

Environmental Compliance, Enforcement & Permitting

Practices & Sectors

Catastrophe
Response Team

Workplace Safety and
Environmental

Workplace Safety and
Health (OSHA/MSHA)

The Environmental Compliance, Enforcement & Permitting Practice (“ECEP”) has experienced, hands-on attorneys who assist clients with compliance with local, state and federal environmental laws, with complex environmental litigation matters, and in finding practical business solutions to environmental issues, whether such issues are in a regulatory setting, associated with contamination, or in connection with real estate and corporate transactions.

Our environmental attorneys are counselors, advisors, negotiators, trial lawyers and appellate advocates with experience in all elements of environmental law, and we take a practical, efficient, hands-on approach to addressing environmental problems and risks.

With respect to compliance, enforcement and permitting, we represent a broad range of operations and activities including heavy industry, chemicals and pharmaceuticals manufacturing, explosives and propellants, solid and hazardous waste disposal, medium and light industrial manufacturing, ammonia and refrigerants, and tankers and transportation. We have extensive experience with solid waste disposal operations, Clean Water Act and Clean Air Act permitting and compliance, brownfields development and liability issues associated with contaminated property. We address the full spectrum of compliance, enforcement, and litigation matters from those associated with local municipal requirements to complex federal cases.

Types of Clients The Environmental Compliance, Enforcement & Permitting Practice Represents:

Heavy metals manufacturing including steelmaking, aluminum processing, foundry operations and all types of metals forming and finishing; solid and hazardous waste handling including landfill and recycling operations and scrap handling and management; chemical and specialty chemicals manufacturing and formulations including paints and coatings, pharmaceuticals, adhesives and soaps; heavy equipment manufacturing including locomotive and railroad equipment, off-road vehicle manufacturing and automobile and related equipment manufacturing; petroleum recycling and refining, mining and aggregates operations; defense, explosives and pyrotechnics manufacturing, and myriad other manufacturing operations.

In addition to traditional manufacturing, we routinely assist clients in the non-manufacturing industries and services, including packaging, agricultural and meat food processing, warehousing and distribution; residential and commercial construction and demolition; commercial laundry and dry-cleaning operations; the transportation and reverse logistics industries; warehousing and distribution of hundreds products (including those containing hazardous chemicals) and retail grocery/warehousing

The attorneys involved in environmental, compliance, enforcement and permitting have experience in all major environmental programs and corresponding regulations and state laws.

Experience includes the Clean Air Act (“CAA”); Clean Water Act (“CWA”), Resource Conservation and Recovery Act (“RCRA”); Emergency Planning and Community Right to Know Act (“EPCRA”); Toxic Substances Control Act (“TSCA”); Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”); Oil Pollution Act (“OPA”); Hazardous Materials Safety Transportation Act (“HMSTA”); and Federal Insecticide, Fungicide, &

Rodenticide Act ("FIFRA").

We address environmental permitting, compliance, and litigation issues with experience, and with the goal of ensuring a practical business solution, regardless of the area of law.

Air Pollution. The air attorneys in our practice group have experience in air permitting as well as compliance and enforcement and rulemaking and variances. On the permitting side, we have assisted clients in obtaining PSD permits for greenfield sites and have considerable experience in the complicated area of New Source Review associated with construction permitting. We have assisted numerous clients in Title V permitting, NESHAPs/MACT and Greenhouse Gas permitting issues.

On the air enforcement and compliance side we have experience in PSD, NSR, the NSPS and NESHAPs issues in a broad range of industries. We have represented clients in responding to Requests for Information, and have experience in the full range of enforcement actions, from Notices/Findings of Violation, through settlements, litigation and appeals of enforcement decisions. We regularly represent clients in rulemaking proceedings—we not only participate in federal and state rulemaking procedures initiated by the government, but assist clients in developing site specific rulemaking and obtaining variances. We have experience in all of the USEPA regions and in many states and have good relationships with air regulators across the country.

Water Pollution. We have experience in all aspects of water pollution control and permitting arising under the major federal water statutes. We regularly assist clients in obtaining NPDES permits across a broad range of industries, and in stormwater permitting and wetlands permitting for the construction and development industries. Our attorneys also assist clients with water quality certifications, including for hydropower plants. We have considerable experience in defending enforcement actions involving wastewater discharges, stormwater discharges, groundwater contamination issues and defending companies and developers in actions involving wetlands permitting and compliance. Our enforcement experience is not only on the federal level, but at the state and local levels as well.

