



Dewey & LeBoeuf

Environmental Litigation



Environmental Litigation

4
Continents

15
Countries

1,100
Lawyers

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 Litigation

Dewey & LeBoeuf LLP's Environmental Litigation Group is internationally recognized for its experience in significant and varied environmental disputes. We represent primarily energy companies, manufacturers and other industries.

Our clients' activities are often heavily regulated by federal, state and local governmental authorities that possess and wield broad powers. In addition, environmental special interest groups closely monitor our clients' activities. Our approach is to assist our clients in the management

of liabilities to minimize the potential for litigation and to seek solutions that avoid it to the extent that position can be maintained while best serving the client's interests.

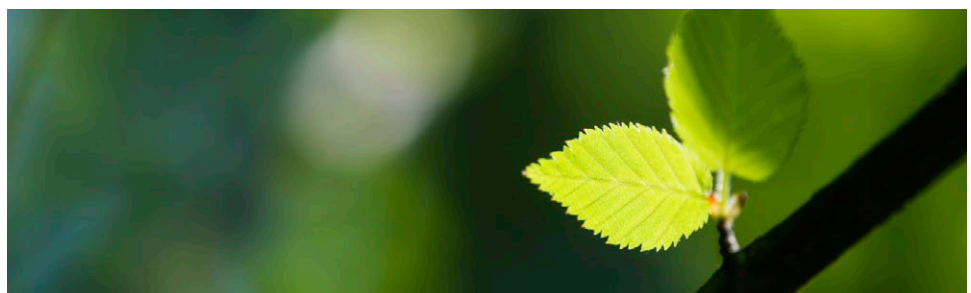
Our Environmental Litigation Practice Group lawyers routinely provide preventative advice and training to our clients and their operating personnel, counseling them in the avoidance of practices and conditions which expose them and their employees and officers to liability. We have extensive experience with stakeholder management and dispute resolutions techniques, to avert costly litigation.

Some matters, however, inevitably result in civil litigation (including private party-only, governmental and "citizens suits"); administrative (including permitting and enforcement) and even criminal proceedings. In those instances, our environmental litigators readily assume an active defense or prosecution. As a result, the Environmental Litigation Group covers 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 attorneys 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. Because of our wide geographic reach of offices, from North America to Europe to the former Soviet Union, we are able to defend, preserve and enhance the interests of our clients in numerous jurisdictions. Our general representative experience in environmental litigation includes:

- Defending energy companies in investigations and litigation commenced by USEPA/Department of Justice concerning air emissions (e.g., "Section 114" NSR/PSD Matters);
- Representing owners of facilities withdrawing water for manufacturing purposes against citizens suits and governmental action alleging harm to natural resources;



- Representing owners of a former manufacturing facility in Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and public nuisance private cost recovery action jury trial in federal court;
- 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;
- Defending a manufacturer in a class action toxic tort matter alleging deposition of air pollutants on a residential neighborhood;
- Defending mass tort class actions with substantive citizen suit claims, including conferring with a variety of medical and non-medical experts in cases involving causation issues arising from alleged toxic exposure;
- Defending a New York County government and its elected officials in a property damage and takings trial in federal court;
- Defending an international energy company against environmentally-based RICO claims in federal district court;
- Representing owners of electric generating stations and manufacturers in federal court on state and federal clean air act issues (NSR/PSD) resulting in federal court-approved consent decrees;
- Representing petroleum company in a property damage case in state court involving the release of petroleum into a residential neighborhood;
- Defending a manufacturer in a putative class action comprised of Native Americans alleging toxic torts associated with polychlorinated biphenyl contamination of adjacent surface water;
- Representing owners of a former manufacturing facility on soil vapor intrusion and other public health and remediation issues in a state court bodily injury/property damage case;
- Defending a client accused of releasing of TCE, arsenic and other hazardous substances into drinking water aquifers and trying the case in a 15-day administrative hearing;
- Obtaining a discharge permit for company and then representing the company in a 15-day administrative trial against national and state environmental organizations over the permit;
- Representing a company in appellate court in an attempt by national environmental groups to close a major facility for alleged permit and statutory non-compliance under the state administrative procedures act;
- Challenging federal regulations requiring the use of ethanol in gasoline in the U.S. Court of Appeals for the District of Columbia;
- Representing industrial plaintiffs group in a CERCLA cost recovery suit stemming from the Environmental Protection Agency;
- Superfund Site Investigation. We served as common counsel to a PRP group that negotiated a settlement with the U.S. Department of Justice for site costs, which in turn sought to seek those costs from other defendants which refused to settle with the government. The unique handling of the settlement of the cost recovery suit and the “nexus document” prepared by common counsel was applauded by the judge handling the matter;
- Defending a potentially responsible party in the Pennsauken Landfill, the oldest state superfund investigation/litigation in New Jersey;
- Defending building owners and demolition contractors in administrative and civil prosecutions for violations of US asbestos emissions standards;

