

## Environmental Disputes, Contested Proceedings and Litigation

### Trying and Resolving Environmental Disputes

Andrews Kurth provides sophisticated and comprehensive counsel on interrelated regulatory and litigation challenges involving environmental issues. Since 1975, we have handled environmental compliance and litigation throughout the United States, Mexico and South America.

Experienced working on all sides of environmental issues, our environmental lawyers have served as federal regulators, prosecutors and corporate environmental counsel, and their educational and professional training includes such fields as engineering, chemistry and biology.

### Straight Talk on Environmental Law

Questions and disputes about federal, state and local environmental laws and regulations often involve emotional issues with long-term business consequences. Delays and extra costs can be just one result—an unreported spill or neglected permit might even mean fines or jail time. Our counsel includes:

- Environmental Trial Counsel and Matters
- Federal and State Regulatory Compliance, Including Permits
- Sediment Contamination
- Alternative Energy
- Facilitating Public Land Projects
- Cost Evaluations of Environmental Risks

Because we know the law from the inside, we give clients straight talk about options that help them remain competitive and in compliance.

### Environmental Trial Counsel

We try cases. Our lawyers serve as corporate defense and corporate plaintiff counsel and have handled disputes in states from New England to the Pacific Northwest, from Texas to the Great Lakes.

Our trial and litigation experience includes environmental indemnity prosecutions, groundwater contamination, CERCLA contribution claims and defense of citizen suits.

Using an aggressive yet common-sense approach to each case, our litigation team is strengthened by our lawyers' backgrounds as EPA criminal prosecutors, regional Superfund Counsel, Justice Department civil environmental prosecutors and as the Department of the Interior Solicitor.

Representative trial engagements include:

- **Landmark CERCLA Claim**—We obtained summary judgment on CERCLA cost recovery claims for a chemical company against the New Jersey Turnpike Authority. This has frequently been cited as the seminal case regarding the inapplicability of the alternative liability doctrine in CERCLA cases.
- **Passaic River**—Acting as lead trial counsel, we are prosecuting some 300 third-party cases, as part of our defense of a New Jersey state court proceeding brought by the state regarding the Passaic River.
- **Natural Resources Damages Settlement**—Represented a client in protesting natural resources damage settlements at the regulatory level in New Jersey and successfully changed the settlement format.
- **Chemical Manufacturer**—Serving as lead counsel for the Potentially Responsible Party (PRP) group and representing a chemical manufacturer in a matter involving a circa 1866 Wisconsin coke and gas plant.
- **Portland Harbor and Willamette River**—Currently advising on major projects in the Pacific Northwest.

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- **Remediation Settlement**—Counseled an environmental consulting firm in a post-settlement lawsuit over remediation measures and settled the case with no contribution on our client's part.
- **Environmental Indemnity**—Obtained a jury verdict for our client, a corporate plaintiff in an environmental indemnity case involving buried documents. The verdict, for \$60 million after court-imposed supplemental damages, included a \$50 million punitive damage jury award.
- **Groundwater Dispute**—Secured a judgment for our client in a three-day trial of a contested groundwater settlement, which required proof of source-relationship and remediation strategies.
- **Groundwater Contamination**—Settled a sediment and groundwater contamination case for \$112 million. Our client's initial share of the three-way settlement was negotiated at 17 percent.
- **Multiparty Cost Recovery Claim**—Negotiated a \$125 million settlement on a cost-recovery claim by the United States government against ten parties. Our client, a chemical company highly targeted by other parties in the contribution aspect of the case, eventually funded only 6.6 percent of the settlement, notwithstanding a non-binding, private allocation of nine percent.
- **Superfund**—Secured a “carve out” settlement for a client acknowledged to be the largest contributor at a Superfund site, leaving other settling parties to pay the remaining liabilities.

