



DEWEY & LeBOEUF

Environmental, Health and Safety



About Dewey & LeBoeuf

Dewey & LeBoeuf is a full-service law firm providing counsel throughout the Americas, Europe, Russia/CIS, the Middle East, Asia and Africa. With more than 1,100 lawyers in major financial and commercial centers, the firm represents national and global corporations, financial institutions and government agencies in their most complex legal matters.

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Environmental, Health and Safety

For 30 years, Dewey & LeBoeuf's Environmental, Health and Safety (EHS) Practice Group has worked closely with our Corporate Transactional, Infrastructure Development and Project Finance Groups to support the firm's extensive network of clients in the industrial, chemical, energy and manufacturing sectors. Our knowledge of these industries, coupled with our environmental regulatory, transactional and administrative, civil and criminal litigation experience, affords us the opportunity to advise our clients on a broad range of EHS issues that are important for maintaining and enhancing enterprise value.

Environmental Compliance Counseling

We provide a broad range of EHS compliance counseling and support services with respect to federal, state and local statutory, regulatory and administrative requirements; federal and state disclosure and self-reporting policies and laws; federal, state and local air, water, and waste permitting processes; and land and water contamination issues, frequently in complex and contested proceedings. We regularly advise clients on issues that arise under the Toxic Substances Control Act (TSCA), the Federal Insecticide, Fungicide and Rodenticide Act

(FIFRA), the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA) and the Clean Air Act (CAA). We also aid companies in the development and implementation of company-wide field compliance audits and management systems.

Climate Change

Dewey & LeBoeuf is qualified to provide business counseling advice and representation regarding greenhouse gas (GhG) issues. Our representation has included advising industrial, chemical, energy and manufacturing clients on complex air quality regulatory issues and the siting of major facilities. As climate change concerns have become a factor in commercial and regulatory arenas, the firm's lawyers represent the legal vanguard, advising clients on the design of GhG regulatory policies, accounting for carbon exposure in transactions, structuring emissions reduction projects, the creation and trading of carbon credits, and compliance and business planning in response to GhG reduction programs and policies. Our representative climate change experience includes:

- Advising major US companies on their investment strategies regarding carbon reduction, offset creation and trading strategies in the United States;

- Advising companies concerning the disclosure of climate change risks in filings with the Securities and Exchange Commission and responding to shareholder inquiries and petitions regarding climate change and GhG emissions; and
- Advising companies on federal, regional and state legislative, regulatory and litigation developments with respect to climate change and GhG emissions, including the development and maintenance of a tracking system and database of key climate change developments and a proprietary database of essential climate change-related litigation materials.

Waste Management and Site Remediation

Lawyers in the EHS Practice Group offer representation on all matters relating to the generation, treatment, storage and disposal of solid and hazardous waste under both federal and state-administered programs. Our lawyers provide advice in connection with compliance requirements, permitting, monitoring, operations, release reporting and closure. Our work includes environmental audit activities of waste management programs designed to minimize the potential for environmental enforcement or citizen suit proceedings. Permitting work routinely includes regulatory

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approvals of impact statements, public health risk assessments, comprehensive recycling programs and disposal agreements.

We also assist companies in the preparation, adjudication and litigation of RCRA hazardous waste permits, and counsel clients on conditionally exempt small quantity generator determinations under RCRA, PCB-related issues under TSCA, beneficial use determination requests, solid waste landfill permits and closure and post-closure negotiations with states. Our lawyers provide counsel and representation with respect to every type of federal and state remediation program activity, including the management and negotiation of engineering evaluations and cost analyses, remedial investigations and feasibility studies, site remediation design, construction contract negotiation and natural resource damages. We currently represent several clients at multiple sites, including both performing and de minimis parties. Our representative experience in these areas includes:

- Acting as common counsel to a group of Fortune 10 defendant companies in a multiparty federal Superfund civil cost recovery action, including U.S. District Court and Court of Appeals proceedings involving third-party defendant claims;