- Defending companies and governmental entities against a wide variety of “citizen suits” in federal court; and
- Prosecuting coastal zone consisting certifications for large development projects before state coastal zone agencies and United States Department of Commerce.

Our international Environmental Litigation Group lawyers have additional representative experience, including:

- Defending the operators of one of the UK’s largest combined heat and power (CHP) plants in relation to English High Court proceedings commenced by the former owners of the plant claiming that all greenhouse gas allowances allocated to the operator under the European Emissions Trading Scheme (EU ETS) are in fact the property of, and should be transferred to/held on trust for, the former owners;
- Defending civil proceedings in the English High Court in negligence and nuisance relating to significant property damage and business interruption losses arising out of a major river water pollution incident;
- On behalf of the operators of a major UK CHP, challenging an application by a neighboring instal-

lation for permission under the EU’s “Integrated Pollution, Prevention and Control” permitting regime to construct a new biomass boiler on site;

- Representing various clients, including owners of former gas works and chemicals production facilities, in connection with land and water remediation requirements imposed by the UK’s Environment Agency under Part IIA of the Environmental Protection Act 1990 in respect of regulatory liability for historic contaminated land and water pollution;
- Defending the operators of an international motor sport grand prix circuit in southern England in respect of English High Court injunction proceedings commenced against them by the local authority based in public and private nuisance; and
- Acting for the joint owners of a CCGT power station in Pakistan in English High Court proceedings in relation to construction delay insurance claims worth approximately \$2 million.

Our lawyers also have been at the forefront of investigations, emergency response and litigation involving significant marine casualties (collisions, explosions, oil spills

and groundings). These matters routinely involve claims for natural resource damages resulting from oil or hazardous substances spills brought by aggressive Attorneys General or United States Attorneys in several jurisdictions. We are often called moments after such casualties and deploy our legal skills sometimes through the conclusion of civil and even criminal proceedings.

Our representative major petroleum spill experience includes:

- Representing a company in a major off shore oil spill in the Gulf of Mexico and prosecuting a claim against Oil Spill Trust fund and a third party;
- Defending a company in proceedings involving oil spill in Puget Sound, WA, including defense of federal and state enforcement and damages;
- Representing a company in a major explosion at Exxon terminal in Staten Island, NY; defending against property damage and death claims; and
- Defending a shipping company in criminal enforcement case for marine pollution violations.



Dewey & LeBoeuf's environmental litigators have developed a practice in climate change and the risk management attendant to this emerging area, drawing on our firm's long-standing environmental representation and knowledge of energy/utility clients. While understanding of the need for climate change regulation, many clients have called upon our lawyers to defend their interests in how proposed and existing climate change regulations and initiatives seek to reduce greenhouse gas emissions.

Our attorneys are also active in assisting clients to create databases which can be employed to combat potential litigation over the effects of climate change. Our decades of experience in Clean Air Act and Clean Water Act compliance and litigation has proved to be a valuable asset to clients in this area.