### Federal and State Regulatory Compliance

As former regulators and prosecutors with the EPA and U.S. Department of Justice, Andrews Kurth lawyers work successfully with those agencies and many others, including the U.S. Army Corps of Engineers, National Parks Service, OSHA and Department of Energy. Our effective counsel includes:

**Permits.** We work to keep our clients in compliance, help them secure permits and quickly respond to investigations. Our practice builds on extensive work for the electric power industry—we secured permits for 15 power plants in seven states. We can create permit-tracking services that help clients verify all required environmental permits, authorizations and notices and provide a solid foundation for contested permitting and nonattainment cases.

**Regulatory Navigation.** Our environmental lawyers are familiar with the regulatory maze—PSD (Prevention of Significant Deterioration) Permits, BACT (Best Available Control Technology) issues, NSPS (New Source Performance Standards) disputes. We work to guide our clients through it, skillfully and cost-effectively. Representative engagements include:

- **Resource Conservation and Recovery Act**—Counseled on a first-impression case regarding the applicability of RCRA to a concentrated animal feeding operation.
- **Clean Water Act**—Defended federal claims for criminal and civil judicial penalties against an offshore operator for alleged Clean Water Act violations.
- **Hexavalent Chromium Remedial Investigation**—Guided RI involving an old, 1,000-acre hexavalent chromium site near Cleveland, Ohio. Client sought to reduce risk, secure remediation levels and to implement Brownfields development to convert the site to a recreational and residential development along the banks of Lake Erie. Public grant money is part of the Brownfields project.
- **Toxic Exposure**—Counseled on health and safety for clients in the Semiconductor Industry Association. At issue was the viability of a retrospective epidemiological study that could assess potential exposures to toxic chemicals in clean rooms.

Other notable regulatory engagements include:

- Serving on the executive committee of a PRP group in a radiological site
- Negotiating sediment issues in multiple Region 6 matters
- Advising on a Region 2 matter
- Maintaining qualifications under OSHA's HAZWOPER (Hazardous Waste Operations and Emergency Response) standard

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### Sediment Contamination

We have extensive experience in harbor/estuary cases involving river and harbor cleanup issues. We work to conduct detailed PRP searches and coordinate appropriate engineering and to investigative support experts.

Additional relevant experience includes constructing complex combined sewer contribution cases, working with ecological and health risk assessments, and participating in the negotiation and management of administrative orders and judicial decrees relating to these river and estuary issues.

### Climate Change

Andrews Kurth's environmental lawyers provide extensive support to the firm's Alternative Energy financing practice group. This includes substantial environmental reviews of wind energy projects in Texas and elsewhere.

In the development of wind farm projects, we represent clients in all aspects of environmental permitting and provide substantive knowledge of issues relating to endangered species, cultural artifacts, avian concerns and wetlands issues.

In addition, lawyers in the Section are members of Andrews Kurth's Climate Change Group and participate within that group in tracking and assessing clients' needs in respect to global climate change and potential future statutory and regulatory developments in that arena.

### Facilitating Public Land Projects

We regularly secure the regulatory approvals for projects that involve public lands and resources. Our lawyers apply their depth of experience with the Endangered Species Act and National Historic Preservation Act to these projects. We work to protect our clients' interests in questions involving coastal zone management, surface mining and other mineral extraction, water allocation and ecological risk. Case examples include:

- **Historic Parks**—Developed a children's historical park on National Park Service grounds.
- **Endangered Species**—Addressed endangered species concerns in California rangelands, Pacific Northwest forests and Arizona wetlands, including resolution of a dispute involving power plant permitting.
- **Urban River**—Defended engineering and environmental claims regarding a historic, highly urbanized river.

### Cost Evaluations of Environmental Risks

Our lawyers evaluate the environmental risks and liabilities of billions of dollars in mergers, acquisitions and asset sales annually. Many of these are asset securitizations involving multiple properties in numerous locations.

For example, we addressed state regulators' concerns about the control technology to complete the disposition of six Midwestern peaker power plants.

Andrews Kurth also handles inspection and compliance reviews, and resolves disputes about them. For example, we achieved a settlement of a contamination and fraud claim in the sale of a manufactured gas plant on behalf of a property seller.