- Assisting in responding to and negotiating the resolution of CERCLA information requests, notifications and orders and decrees under Sections 106 and 107;
- Negotiating and implementing RCRA voluntary corrective actions and orders;
- Conducting and participating in negotiations and alternate dispute resolution procedures to expedite the resolution of liability and contribution issues;
- Pursuing claims by, and defending claims against, individual and group clients in connection with cost recovery, contribution, and third-party personal injury and property damage claims involving equitable and injunctive relief;
- Defending citizen suit actions seeking damages and/or injunctive relief under CERCLA and RCRA; and
- Providing representation in the defense and, where appropriate, resolution and quantification of state and federal natural resource damage claims.

In addition, the EHS Practice Group offers comprehensive transactional experience in real estate, as our lawyers have played a leading role in the acquisition and divestiture of environmentally sensitive property and in brownfields redevelopment, and have negotiated some of the earliest liability “buyouts” and prospective purchaser agreements. Our work

in this area has included matters involving the transfer of contaminated military bases under base closure laws, prospective purchaser agreements and guaranteed fixed price remediation contracts; full liability transfers; and transactions for the acquisition and redevelopment of contaminated sites. We also have extensive experience in the use of cutting-edge environmental insurance products in hazardous waste site remediation, development and redevelopment projects, an important aspect of environmental due diligence.

Water Quality

Dewey & LeBoeuf possesses considerable experience with the myriad water quality issues facing our clients. We offer comprehensive representation of business confronting federal and state permit issuance, modification and transfer proceedings. These also include NPDES and POTW discharge concerns. Our lawyers have also been directly engaged in other key water policies and regulatory initiatives such as water quality standards, water quality criteria, total maximum daily loads, nonpoint source pollution, cooling water intake, stormwater and watershed management and privatization issues. Our team has extensive experience in dealing with water-related statutes such as the Coastal Zone Manage-

ment Act, the Oil Pollution Act, the Endangered Species Act, the Federal Power Act and the National Environmental Policy Act. Our experience in this area includes:

- Advising client on stormwater, oil spill prevention and pollution prevention requirements, including the implementation of “standardized” pollution control prevention across multiple retail sites;
- Advising clients on the applicability of effluent limitations guidelines to new and existing processes and assisting in the self-disclosure of potential historic violations under federal and state audit policies, resulting in a significant reduction in the final penalty assessment;
- Defended a client in a major enforcement action for alleged violations under the CWA and successfully negotiated a significant reduction in the penalty predicated on arguments tied to the “economic benefit” of the alleged non-compliance;
- Advising a client regarding compliance with TMDL requirements and allocation of pollutant loading among several industrial sources;
- Representing various clients in state Section 404 CWA permit applications before the U.S. Army Corps of Engineers and Section 402 CWA permits before various state agencies;

- Representing owners of coal-fired power plants in challenges to CWA Section 316 determinations (thermal and entrainment/impingement) by a state permitting authority;
- Representing a major chemical manufacturer before the EPA, the U.S. Congress, and within several states on issues related to water quality and the use and development of alternative agricultural chemicals to enhance water quality protection efforts;
- Representing clients with respect to permitting, modification and transfer, and operational and monitoring issues, as well as providing administrative, civil and criminal defense to enforcement and other legal proceedings by governmental authorities; and
- Represented a major manufacturing company on a CWA enforcement matter in the U.S. Court of Appeals for the D.C. Circuit.