Our representative climate change litigation experience includes:

- Representing clients in preparing the administrative record for a potential challenge to a myriad of proposed state regulations on climate change;

- Representing clients on pre-litigation planning, including establishment of databases;
- Challenging, in three separate cases by way of appeal and subsequent judicial review, national CO2 emissions allowance allocation methodology decisions on behalf of several industrial clients dissatisfied with their allowance allocations under Phase I and Phase II of the EU ETS;
- Successfully defending a leading UK-based carbon off-setting company in defense of an investigation by the UK's Advertising Standards Authority. The investigation alleged the company ran misleading advertising regarding the potential of various voluntary carbon emissions reductions projects in the developing world involving a detailed examination of project methodology, additionally and verification issues; and
- Advising various clients in the oil and gas, energy, industrial and insurance sectors on the implications of emerging public law and class action "climate change litigation" and strategies for claim avoidance, defense preparation measures, creation of database and other risk management strategies.

In the project development area, our clients call upon our environmental litigators to secure contested environmental permits in administrative trials and defend the permits in federal and state courts. Whether it is the siting and operation of a power plant, cement plant, manufacturing facility or major resort, our lawyers assist in the creation of robust and defensible administrative records, including National Environmental Policy Act documentation, then defend the permits and records in court.

Our representative project development litigation experience includes:

- Arguing two mining and redevelopment cases in New York State's highest court on the same day, *Merson v. McNally and Philipstown Industrial Park v. Town of Philipstown*. A leading treatise has called Merson a "landmark" case;
- Representing a New York City museum on a major building project and subsequent litigation over the environmental impact review process;
- Representing a multinational cement company on the siting, permitting and environmental impact review of a cement manufacturing

facility and litigation related to the facility; and

- Representing multinational joint venture on the permitting and environmental impact review of a liquefied natural gas facility, including contested permit proceedings and establishing the appropriate administrative record for expected litigation.

Our firm's Environmental Litigation Practice group has significant experience in less traditional environmental areas. We serve as lead multinational defense counsel to an insurance entity with numerous electric generating member insureds. We have provided electromagnetic fields bodily injury and property damage litigation avoidance, advice and defense to more than 130 clients worldwide. These include electric utilities, electrical equipment and computer manufacturers, and real estate developers in the US, Canada, Australia, Japan and Great Britain. In these cases, our lawyers have made extensive use of "Daubert motions," and their scientific and engineering backgrounds. They have worked with over 100 of the world's leading

experts in the fields of exposure assessment, physics, epidemiology, oncology, real estate appraising and related disciplines.

Our representative EMF litigation experience includes:

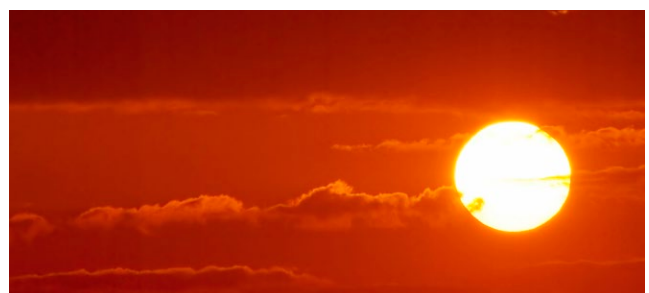
- Defending Florida utility against state court claims of bodily injury (cancer - leukemia) and property damages;
- Defending Connecticut utility against state court claims of bodily injury (brain cancer);
- Defending New York City utility against state court claims of bodily injury (breast cancer); and
- Defending Texas utility against state court claims of bodily injury (cancer -leukemia) and property damage.

In the environmental law realm, the line between civil and criminal prosecution can be obscure. Our lawyers, some of whom are former prosecutors and former regional and chief counsel for federal agencies such as the United States Environmental Protection Agency and United States Army Corps of Engineers,

respectively, have conducted investigations of and defended clients in a wide variety of environmentally-based criminal proceedings.

Our representative criminal defense experience includes:

- Defending a manufacturer in a criminal investigation stemming from improper environmental reporting. Various company employees were indicted, but plead out with no jail time and probation sentences;
- Defending a water company in a criminal investigation stemming from pollution spill and lack of proper environmental reporting. Company representatives were indicted and eventually plead out, but no jail time was served. The company served a period of probation; and
- Defending a company on involving criminal allegations, major oil spill, criminal case, natural resource damages and class action in Buzzards Bay.



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