

Environmental Practice Group

The environmental attorneys at Dickinson Wright have diverse backgrounds that include experience in environmental engineering, chemistry, urban planning, business and communications. This diversity allows us to understand not only the legal, but also the technical and business aspects of our clients' environmental projects. Our collective knowledge and experience enables us to serve our clients' transactional, development, compliance, crisis response, litigation and other environmental needs with a sensitivity to both public and government relations that is unique to our firm. Our attorneys strive to develop a comprehensive environmental strategy tailored to the specific needs of our clients. We are aggressive in the representation of our clients, yet we are flexible and creative in developing solutions to ensure that each client's environmental project or litigation goal is achieved.

Transaction Support

Our attorneys provide advice that is essential to understanding the environmental implications and potential liabilities associated with the proposed purchase, sale, lease or financing of real estate, as well as with proposed corporate mergers, acquisitions and divestitures. We assist our clients with all environmental aspects of a transaction. We negotiate environmental terms and conditions of the contract, retain consultants, review environmental reports, assess environmental risks, and actively resolve environmental issues. Our attorneys have advised clients in thousands of real estate and corporate projects worldwide, ranging from multi-million dollar acquisitions and divestitures to the sale or lease of small business properties. We are routinely responsible for environmental due diligence for some of the largest corporate mergers, acquisitions and divestitures in the Midwest. We educate and advise clients on the use and preparation of liability protections such as the federal innocent purchaser, prospective purchaser and contiguous property owner defenses, as well as corresponding state defenses, such as Michigan's Baseline Environmental Assessment program. We also assist our clients in implementing post closing due care and cleanup obligations. On behalf of our clients, we are creative in the use of escrows, insurance, prospective purchaser agreements and other tools to facilitate transactions. Our philosophy is that the environmental attorney's role in business transactions is

(i) to assist in evaluating and quantifying environmental risks in order to enable the client to make an informed business decision and (ii) to facilitate the resolution of environmental issues that otherwise may be an impediment to a transaction. Our transactional work also includes a specialty in identifying and addressing issues unique to property development, as discussed below.

Property Development

Many of our clients are involved in the development of property for a wide variety of uses, including retail stores, shopping centers, schools, residential housing, office buildings, and industrial manufacturing and warehousing facilities. Dickinson Wright attorneys have expertise in counseling our clients to identify and address issues unique to the development and redevelopment of properties. In the area of Brownfield redevelopment, we assist our clients in evaluating available tax credits, grants and other financial incentives that may equalize or, in some cases, reduce the cost of Brownfield redevelopment over green field development. Our representation of developers, lenders, municipalities and even Brownfield authorities gives us a broad base of experience from which to draw. With respect to new developments, we work with our developer clients to identify the necessary approvals and permits for their projects. Our experience encompasses approvals in the areas of zoning, wetlands, floodplains, river or lake bottom land, endangered species, stormwater, soil erosion and sedimentation, well drilling, water use and sewer systems. Our aggressive advocacy in this area on behalf of our clients is demonstrated by our successful challenge to the U.S. Army Corps of Engineers' regulation of wetlands before the United States Supreme Court in *Carabell v Army Corps of Engineers*, 126 S. Ct. 2208, 547 U.S. 715 (2006).

Environmental Compliance/Enforcement

The environmental attorneys at Dickinson Wright have counseled clients with global operations on maintaining efficient and cost-effective compliance with applicable environmental laws, and beyond, to achieve their overall corporate environmental objectives. We identify new and existing state and federal environmental regulations that apply to our clients' operations, so they can implement

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programs to efficiently achieve, maintain and monitor compliance. Our efforts to assist our clients in navigating the complex permit approval processes include identifying permits and permit exemptions applicable to facility operations, reviewing supporting documentation, drafting permit applications, and representing our clients in permit negotiations, and, when appropriate, permit appeals. Our permit work continues, as we aid our clients in preparing periodic reports, understanding and implementing training and other permit requirements, and responding to permit violations. We assist our clients with internal environmental auditing to identify opportunities for enhancing compliance, minimizing waste and reducing overall impacts from air, water and solid waste streams. Additionally, we assist clients in preparing for and responding to governmental compliance audits, inspections and enforcement matters. Our specialized work in environmental crisis management is detailed below.

Remediation

Dickinson Wright's environmental attorneys are leaders in facilitating efficient and cost-effective remediation of former industrial sites under both federal and state law. We have oversight responsibility for a number of the largest remediation sites in Michigan and are involved in several multi-million dollar clean-up efforts at sites located throughout the United States. We are skilled at negotiating with governmental agencies and other responsible parties; recommending, retaining and overseeing the work of consultants and contractors; preparing necessary contracts and other documents; assisting in selecting appropriate remedial actions; coordinating implementation and reporting; reviewing reports and work plans, from the most minor construction bid documents to multi-volume investigation reports and remedial action plans; and handling all other aspects of a remediation project. We assist our clients in obtaining site access, negotiating deed restrictions and implementing institutional controls. We also act as common counsel to numerous groups of potentially responsible parties at sites where multiple parties are allegedly responsible for the contamination. We have experience in dealing with groundwater impacts, soil impacts, soil vapor intrusion, migrating constituent plumes, surface water and sediment impacts and related issues. In addition, our firm

has specialized expertise in the area of methane remediation, and we have an intimate knowledge of the upcoming rules and guidelines regarding methane gas issues.

