodge, P.G. and Attorney will be the speaker for the Winter Meeting of the Carolinas Chapter of AEG in Charlotte.

This presentation examines the professional responsibilities of environmental professionals as enumerated in several recent court decisions. Environmental consultants performing environmental site assessments (ESAs) can be liable for negligence and misrepresentation as a result of improper delegation or oversight in the assessment process. Although the All Appropriate Inquiry Standard (AAI) sets a minimum scope of work for conducting an ESA, environmental professionals must exercise reasonable judgment in identifying data gaps and recognized environmental conditions at subject sites. In another case, attempts by lawyers to claim privilege over environmental compliance reports, environmental data, and groundwater data and interpretation failed, resulting in the disclosure of thousands of pages of information to another party in a lawsuit. Strict rules exist for the establishment and maintenance of privileged communication between attorneys, clients, and consultant-experts. Failure to understand the scope of the rules governing privileges may result in the unintended release of internal documents, waiver of any privilege that might be claimed, and potential liability to the consultant and the client. Consideration of potential privileges should be made contemporaneous with the creation of a document or report, and consultants should be made aware of the type of privilege claimed and the rules governing the maintenance of the privilege. If time permits, a short discussion may ensue regarding the role of the geoscientists when called upon to provide expert opinions.

John Adams Hodge is an AEG member, a Professional Geologist in North and South Carolina, and a practicing environmental lawyer who resides in Columbia, SC. He was formerly an attorney with the South Carolina Department of Health and Environmental Control, and he recently left a large law firm and opened up his own practice. He is listed in America's Best Lawyers – Environmental Law. Mr. Hodge is also an environmental consultant and an Adjunct Professor in the Environment and Sustainability Program at the University of South Carolina in Columbia. For many years he taught a graduate course, Environmental Regulations and Planning, in the Department of Environmental Health Sciences at the University of South Carolina. His work focuses on environmental permitting and compliance, brownfields redevelopment, and site assessment and remediation. Mr. Hodge has experience in virtually all environmental regulatory programs. He negotiated the first brownfields agreement in South Carolina, was a leader

for the cleanup team engaged in the remediation of the Charleston Naval Complex, and obtained the original wetlands permits for the Boeing 787 aircraft assembly plant in Charleston. He recently published an article on forecasting climate change in the *Sci-Tech Lawyer* and also published an article regarding the Deepwater Horizon oil spill in *The Environmental Law Reporter*. He received a B.S. Degree in Geology from Duke University, an M.S. Degree in Marine Science/Geology and a J.D. Degree from the University of South Carolina, and a Certificate in Planetary Geology from Birkbeck College of the University of London.

