

Environmental

Environmental matters typically involve difficult regulatory and litigation decisions. Andrews Kurth's environmental practice is constructed to offer some of the most experienced and successful environmental lawyers in the country in both these areas—and we've worked in both disciplines since 1975.

Our team members have served as federal regulators and prosecutors and corporate environmental counsel; have trained in such fields as engineering, chemistry and biology; and handle environmental compliance matters throughout the US, Mexico and South America. We have worked on all sides of environmental issues, and clients benefit from our holistic view of these complex problems.

Our environmental trial team

We try cases. We serve as corporate defense and corporate plaintiff counsel. Our seasoned environmental trial lawyers have handled disputes in nearly half of the fifty states, from New England to the Pacific Northwest and from Texas to the Great Lakes. We take an aggressive yet common-sense approach to each case, reflecting our lawyers' years of insight as EPA criminal prosecutors, regional Superfund Counsel, Justice Department civil environmental prosecutors and as the Department of the Interior Solicitor.

Recent trial engagements have included:

- In 2003, a jury verdict for our client, a corporate plaintiff in an environmental indemnity case involving buried documents, in the amount of \$61 million (after court-imposed supplemental damages), which included a \$50 million punitive damage jury award against a Shell Pipeline subsidiary.
- In 2003, a judgment for our client in a three-day trial of a contested groundwater settlement, which required proof of source-relationship and remediation strategies.
- In 2003, settlement of a sediment and groundwater contamination case for \$112 million. Our client's initial share of the three-way settlement was negotiated at 17 percent.
- A \$125 million settlement in 2002 on a cost-recovery claim by the U.S. 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 9 percent.
- In 2001, 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.
- We secured a "carve out" settlement in 2000 for a client acknowledged to be the largest contributor at a Superfund site, leaving other settling parties to pay the remaining liabilities.

Our 2004 engagements include further environmental indemnity prosecutions, the defense of several groundwater contamination cases, the prosecution of CERCLA contribution claims and the defense of an environmental group's citizen suit notice involving an estuarine environment.

Complying with federal and state regulations

As former regulators and prosecutors with the EPA and Department of Justice, we work successfully with those agencies and many others (from the Corps of Engineers and the National Parks Service to OSHA and the Department of Energy). The goals are to keep our clients in compliance, help them secure permits and quickly respond to investigations. Building on our 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.

The regulatory maze—PSD (Prevention of Significant Deterioration) Permits, BACT (Best Available Control Technology) issues, NSPS (New Source Performance Standards) disputes—is no mystery to Andrews Kurth. We guide our clients through it, skillfully and cost-effectively. Recent engagements have included:

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- A first-impression case regarding the applicability of RCRA to a concentrated animal feeding operation.
- Federal claims for criminal and civil judicial penalties against an offshore operator for alleged Clean Water Act violations.
- Guidance through the RI stage of an old, 1000 acre hexavalent chromium site near Cleveland, Ohio. The client's vision was to utilize risk reduction principles to secure remediation levels, then to implement Brownfield development to convert the site to a recreational and residential development along the banks of Lake Erie. Public grant money has been utilized for parts of the Brownfield project.
- Representing clients in the Semiconductor Industry Association with regard to health and safety issues, particularly whether a retrospective epidemiological study that could assess potential exposures to toxic chemicals in clean rooms is viable.
- Representing a mini-steel mill on various multi-media issues.

Our 2004 engagements include serving on the executive committee of a PRP group in a radiological site, negotiating sediment issues in multiple Region 6 matters and a Region 2 matter, and various enforcement matters. We maintain qualifications under OSHA's HAZWOPER (Hazardous Waste Operations and Emergency Response) standard.

Sediment contamination

We are involved in three harbor/estuary cases. Each involves river and harbor cleanup issues. We have conducted detailed PRP searches and coordinated appropriate engineering and investigative support experts. We have constructed complex combined sewer contribution cases, worked with ecological and health risk assessments, and participated in the negotiation and management of administrative orders and judicial decrees relating to these river and estuary issues.

Facilitating public land projects

We have the contacts and experience to secure the regulatory approvals for projects that involve public lands and resources. Our lawyers thoroughly understand how the Endangered Species Act and National Historic Preservation Act apply to such projects, and know how to protect our clients' interests in questions involving coastal zone management, surface mining and other mineral extraction, water allocation and ecological risk. We have helped clients:

- Develop a children's historical park on National Park Service grounds.
- Address endangered species concerns in California rangelands, Pacific Northwest forests and Arizona wetlands, including resolution of a dispute involving power plant permitting.
- Defend engineering and environmental claims regarding a historic, highly urbanized river.

Evaluating environmental risk

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.

We can also handle inspection and compliance reviews and resolve disputes about them, as in our settlement of a contamination and fraud claim in the sale of a manufactured gas plant on behalf of a property seller.

Knowing the law, knowing your options

Questions and disputes about federal, state and local environmental laws and regulations often involve emotional issues with long-term consequences for your company and its financial future. Delays and extra costs can be just one result—an unreported spill or neglected permit might even mean fines or jail time.

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Andrews Kurth lawyers understand the high stakes in environmental matters. Because we know the law from the inside, we give you straight talk about your options so you can be compliant and remain competitive.