

Environment and Natural Resources

Environmental Law

Contact

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Garvey Schubert Barer provides comprehensive legal services to clients affected by the widening scope and increasing complexity of environmental regulation. Our lawyers are skilled at advocating for our clients in a variety of postures, negotiations, investigations, litigations and legislative proceedings. They have extensive experience addressing a wide range of environmental issues, whether arising under the Clean Air Act, Clean Water Act, the Endangered Species Act, Superfund, the Resource Conservation and Recovery Act, parallel state laws or other substantive areas of environmental regulation.

Waste-to-Energy

Our lawyers assist clients with waste-to-energy (WTE) facilities and solid waste issues. Our work involves many facets of the Clean Air Act's New Source Review program, both Prevention of Significant Deterioration (PSD) and NNSR (Nonattainment New Source Review (NNSR)), state solid waste laws, human health and ecological risk assessment, site selection and alternatives analysis as well as other related regulatory requirements.

One important aspect of our WTE-related work involves implementation of "flow control" and similar laws and ordinances through which state and local governments designate specific facilities for management of locally generated waste. We have represented more than 20 entities (local governments and state and regional associations) as *amici curiae* in the U.S. Supreme Court proceedings in *United Haulers Association v. Oneida-Herkimer Solid Waste Management Authority*, 550 U.S. 330 (2007).

As part of this work, we counsel a national coalition of local government entities concerning flow control litigation in federal courts and regularly advise local government clients on various allied subjects, including enforceability of state and local solid waste management laws and related questions of federal law, including Commerce Clause issues that affect the use of flow control. We also represent a national coalition of local government-public sector WTE facility owners in connection with federal legislation concerning a national renewable energy standard (sometimes referred to as the renewable energy "portfolio" standard) and related climate change (carbon emissions) legislation.

Federal and State Government Relations

We draft and analyze proposed federal and state legislation and regulations affecting the environment and our clients. We also assist in preparing testimony on proposed legislation and regulations and represent our clients' positions before legislative and administrative bodies.

Contractual Relationships

We advise clients with respect to prospective contractual relationships that may affect their responsibilities under environmental statutes and regulations. Such transactions may involve both commercial and residential real property, industrial facilities, waterfront activities, and waste processing and disposal arrangements.

Environmental Remedial Action

Remediation is a complex area, both legally and scientifically. We help clients develop effective remediation objectives that are practical and cost-effective. In addition, we represent clients before administrative agencies to ensure the agencies provide maximum support for clients' remediation efforts and interfere with those efforts as little as possible.

Continuing Compliance and Permitting Issues

We advise clients regarding the entire range of potentially applicable federal, state and local permits that relate to environmental issues, in addition to more general issues concerning compliance with applicable requirements. Obtaining these permits and ensuring such compliance is increasingly becoming a part of the ordinary course of business for many companies and governmental

entities due to the breadth and complexity of environmental regulation and the high costs of failure to comply. We also represent clients before administrative agencies in the process of obtaining necessary permitting and other types of authority.

Insurance Coverage

We advise clients on coverage issues under a full range of insurance policies. We also litigate coverage disputes. Our expertise in the coverage area includes issues involving hazardous waste disposal and toxic torts.

Investigations and Litigation

We represent clients in civil and criminal proceedings initiated by federal and state agencies and in related negotiations. We also represent clients in litigation involving pollutant discharge, hazardous waste disposal and cleanup and related issues of contribution and insurance coverage. This practice includes defending clients in citizen suits authorized by a number of federal environmental statutes, including the federal Clean Air Act, Clean Water Act and Resource Conservation and Recovery Act.

Clean Air Act

The firm has wide experience in counseling domestic and foreign clients on the impact of the Clean Air Act on their activities. Garvey Schubert Barer lawyers played a central role in shaping the landmark acid rain provisions of the Clean Air Act, and on several occasions have represented a foreign government in litigation and administrative proceedings involving various state Clean Air programs. In addition, as noted above, our work also involves many facets of the Clean Air Act's New Source Review program, both Prevention of Significant Deterioration(PSD) and Nonattainment New Source Review (NNSR). We have also counseled oil, chemical and wood product companies, other manufacturing industries and utilities at various stages of federal and state proceedings under the Clean Air Act.

Resource Conservation and Recovery Act

We have counseled domestic and foreign clients on state and federal rules for hazardous waste generation, storage, transportation and disposal under the Resource Conservation and Recovery Act (RCRA). We have provided in-depth legal analysis of potential civil and criminal liability for RCRA violations, as well as strategies for dealing with federal and state regulatory authorities. Our lawyers have provided advice to clients regarding the appropriate cradle-to-grave handling of specific categories of wastes such as laboratory wastes, refinery waste and residues, asbestos and industrial lubricants.

Superfund

Our firm has actively engaged in Superfund cleanup and enforcement proceedings throughout the United States. In a recent proceeding, our firm helped to negotiate a settlement with the Environmental Protection Agency (EPA) on behalf of a group of private waste generators and to develop an innovative financial instrument for allocation and payment of Superfund liabilities among the private generators. Our lawyers have successfully recovered indemnification from insurance companies for our clients' Superfund liabilities. We have also counseled foreign governments on the potential application of Superfund and RCRA to shipments and disposal of hazardous wastes in the U.S. In addition, our firm has been actively engaged in Superfund reform legislation.

Medical Waste

We have counseled a number of private companies on the federal regulatory standards for medical waste disposal and have worked with researchers attempting to develop new technologies for medical waste treatment and disposal.

Nuclear Waste Management

We counsel waste management businesses and other clients about managing and disposing of nuclear wastes. This advice extends to Nuclear Regulatory Commission and state licensing requirements for low-level radioactive waste sites; it also includes compliance with the National Environmental Policy Act. In addition, we update clients on prohibitions for disposal of low-level waste, as well as the transportation and disposal abroad of U.S.-origin spent reactor fuel and high-level waste.

Military Base Closure and Cleanup

Our firm has represented foreign governments in connection with the closure and transfer of U.S. military bases overseas and

domestic real estate developers in connection with the closure and transfer of military bases in the U.S. Our focus has been on the U.S. military's environmental remediation responsibility and the impact of the military's policies on the opportunities for redevelopment. Two of our firm's lawyers are co-authors of what is widely regarded as the leading law review article in this field.

Endangered Species Act

We have been representing clients in administrative proceedings and litigation involving the Endangered Species Act (ESA) since its enactment in the 1970s. Our ESA experience includes representing companies across a wide range of industries such as forestry, fisheries and real estate development, as well as representing individual landowners charged with ESA violations. Our ESA litigation services include defending the largest ESA enforcement case ever brought against a private landowner. One of our lawyers, while working for the federal government, participated in the deliberations of the "God Squad," a committee of senior government officials charged with reviewing sensitive ESA species protection actions. The list of ESA-protected species with which we have experience includes Pacific salmon, the spotted owl, sea turtles, sea lions and eagles. Our firm also advises foreign governments on the impact of ESA regulations on commercial and regulatory activities in foreign countries.