Air Quality

Dewey & LeBoeuf’s Air Quality Group is widely recognized as a world leader in air quality regulatory legal services. Our air quality practitioners are at the forefront of the development of pragmatic and creative strategies for the air quality issues facing our clients. The following are examples of our air quality practitioners’ federal and state experience:

- Advising companies on NSR applicability issues for planned changes and expansion activities and in obtaining revised CAA permits, including the approvals required to incorporate the impacts of historic and unpermitted facility modifications;
- Representing clients cited for alleged PSD/NSR violations related to the construction and modification of facilities;
- Representing various companies in all aspects of regulatory issues associated with CAA compliance and state efforts to implement the CAA, including compliance counseling and permitting issues (Title V, synthetic minor, PSD, NSPS, NESHAP, MACT, nonattainment NSR, NOx SIP Call, emission testing, PM 2.5 implementation, Regional Haze, self-disclosure, enforcement update and Title IV acid rain issues); and
- Developing nationwide air permitting and compliance strategies for manufacturing clients designed to promote operational flexibility, increase production efficiency, minimize compliance exposure and avoid new regulatory requirements.

Transactional

On the “business” side, our environmental lawyers are active in the mergers, acquisitions and divestitures handled by the firm throughout

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the United States. The following are examples of our transactional experience for clients:

- Represented a company in the auction of 20+ assets, located in several states, which were subject to numerous administrative compliance and third-party claims. We recommended and structured a “pre-packaging” of remedial/regulatory responsibilities with a wrap-around environmental insurance policy for inclusion in the electronic data room and to be offered as the exclusive (i.e., no indemnities) remedy to bidders. The auction was successful and the need to negotiate an indemnity to address known environmental risks was eliminated; and
- Represented a multistate, diversified company in the acquisition of substantial new production capacity. A key valuation issue in this transaction required development of a business strategy to anticipate federal, regional and state GhG initiatives.

Health and Safety

We also advise clients on the wide array of issues raised by the regulations and programs of the U.S. Occupational Safety and Health Administration, Mine Safety and Health Administration, and their respective state agency counterparts.

Our lawyers can provide insight into how workplace health and safety matters are addressed by different national, federal and state agencies. Relevant experience in this area includes:

- Advising a retail client on the development and implementation of blood-borne pathogen policies and management systems;
- Conducting and overseeing accident investigations, including counseling to minimize the potential for litigation and/or enforcement and attention to privilege and other concerns related to potential litigation;
- Developing and implementing health and safety training and auditing programs and management systems, as well as evaluating existing programs and systems; and
- Negotiating federal and state agency health and safety violations with respect to both the level of alleged violations and penalty amounts.

Environmental Litigation

Our general approach is to help clients manage liabilities to minimize the potential for litigation and to seek solutions that avoid litigation to the extent that position can be maintained while best serving the client's interests. Some matters, however,

inevitably result in civil litigation, administrative proceedings and even criminal proceedings. In those instances, our environmental litigators readily assume an active defense or prosecution. As a result, we cover compliance, bodily injury/toxic torts, property damage and nuisance involving virtually all environmental media and major laws at the trial court, appellate court and administrative level. Our lawyers have tried environmental and toxic tort cases to verdict, argued in state and federal appellate courts, resolved matters through settlements and various forms of dispute resolution and avoided disputes through creative and thoughtful approaches, all while partnering closely with our clients. Dewey & LeBoeuf's Environmental Team has significant experience defending both alleged potentially responsible parties and corporations whose facilities are alleged to have caused environmental damage. Some examples of our environmental litigation experience include:

- Defending a toxic tort matter stemming from ground water contamination (300+ plaintiffs). The matter went to trial, and a mutually acceptable settlement was eventually agreed to by all parties;
- Assisting clients with toxic tort litigation in connection with air emissions from facility operations and the

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remediation of historic waste disposal and manufactured gas plant sites;

- Representing owners of industrial facilities in federal court on state and federal Clean Air Act issues, including alleged NSR and PSD violations, resulting in federal court-approved consent decrees; and
- Trying a property damage case in state court involving the release of petroleum into a residential neighborhood.

Project Siting and Licensing

Our EHS lawyers advise clients on environmental matters related to the siting and licensing of various facilities under federal and state law. Our representations include the preparation of complex alternatives analyses; strategic compliance counseling regarding the National Environmental Policy Act and the Coastal Zone Management Act; obtaining various permits required under the CAA, CWA, and other state and federal laws; and representation in administrative and judicial appeals of environmental permits.

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