

Environmental, Safety & Toxic Torts Practice Group



Breadth. Depth. **Results.**

Environmental, Safety & Toxic Torts

We regularly assist clients in navigating the maze of environmental and safety laws to find practical business solutions to environmental problems.

Businesses today are confronted with a complex web of environmental and safety concerns, ranging from contaminated property, chemical releases and workplace hazards, to greenhouse gas emissions and global warming. Environmental and safety laws designed to protect the air, water, land and human health have all grown exponentially as scientists and lawmakers continue to uncover new risks in our evolving technological society. Along with the expanded reach of environmental and safety regulation has come heightened public awareness over how business activities impact the environment, and a broader consideration for what should be done about it.

The Environmental, Safety & Toxic Torts Group regularly assists clients in navigating the maze of environmental and safety laws to find practical business solutions to environmental problems. Our practice has evolved with the ever-changing environmental and safety laws enacted at the local, national and international levels. We are counselors, advisors, negotiators, and when necessary, trial lawyers and appellate advocates, with respect to every element of environmental and safety laws. We are able to take an environmental problem from the formulation of an initial compliance strategy to any form of dispute resolution, including mediation, arbitration, jury trial and appeal.

We represent a broad range of corporate clients, industry coalitions and trade associations before state and federal regulatory agencies such as the U.S. Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and their local and state counterparts. Our national presence allows us to keep clients updated as compliance and enforcement trends develop. We have extensive experience with solid waste disposal operations (including landfill gas), the Clean Water Act, the Clean Air Act, permitting and compliance, emissions trading, alternative energy, brownfield development, hazardous waste regulation and liability issues associated with contaminated property. We regularly deal with the full spectrum of worker safety and chemical exposure matters.

Our group is increasingly involved with product stewardship and supply chain management issues related to toxics use reduction and product take-back requirements in the global marketplace. We assist companies in addressing regulatory issues by designing and implementing compliance and management system programs to help achieve business objectives.

Litigation and Toxic Torts

Environmental and toxic tort claims usually begin with an actual or threatened exposure to hazardous chemicals, such as those resulting from air and water pollution, groundwater contamination, air emissions and a variety of other chemical releases. In addition, the expanding use of new technologies, ranging from biotech to nanotechnology, has given rise to new legal claims and theories.

The wide-ranging impact of many environmental conditions, such as groundwater contamination, air pollution and off-site migration of pollutants, demands a creative approach to toxic tort and environmental enforcement actions. We have experience effectively communicating to clients the risks and liabilities they may face in environmental matters. We also have the resources to develop and implement a winning strategy. Our team combines substantive knowledge of the law with extensive trial experience, having tried or argued cases in almost every forum in state and federal courts, including the U.S. Supreme Court. Our practice includes:

- Defense of toxic tort cases
- Defense of enforcement actions brought by the EPA and state agencies
- Defense of environmental remediation and infrastructure contractors and professionals in breach of contract and negligence claims
- Litigation concerning environmental indemnity provisions
- Litigation arising from contaminated property

Toxic Torts

A chemical manufacturer was sued in a mass toxic tort action when sulfur trioxide spilled while unloading at a customer's facility.

- ▶ During discovery, our team determined that the customer had responsibility under OSHA to maintain unloading equipment and that our client's product stewardship program did not create duty to inspect and repair the equipment that failed.

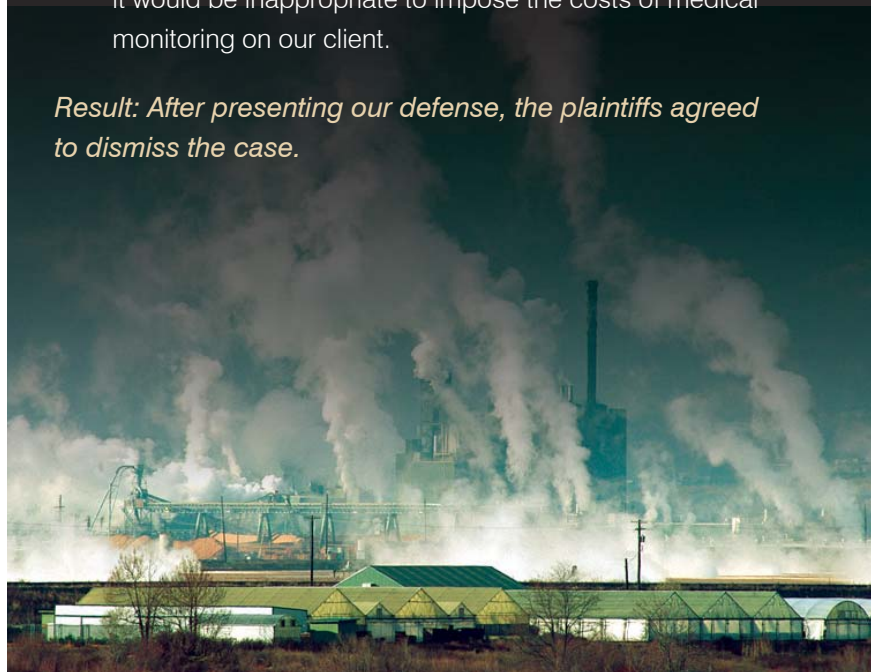
Result: We obtained summary judgment in trial court, and argued and won the case for the client on appeal.

Class Action

A property owner employed a contractor who improperly disturbed asbestos during construction activity, causing the release of asbestos dust and fibers into portions of the building. Certain employees of the owner's tenant sued the property owner, our client, in a class action seeking to recover the costs of medical monitoring and testing that class members may incur in the future to determine if an asbestos-related disease has manifested.