Emergency Response/Crisis Management

Dickinson Wright's environmental attorneys are called upon by their clients in times of crisis to assist in emergency response management and damage control. Environmental incidents and releases such as a major oil spill or fire at a chemical plant require immediate action. Our attorneys have coordinated emergency response activities, identified and provided required notifications to federal, state, and local agencies, advised on reports to OSHA investigators, facilitated communications among client contacts, the media and emergency response teams, overseen medical assistance and property damage programs, obtained expedited permits for handling waste streams generated as a result of an emergency situations and defended our clients in the unfortunate event that litigation ensues.

Environmental Litigation

Dickinson Wright's environmental attorneys are well-versed in both the defense and prosecution of environmental litigation matters, including class actions, multi-party joinder actions (including opt-outs from class actions), federal Superfund cost recovery and contribution litigation, litigation involving state environmental protection acts, administrative trials and appeals, and environmental compliance litigation. In the arena of toxic tort litigation, we have successfully defended clients against actions involving air emissions, fugitive dust, soil vapor gases, groundwater contaminants, noise and vibrations, asbestos, mold and other issues, in both classic courtroom settings and through defense at public hearings and city council meetings. We have the technical expertise and scientific savvy necessary to understand the exposure pathways and potential contributing factors, both for personal injury and property damage claims, and we know when and how to use our experts to surgically reduce the size and substance of the claims. We have defended clients in administrative, civil and criminal governmental actions from information requests and notices of violation through penalty and supplemental environmental project negotiations to final settlement. In negotiating settlement agreements, we

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strive to use innovative settlement techniques that take into account the client's short and long-term business plans. While no business welcomes the prospect of prosecuting or defending complex environmental litigation, our firm has the experience and capability to obtain the best results possible for clients faced with that challenge.

Energy & Sustainability

Our environmental attorneys are key members of Dickinson Wright's Energy & Sustainability Task Force. This task force helps clients identify and address the opportunities and challenges associated with the changing energy and sustainability markets. Dickinson Wright's attorneys have been at the forefront of these issues, representing clients in international and domestic energy matters, including oil and gas production, electrical generation, wind turbines, biofuels production, coal gasification, electrical transmission and distribution, sustainability policy development and implementation, green construction, and emissions trading. We bring a broad range of experience and understanding to our clients' developing energy projects, including project planning, land and property rights acquisition, financing, and regulatory permitting. Our work incorporates the arena of energy regulation, public utility and rate issues, and regulatory and environmental compliance. Our attorneys are well versed in green building and design initiatives, such as LEED, the implementation of green purchasing programs, and the emerging carbon trading market. Dickinson Wright's cross-disciplinary Energy & Sustainability Task Force is comprised of attorneys from our energy, environmental, municipal finance, real estate, corporate, construction and intellectual property practice groups.

Practice Group Highlights

Transactional Support

- Environmental counsel for borrower in \$3.7 billion financing secured by 150+ properties in 30 states, and subsequent \$330 million commercial mortgage-backed securitization with 81 properties in 28 jurisdictions, co-managed by Morgan Stanley and Chase Securities.

Property Development

- Successful challenge to the U.S. Army Corps of Engineers' regulation of wetlands before the U.S. Supreme Court in *Carabell v Army Corps of Engineers*, 126 S. Ct. 2208, 547 U.S. 715 (2006).
- Brownfield project with EPA and state agreements, tax incentives and multi-media permitting.

Environmental Compliance/Enforcement

- Group counsel for 110 member group in multi-million Superfund removal action in Illinois.
- Successful appeal of federal RCRA and Title V permit conditions.

Remediation

- Counsel on one of the largest Michigan remediation sites, with remedial costs in excess of \$100 million and value assurance plans involving more than 100 residential and commercial properties.

Emergency Response/Crisis Management

- Counsel in two of the largest incidents in Michigan, a major gasoline spill/fire from a tanker ship and a major fire at chemical plant, involving personal injury, evacuation of residential neighborhoods, business interruption, environmental response, and natural resource impairment.

Environmental Litigation

- In *Graham, et al. v. Lautrec, Ltd. et al.*, obtained first ruling in Michigan that experts in mold matters did not satisfy standard for expert testimony articulated in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* and must be stricken. This ruling has been cited in several other states.
- Counsel in 14,000-home class action involving personal injury and property damage claims and in multiparty joinder actions involving 370 parties who opted out from the class settlement.

For more information about the full range of legal services provided by Dickinson Wright's Environmental Practice Group, contact Sharon Newlon at (313) 223-3674 or snewlon@dickinsonwright.com.

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