Resource Conservation & Recovery Act The ECEP Practice has deep experience in all facets of RCRA and its implementing regulations and state counterparts. Our robust experience includes compliance counseling, defending enforcement matters, Part B permitting for complex industrial sites; corrective action, and prosecuting and defending RCRA Citizen Suits. Our experience derives from over two decades of representing facilities that generate, treat, store, dispose and recycle wastes, facilities with USTs and ASTs, landfills, waste piles, land-farms, OB/OD units, surface impoundments, wastewater treatment units, and incinerators. We have experience in waste characterization, cleanup standards and land disposal issues. Our group resume includes all aspects of RCRA rulemaking, defense of countless complex RCRA enforcement actions, and defense and prosecution of citizen suits. In addition to the waste disposal industry we have represented waste transporters in the bulk transport and rail industries, waste recyclers and reclaimers (including solvent recovery and oil reclamation facilities), tire recyclers, metals reclamation facilities (including scrapyards, aluminum recycling and electric arc furnace facilities), waste-to-energy recycling facilities, and cement kilns.

UST/AST Issues The ECEP Practice has deep experience in all facets of the Underground Storage Tank ("UST") provisions of the Resource Conservation and Recovery Act ("RCRA"), and various state programs addressing underground and aboveground storage tanks and implementing federal RCRA UST regulations and programs. We represent facilities in a broad range of industries which utilize ASTs and USTs in the handling, use, storage and distribution of chemicals, petroleum products and wastes. Our group resume includes experience in federal and state UST/AST rulemaking, defense of countless enforcement actions arising from or relating to the use of USTs/ASTs, and defense of citizen suits relating to USTs/ASTs.

Asbestos. The ECEP Practice has unique experience in asbestos issues arising under Environmental laws as well as toxic torts relating to asbestos exposure. Experience includes the mining, manufacturing, use, removal and disposal of asbestos and asbestos containing products, including laws aimed at the protection of workers exposed to asbestos in workplace settings; renovations and construction projects in structures with asbestos; the abatement and disposal of asbestos, and the workers' compensation, personal injury, and toxic tort liabilities associated with exposure to asbestos. Our unparalleled strength at the federal, state, provincial and local levels in the OSHA/safety aspects of asbestos regulation and liability, combined with experience in the manner in which environmental regulations address asbestos abatement and disposal, places us in a unique position to address the three major areas of asbestos liability: compliance with safety and OSHA regulations addressing workplace exposure; compliance with environmental regulations addressing renovation, reconstruction and abatement, and personal injury/toxic tort litigation involving asbestos exposure.

Community Right to Know. Our attorneys have experience in all aspects of compliance and enforcement, and recordkeeping and reporting associated with the EPCRA and its Section 311 Extremely Hazardous Substances provisions, Section 312 Hazardous Chemicals Inventory Reporting provisions and the Section 313 Toxic Chemical release Reporting Provisions. We have experience across the country, in a wide range of industries, responding to federal and state enforcement actions with respect to reporting, particularly in the wake of a chemical spill or release, including ammonia releases

Litigation. The attorneys in the ECEP Practice have extensive litigation and trial experience before administrative tribunals and in state and federal courts. Our litigation experience includes Superfund cost recovery and contribution claims, individual and class-action toxic tort and medical-monitoring claims, and civil investigations and criminal prosecutions under state and federal laws. Environmental litigation can encompass a wide range of complex issues including property damage caused by environmental contaminants, insurance coverage disputes, breach of contract and environmental indemnities, and multijurisdictional issues. Our attorneys have close relationships with a wide variety of experts, consultants, and other professionals that are necessary to obtain the best results possible in any given circumstance.

Spill and Release Reporting and Response. We routinely assist clients in making determinations of whether or not to report a spill or release of a hazardous substance and in developing the appropriate response thereto. We have handled numerous federal enforcement actions against clients accused of failure to report, or late reporting of a release of a broad range of chemicals, including ammonia releases. Our practice includes attorneys experienced in Risk Management Programs and in the complex area of Process Safety Management.

Environmental Aspects of Real Property, Corporate and Financing Transactions. A significant part of our practice involves the environmental aspects of corporate and financial transactions, including conducting and review environmental due diligence, assessing environmental risks associated with contamination, as well as the risks posed by environmental compliance including permitting issues and enforcement matters. Our ECEP attorneys have considerable experience in drafting and negotiating environmental provisions in M&A, and PSA agreements and loan documents as well as stand-alone remediation agreements indemnity agreements and escrow agreements for pre- or post-closing resolution of environmental issues. Additionally, we are familiar with and regularly advise clients on the various types of insurance products available to parties when necessary to overlay additional levels of protection to parties involved in transactions with environmental risks.

We have experience in the regulatory and statutory aspects of transactions, including ensuring the transfer of permits between entities is accomplished in a manner acceptable to state and

local agencies, and making any regulatory notices for changes in control of ongoing operations. While not necessary in most transactions, when regulators become involved in transactions (either because of an ongoing obligation for remediation or as part of an Order, or because a governmental entity has an interest in the real property or operations) we are effective in facilitating cooperation with regulators. We have obtained Prospective Purchaser Agreements from state agencies for clients seeking confirmation of risk shifting when acquiring properties with environmental issues, and have similarly obtained “comfort letters” from USEPA. We have assisted in and facilitated numerous “No Further Action”-type and closure letters (both pre and post-closing) to mitigate risks between parties and am familiar with most states and many local voluntary and regulatory cleanup programs.