- ▶ We successfully defended the case asserting that state law would not recognize a claim for medical monitoring where the plaintiff cannot show any present injury. Working with experts, we concluded that named plaintiffs could not establish that they had inhaled asbestos fibers as a result of the improper asbestos removal, but only that the building had contained some asbestos, such that it would be inappropriate to impose the costs of medical monitoring on our client.

Result: After presenting our defense, the plaintiffs agreed to dismiss the case.



Brownfields

A municipality owned an abandoned incinerator and solid waste landfill that were considered an eyesore and an impediment to residential and commercial development in an upscale suburban neighborhood. Numerous legal, technical and social impediments hindered the “closure” of the landfill and incinerator property. The age of the former landfill placed it outside current state regulations for closure but there was significant contamination, including PCBs and lead, that needed to be abated. To further complicate the issue, there were wetlands on a portion of the property and the landfill was producing methane gas. The technical challenges to cleanup and development resulted in very large cost estimates for remediation at the site; however the costs to allow the landfill to remain dormant were minimal and the community was divided as to whether and how to develop the site.

► Working closely with the state’s EPA, the community, and an environmental consultant, we were able to devise and execute a clean-up plan that allowed for a combination of removal of hot spots, capping of other less contaminated areas, and use of engineered barriers and environmental land use restrictions to reduce risks associated with materials remaining in the landfill. We were able to manage environmental risks to a level that allowed the state to approve the cleanup. We assisted the municipality in obtaining state brownfields funds to aid in financing the cost of cleanup. Post-cleanup we worked with several top-end auto dealerships to develop the site while managing risks.

Result: Several thriving businesses are now operating on the property and generating up to a million dollars a year in sales tax revenue for the community.

Compliance and Counseling

Our attorneys take a practical approach to solving environmental problems and seek solutions consistent with the core values of our clients’ businesses.

Examples of issues we handle include:

- Allocating environmental risks in corporate and real estate transactions
- Compliance and permitting matters arising under the major environmental laws, including the Clean Air Act, the Resource Conservation and Recovery Act, the Clean Water Act, Superfund and the Toxic Substances Control Act
- Landfill gas issues, including contracting, environmental compliance and tax incentives
- Responding to emergency spills and chemical releases
- Commenting on proposed environmental legislation and rulemaking
- Negotiating indemnities, warranties and escrows and other contractual terms to protect against environmental and toxic tort liabilities



Occupational Safety and Health

Virtually every worker in the country is covered under the jurisdiction of the Department of Labor's Occupational Safety and Health Administration. Employers must comply with OSHA regulations and standards to protect employees and maintain safe and healthy work environments. Awareness of, and compliance with, OSHA's many regulations and policies can be confusing and complicated, and many employers seek assistance to avoid unsafe conditions, costly penalties and litigation.

National enforcement programs and the steady promulgation of significant new standards have caused OSHA compliance efforts to consume ever-greater industry resources. Multi-million dollar OSHA penalties have become commonplace and even routine OSHA citations can lead to the assessment of substantial fines. Our attorneys have assisted clients in drafting written programs to meet the requirements of OSHA, as well as the related legal obligations under state civil and criminal law and workers' compensation.

We counsel clients on their legal obligations to develop workplace violence prevention programs under the Occupational Safety and Health Act in order to maintain a workplace which is free of the "recognized hazard" of workplace violence. We conduct training for clients on how to respond to potential workplace violence incidents, and assist clients in responding to actual on-site incidents as the event occurs, interfacing with law enforcement entities, such as the FBI, as well as mental health care providers and any other relevant parties. We work with clients to address workplace hazards by developing an in-house team composed of individuals from human resources, safety and health, and security, as well as legal and mental health care providers, when appropriate.

Our team has particular experience with and knowledge in OSHA and National Institute for Occupational Safety and Health (NIOSH) investigations, including allegations of ergonomic hazards, record-keeping requirements, union and employee complaints and general inspection protocols. We are able to draw upon the strength of our national labor and employment practice in order to provide comprehensive services that address these myriad issues.

OSHA

As a result of an accident with multiple fatalities related to a sewer construction project, a construction company received 11 willful citations and numerous other serious citations totaling \$880,000 in penalties.

- ▶ Our team was brought in for the appeal of an unfavorable decision by the state's Appeals Board in which the client was represented by another law firm.

Result: We were successful in obtaining a decision from the state's Court of Appeals dismissing all of the citations except for two minor ones, resulting in only \$4,500 in penalties.



About Our Group

The Environmental, Safety & Toxic Torts Group is comprised of attorneys with diverse backgrounds. The group has decades of industry experience and several attorneys have served as in-house environmental counsel, making us particularly sensitive to the pressures that businesses face amid the fast-paced global marketplace.

When specific projects require skills that extend beyond the traditional practice of environmental law, we do not hesitate to draw upon the extensive experience of other Seyfarth Shaw practice groups, including labor and employment, real estate, construction and corporate and finance.

About Seyfarth Shaw

Seyfarth Shaw was founded in 1945 by three lawyers and has grown to more than 750 lawyers across ten offices. We handle issues for our clients in all key areas including labor and employment, commercial litigation, construction, corporate and finance, employee benefits, environmental, government contracts, intellectual property, litigation, real estate, securities litigation, trade secrets, trusts and estates, and workouts and bankruptcy, among others.

Our success is the result of a constant, unrelenting focus on the needs of our clients. Our commitment to excellence and our belief in the strength of a team-based approach to the delivery of our services offers an atmosphere of creative and innovative thinking.

Our clients are our partners in business and we are committed to listening to their needs and to aligning the skills and abilities of our people to respond to those needs. Our clients range from *Fortune* 100 to midsize companies, and include publicly traded and privately held companies. We represent clients of all sizes across all industries and we are diligent in providing the same level of commitment to each client.



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