

REPRESENTATIVE MATTERS

Superfund Cost Recovery and Natural Resource Damages (NRD)

We have successfully represented numerous Fortune 500 and other companies on a wide range of Superfund cost recovery and natural resource damage actions, both in alternative dispute resolution and formal judicial proceedings, including successful recoveries from the federal government at various remediation sites.

Our experience includes serving as common counsel for multiparty Potentially Responsible Party (PRP) groups in connection with cleanup actions under federal and state laws, where we have negotiated innovative and creative settlement agreements with federal and state regulatory agencies.

Our federal Superfund cost recovery and natural resource damages litigation experience includes:

- Successfully defending a multinational consumer products company in which the United States sought to impose more than \$100 million in CERCLA “operator” liability on our client based on the former activities of a corporate subsidiary. This case resulted in one of the most important U.S. Supreme Court decisions under CERCLA, with the Court finding that Superfund liability can be imposed on corporate parents for the actions of their subsidiaries only if the corporate parent exercised actual control over the hazardous waste-related activities performed at a particular cleanup site.
- Negotiating a highly favorable settlement agreement from the United States in connection with a cost recovery claim made by a wireless carrier against the federal government. As part of this claim, this carrier had sought reimbursement from the government in connection with the cleanup of a formerly-utilized, top-secret government facility. Under the settlement, the U.S. has agreed to pay a fair portion of the past costs and close to 50% of any future costs for the cleanup.
- Defending a major manufacturer and obtaining a favorable global settlement in a Superfund action brought by the U.S. Department of Justice and the Texas Attorney General's Office for response actions and natural resource damages associated with mercury in bay sediments.
- Representing numerous clients in defending against EPA and state claims and negotiating cost-effective and appropriate cleanups with the federal and state governments at several dozen single and multi-party state and federal Superfund sites across the country.
- Obtaining a multi-million dollar settlement for the owner of an industrial manufacturing site in a Superfund cost recovery and contribution action that also involved related common law claims against the former owners and operators of the property.
- Representing a major international oil company in pursuing multi-million dollar CERCLA cost recovery and contribution

claims against the federal government. These claims seek to recoup the cleanup costs that our client has incurred and will continue to incur in remediating environmental contamination that resulted from war-time production activities at several large oil refinery facilities.

- Prosecuting a CERCLA cost recovery and contribution action on behalf of a large, international manufacturing company against more than a dozen recalcitrant PRPs at a very large federal Superfund site in New England. We have employed a novel litigation strategy that is designed to establish the defendant PRPs' liability at this site in an expeditious, cost-effective manner, and then to pursue settlements where possible and to otherwise seek summary judgment as to any remaining recalcitrant PRPs' responsibility for both past costs and future response costs at this site.
- Advising one of our industrial clients in an extensive mediation/allocation process for establishing this client's "divisible" or "allocated" share of responsibility for the past and future cleanup costs at a major Superfund site in California. As part of this process, we engaged experts to assist us with evaluating the waste materials allegedly contributed by our client to the site, and we prepared a targeted allocation brief for the mediation/allocation process that provided a comprehensive analysis of the volume and toxicity associated with our client's alleged wastes and their potential connection to the proposed site cleanup. Through our efforts our client was able to resolve its liability at the site as a *de minimis* party.

Waste and Remediation Bankruptcy Issues

Bankruptcy can involve a number of complex waste and remediation issues. We integrate our environmental practice--particularly our litigation, waste and remediation capabilities--with our highly experienced bankruptcy department to effectively handle environmental claims and related litigation.

Our remediation-related bankruptcy experience includes:

- Representing a national metals mining, and refining company in connection with \$6.5 billion in environmental bankruptcy claims at approximately 75 state and federal Superfund and related sites in connection with remediation and government investigations. The U.S. Department of Justice describes this case as the "the most complicated environmental bankruptcy in United States history."
- Obtaining a precedential ruling from the U.S. Bankruptcy Court for the Northern District of California striking contingent claims under 11 U.S.C. § 502(e)(1)(B).

International Environmental Remediation

Multinationals with assets abroad risk having high-dollar foreign assets expropriated under the pretext of waste and remediation violations. These international disputes often present an additional layer of complexity relating to conflicts of law, sovereign immunity, the act-of-state doctrine, the forum *non conveniens* doctrine, international service and international discovery.

