
Statement of Qualifications for Asbestos

The lawyers of Seyfarth Shaw's Environmental, Safety and Toxic Tort ("ESTT") Practice Group have unique experience in the myriad laws applicable to the mining, manufacturing, use, removal and disposal of asbestos and asbestos containing products including laws aimed at the protection of workers exposed to asbestos in workplace settings; renovations and construction projects in structures with asbestos; the abatement and disposal of asbestos, and the workers' compensation, personal injury, and toxic tort liabilities associated with exposure to asbestos. Our unparalleled strength at the federal, state, provincial and local levels in the OSHA/safety aspects of asbestos regulation and liability, combined with experience in the manner in which environmental regulations address asbestos abatement and disposal, places us in a unique position to address the three major areas of asbestos liability: compliance with *safety and OSHA regulations* addressing workplace exposure; compliance with *environmental regulations* addressing renovation, reconstruction and abatement, and *personal injury/toxic tort litigation* involving asbestos exposure.

Workplace Exposure

Our experience with asbestos in work-place settings comes from years of representing companies in industrial and commercial settings where buildings and structures have asbestos present in building structural materials. We have counseled and defended innumerable clients in this area: assessing risks associated with the presence of asbestos in the workplace, working with clients to develop strategies to address the presence of asbestos, and effecting solutions which range from preparation and implementation of operations and maintenance programs ("O&M"), to the removal of remediation of asbestos. Often our recommendation is a combination of O&M and removal, based on risks posed on a case-by-case basis. Particularly in complex settings involving multiple buildings and structures, we have been successful in working with our clients to develop cost-effective means of addressing asbestos through a combination of O&M and remediation, while minimizing liabilities by preventing employee exposure to asbestos.

Environmental Regulations

Where O&M is an option, we assist clients in developing new programs, or evaluating existing programs to ensure the O&M meets safety and environmental laws with respect to notifications to employees, placarding and signage, testing, personal and ambient monitoring, and means of limiting or controlling exposure. Where abatement or remediation is an option, we counsel clients on federal and local notification and permitting requirements, including those arising under NESHAPs and local air pollution control requirements, assist in drafting abatement laws and contracts, and assist in disposal issues. Where enforcement actions arise under either safety and OSHA regulations, or environmental regulations, we are prepared to provide practical, efficient and reasoned defenses for our clients.

Our clients include not just owners and operators of facilities where asbestos is present in the workplace, we have experience advising and defending asbestos mines, as well as defending construction and demolition contractors and subcontractors in enforcement actions involving asbestos-containing materials in building products.

Personal Injury/Toxic Torts

Not only are we proficient in the defense of regulatory actions arising under safety, and environmental regulatory requirements applicable to asbestos, we have considerable litigation and trial experience defending workers' compensation, personal injury, and toxic tort actions arising from asbestos exposure; the litigators in our ESTT group have handled hundreds of such cases across the country.

Representative Cases

In addition to routine counseling and defending companies in enforcement actions for violations of OSHA requirements with respect to assessment, labeling, and managing asbestos products in the workplace, and in enforcement actions for violations of environmental requirements, the following are representative of some of the Firm's asbestos experiences:

- Representation of client/purchaser where, post-acquisition, it was discovered that the 1,000 acre industrial facility was crisscrossed with abandoned piping wrapped with asbestos in varying degrees of deterioration. We assisted the client in identifying the various regulatory requirements applicable to the presence of the asbestos in aboveground and underground pipe, addressed whether notification of the discovery was necessary to federal and local authorities, and counseled the client in strategic approaches to addressing the asbestos. We also worked with the client in developing claims against previous owners of the site.
- Assisting client in assessing O&M and long-term abatement strategy for portfolio of 30+ properties with total \$25 million asbestos abatement liabilities;
- On behalf of client/purchaser, we assessed the risks posed by asbestos, and the costs of addressing asbestos, in a transaction involving 100+ buildings and structures at a mental health facility, with varying volumes and levels of deterioration of asbestos; the risk and cost assessments allowed us to develop contract language preferential to our client in allocating the costs and risk of addressing the asbestos at the historical facilities;
- Successfully representing a university in criminal case brought by the state against the university and its contractors and subcontractors for alleged mishandling of asbestos in a large urban renovation project;

- Advising a client of regulatory requirements and disclosure obligations after the company received anecdotal information from former disgruntled employees that asbestos piping had been historically buried by the employees in an unpermitted on-site landfill;
- Representation of an asbestos mine in an administrative enforcement case;
- On behalf of a public company purchaser of a large paper mill business, we assessed the implications of asbestos-containing materials in buildings and old equipment under FIN 47, an interpretation of the FASB 143 that may force companies to recognize contingent compliance, cleanup or disposal costs associated with facilities or equipment being taken out of service, sold, mothballed or being retired. This analysis was critical to our client's purchase terms and offering price for the business.
- Negotiating asbestos abatement contracts and development of comprehensive O&M program at a large power plant;
- Representing a community college in the voluntary disclosure of the discovery that untrained employees had conducted removal of significant amounts of tile without knowledge the tile had asbestos-containing materials, without proper personnel protective equipment, without notification to the state, without regard to state abatement laws, and where the asbestos containing materials were ultimately disposed of in a municipal landfill without the knowledge of the landfill owner and operator;
- Representation of an asbestos mine in private actions by a public school system for property damage associated with the presence of asbestos in school district building materials;
- Advised major oil company of release reporting, remediation and disposal requirements for abandoned asbestos in petroleum pipeline.
- Representation of big-box developer in state enforcement action where 25 residences were demolished on the basis of an assessment showing no asbestos, but where spot-checking by state revealed asbestos in demolition rubble;
- Successfully defended building owner against putative class action seeking medical monitoring for alleged exposure to asbestos removed by contractor without taking required precautions. Convinced State to drop client as a target in parallel criminal investigation.
- Representation of multi-family residential facility in risk assessment and approach to removal of asbestos in a large public housing project; oversaw notice and communications to tenants and phased approach to abatement without relocation of tenants.

From day-to-day counseling on O&M programs and compliance with regulatory obligations, to defense of enforcement actions and personal injury claims, the attorneys of Seyfarth Shaw's Environmental Safety and Toxic Tort Practice Group have the necessary knowledge and experience to assist our clients in any aspect of the use, maintenance or remediation of asbestos. We are happy to provide references which show our depth of experience and dedication to our clients.