

Environmental Issues in Transactions

Secured lendings and foreclosures, real estate purchases and leases, and business mergers, acquisitions and reorganizations can involve important and complex environmental considerations. Environmental contamination of property - such as soil or groundwater contamination - can limit the usefulness and value of property and expose owners to potentially significant liability. There is a complex array of federal and state laws governing liability for environmental contamination, as well as defenses to that liability. Agreements can also allocate risks between purchasers and sellers or landlords and tenants.

Our team provides counseling for accurate analysis of, and response to, those environmental issues, and assists our clients in identifying, retaining and working with appropriate and cost-effective consultants, testing facilities and remedial contractors. We also conduct environmental due diligence to assess and minimize the risks of environmental liability, understand potential environmental enforcement and costs, ensure post-deal regulatory compliance, and allocate risks in a manner most favorable to our clients.

Administrative agency representation is one of our principal strengths. We have developed a national reputation in this specialized area of law, having represented local, regional and national clients since the early 1970s with regard to complex environmental issues.

Representative Experience

- Advised a large industrial client on environmental due diligence nationally for acquisitions and divestitures. This included review of environmental assessment, evaluation of remediation liability and guidance regarding permit transfer and compliance. We also assisted in the negotiation of environmental indemnities, remediation agreements and setting up environmental escrows to facilitate property transfer.
- Represented multiple national banks in tax credit-financed projects, often involving infill developments with preexisting contamination.

Environmental diligence included securing CERCLA lender and innocent landowner defenses; we also worked with consultants to understand ongoing obligations, minimize non-CERCLA liabilities and ensure regulatory compliance going forward.

- Represented a municipality in negotiating the purchase of a contaminated property from a bankruptcy estate, including negotiating access to funds to support future cleanup and development.
- Worked with an agribusiness client on the acquisition and development of industrial and green-field properties for multi-state expansion of operations.
- Represented a major entertainment company nationally and internationally by reviewing and managing all environmental due diligence and environmental issues associated with all property acquisitions, sales, leases and financing. We managed environmental issues associated with 30 major acquisition projects ranging from formerly undeveloped land to urban properties to former industrial sites. We represented the company in managing its environmental due diligence process and documentation associated with each new lease or property acquisition. In connection with a \$425 million senior credit facility, we structured an environmental due diligence process to comply with credit agreement warranties.
- Represented one of the world's largest automotive corporations in connection with environmental aspects associated with former facilities' sales and leases at a former Missouri manufacturing facility. Representation included management of potential environmental problems associated with sublessee activity. We represented the corporation in convincing the State of Iowa to manage oversight of environmental cleanups at a former Iowa facility thereby avoiding USEPA Superfund involvement and thus facilitating marketability of the facility.
- Advised clients with respect to the acquisition and demolition of an old hospital facility in Kansas City. The hospital contained a great quantity of asbestos and the property held an underground storage tank. The existence of environmental issues required careful drafting of all acquisition documents to insure proper remediation activities were conducted.
- Represent a developer in all environmental aspects of the purchase of a former nuclear weapons component manufacturing facility from the National Nuclear Security Administration.