We advise clients on international waste and remediation arbitration matters and are fortunate that we can quickly assemble a cross-disciplinary team that includes our arbitration and mediation lawyers from our other offices around the globe. Our arbitration group has handled matters in virtually every industry, on both institutional and *ad hoc* arbitrations.

Our international environmental remediation experience includes:

- Representing the claimant, a joint venture between two large U.S. oil companies, in an US \$11 billion ICC arbitration arising out of the Republic's unilateral decision to terminate the joint venture's rights in Yemen after 20 years of continuous operations under a production sharing agreement. As part of this representation, our lawyers teamed with technical experts to develop an auditing and sampling program that allowed for the assessment of environmental impacts to air, soil, groundwater and vegetation from petroleum constituents and the identification of appropriate remediation standards and guidelines in the Middle East.

Environmental-Related Products Liability

Product liability claims based on the presence or impact of hazardous substances are of increasing concern to energy and industrial companies for a variety of reasons, including technological advances in the ability to detect substances at low levels. Our environmental products liability litigation experience includes:

- Serving as national counsel to two leading refiners and a chemical company in over 50 product liability lawsuits across the

country alleging that gasoline containing MTBE contaminated water supply wells.

- Representing a major petroleum company in defending an ongoing class action on behalf of all owners of underground storage tanks in the State of West Virginia. We were successful in instituting a very favorable and innovative trial plan in that case which requires plaintiffs to first establish "general causation" and then, in separate trials, demonstrate damage on an individual basis.
- Defending petroleum companies against claims based on the presence of ethanol in gasoline.

Voluntary Cleanup Projects

Rather than wait to be compelled to complete remediation work pursuant to a federal or state order or enforcement action, many clients seek our advice about performing voluntary cleanups of their properties.

Baker Botts lawyers work with clients to implement cleanups under many of the state Voluntary Cleanup Programs (VCP) across the United States.

Our services relating to VCP matters include:

- Counseling on the regulatory requirements of numerous VCP programs, including those established in Texas, Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania and Virginia
- Advising about the particular liability protections that may be available under VCP programs upon completion of the remediation work, such as governmental covenants not to sue, releases of liability and third-party contribution protection

- Negotiating cleanup strategies and requirements with state agency officials, including VCP agreements and administrative consent orders that will govern the implementation of remediation activities and final site closure
- Analyzing alternative cleanup options, including the use of risk-based cleanup standards and controls to limit future property uses and possible human exposures to contaminants
- Assisting with the selection and hiring of remediation consultants and contractors
- Negotiating innovative insurance contracts for funding the cleanup
- Providing advice about site investigation and cleanup, and overseeing the preparation of required reports for submission to regulators
- Negotiating final site closure requirements and the issuance of state "no further action" determinations

Corrective Action

The federal Resource Conservation and Recovery Act (RCRA) and analogous state laws impose corrective action requirements on various types of regulated properties, such as industrial or commercial sites that have been used for the generation, storage, treatment or disposal of hazardous waste, or certain underground storage tank sites. Under these requirements, the owner and operator of a regulated property can be compelled to investigate and clean up releases of hazardous

waste and hazardous waste constituents, and petroleum and related constituents from an underground tank system. Corrective action requirements are often imposed in connection with hazardous waste permits, or through a specific governmental directive or order.

Baker Botts works with clients to satisfy their corrective action obligations in a variety of different contexts, ranging from complex industrial manufacturing sites that may have dozens of "solid waste management units", to large commercial hazardous waste treatment, storage, and disposal facilities, to local gasoline service stations. We also have substantial experience working with regulators on innovative legal mechanisms and cleanup approaches to address corrective action requirements under federal and state law.

Our services relating to corrective action include the following:

- Counseling on applicable corrective action requirements for contamination at an industrial or commercial property
- Providing regulatory interpretations about specific corrective action requirements under relevant federal and state programs
- Negotiating and contesting terms of governmental permits and orders imposing corrective action obligations
- Developing and negotiating innovative memoranda of agreement, letters of commitment and closure plans that have been accepted by regulators as alternative approaches to corrective action orders and permits
- Overseeing the completion of corrective action measures and obtaining



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- governmental approvals and closure determinations
- Advising clients about recent administrative reforms by the EPA under RCRA intended to encourage the use of expedited, streamlined and risk-based corrective action cleanups
- Participating in EPA task forces and advisory committees that work on developing improved regulatory approaches to corrective action