



**McGuireWoods**

# ENVIRONMENTAL LITIGATION





## ENVIRONMENTAL LITIGATION



McGuireWoods' environmental litigators draw on their deep legal and industry experience to deliver strategic counsel to clients anywhere they do business. Our lawyers successfully litigate environmental and toxic tort cases in state and federal courts throughout the United States, including all the federal appellate courts and the U.S. Supreme Court. We lead vast and overlapping discovery, navigate novel legal theories, defeat class certification, tackle complex technical and scientific issues, and manage difficult facts. Drawing on our familiarity with U.S. Environmental Protection Agency and Department of Justice policies and procedures, the team works closely with EPA and DOJ staff and counsel to negotiate responses to investigations and enforcement actions.

While prepared to mount an aggressive defense at trial and before federal and state regulatory agencies, the team is proud of those cases that do not make it to court. Our environmental litigators also recognize the value of a positive reputation, and work with affiliate McGuireWoods Consulting's strategic communications, public relations and government relations teams to manage the publicity that often surrounds environmental incidents and complaints — and to ensure that clients' perspectives on important issues are heard and understood.

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### HOW WE HELP

McGuireWoods partners with clients through strategic and cost-effective negotiations and litigation. The firm resolves issues with regulatory agencies and other interested parties through negotiation, but stands ready to litigate when required. Our lawyers draw on decades of experience handling disputes over permit appeals, rule challenges, cost recovery claims and contribution actions, as well as citizen suits and toxic torts. When clients face a government investigation and/or enforcement action, the team's bench of former federal prosecutors leverage experience from both sides of civil and criminal enforcement actions.

## TYPES OF ENVIRONMENTAL LITIGATION

Clients call on McGuireWoods to handle environmental enforcement and litigation matters, including:

### CERCLA Environmental Cost Recovery and Contribution Litigation

McGuireWoods has an exemplary record of achievement in CERCLA contribution and cost recovery actions in U.S. District Courts and Courts of Appeal involving Superfund sites throughout the country. Our litigators have recovered or saved clients hundreds of millions of dollars at sites where liability is disputed but equitable allocations must be made. When potentially responsible parties cannot agree, we take the case to trial. And this sets McGuireWoods apart. In just the past five years, the team has tried and appealed numerous CERCLA contribution cases to a successful conclusion. McGuireWoods has a strong record of success and trial experience in CERCLA contribution and cost recovery cases.

### Challenges to Regulations and Agency Actions

Administrative Procedure Act litigation draws on McGuireWoods' regulatory know-how and experience with administrative litigation, the exceptional brief-writing and practical clerkship experience of team appellate litigators, and the strategic thinking of our experienced environmental litigators. Leveraging broad environmental regulatory know-how, the team prepares comments on proposed regulations, challenges unlawful regulations in court and defends favorable agency decision-making from others' attacks.

### Citizen Suits

McGuireWoods defends chemical, solid waste management, agricultural and other companies around the country against citizen suit claims under RCRA, the Clean Water Act, the Clean Air Act, and the Emergency Planning and Community Right to Know Act. Our experienced environmental lawyers effectively advocate how the multitude of environmental laws, regulations and guidance documents should be interpreted and applied.


### Class Actions

McGuireWoods represents agricultural, automotive, solid waste management, manufacturing and other companies around the country in environmental class actions. The team takes a proactive approach to defending these cases, developing the record to put clients in the best position for favorable resolution at any stage of the litigation. The firm has a strong record of obtaining dismissal of claims at the early

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stages of litigation, defeating class certification motions after commencement of discovery, winning on summary judgment at the close of discovery, and obtaining favorable verdicts at trial in some of the country's largest, high-stakes cases. Our lawyers bring sector-specific class action experience, combined with broad business and industry knowledge, to approach litigation from clients' point of view.

#### **Environmental Enforcement**

McGuireWoods defends clients in government investigations and enforcement actions brought under all federal and many state environmental, safety and health statutes — responding to civil information requests and subpoenas, advising on criminal investigations, and defending against government enforcement actions in federal or state court or before administrative agencies. The firm's environmental litigators understand EPA and DOJ policies and procedures, and work closely with the agencies' staff and counsel to negotiate responses to investigations and enforcement actions.

#### **Environmental Justice**

McGuireWoods has tackled environmental justice problems since President Clinton's 1994 executive order directed the federal government to address disproportionately high environmental impacts on minority and low-income populations. That work includes responding to federal rulemaking actions, representing industry in proceedings that raise environmental justice considerations and working with affected communities to foster improved understanding. Recent federal and state environmental justice policies are impacting cleanup and response activities in new and consequential directions. The team offers deep environmental justice experience, working with communities, companies, municipal clients and trade organizations to understand, address and resolve environmental justice issues. Our lawyers also have unique litigation experience, including winning the first case under a new state environmental justice statute and winning a Freedom of Information Act administrative appeal requesting wrongfully withheld, critical documents from EPA's Office of Civil Rights.

#### **Fraudulent Transfer and Bankruptcy-Related Environmental Litigation**

McGuireWoods represents publicly traded and private companies and their subsidiaries in some of the most complex and high-stakes bankruptcy cases in the country. The firm leads matters in which channeling injunctions are used to direct environmental claims to litigation trusts. While

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McGuireWoods' experienced bankruptcy litigators handle between-company matters through trial and appeal in any court across the country, the team offers practical solutions where a consensual approach best serves clients' interests. The firm's success in contested matters, fraudulent transfer litigation and lender liability claims is a result of the firm's collective knowledge, judgment and the ability to quickly structure a deep and experienced team. McGuireWoods anticipates where company subsidiaries are impacted by significant financial cleanup obligations, and litigates to seek financial recovery. Team lawyers maintain longstanding, productive working relationships with EPA, DOJ and state agencies and officials to establish productive resolutions for the parties involved. Notably, McGuireWoods represents the Chapter 11 plan administrator and the reorganized debtor in *In re ASARCO LLC, et al.* (Bankr. S.D. Tex.), the largest environmental Chapter 11 filing in history, involving distributions of more than \$3.4 billion to creditors.

### Insurance Recovery

McGuireWoods' environmental litigators partner with firm insurance recovery lawyers to provide risk mitigation and other strategic considerations in instances where clients face declined coverage. We represent clients on every aspect of insurance coverage and recoveries, as well as arbitration and litigation of coverage matters. The insurance recovery team litigates large insurance-coverage actions in state and federal courts nationwide. The team's pursuit of claims through trial has led to recovery of approximately \$1 billion per year, for each of the past three years, on behalf of policyholder clients.

### Land Use Litigation

The firm advises commercial, industrial and infrastructure project developers in the appeals of both favorable and negative zoning decisions made by localities and permit issuances and denials by regulatory authorities. We also engage with "NIMBY" public opponents and other interested parties to hear their concerns and why they oppose a project, and to explain clients' goals and objectives. Firm lawyers also enlist strategic communications support from public affairs subsidiary McGuireWoods Consulting to help clients successfully navigate project development hurdles.


### Mass Tort Litigation

McGuireWoods represents corporate defendants in cases arising from alleged exposure to toxic substances such as

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PFAS, asbestos, lead, silica, latex, mold, tobacco, benzene, solvents, PCBs, VOCs and other chemicals. We also defend consolidated cases municipalities file in states such as California, New Jersey and Ohio. The firm has a national reputation for navigating the legal complexities of these cases while developing defense strategies focused on the client's risks and business needs — including coordinating and managing large-scale defense efforts involving hundreds of cases pending in different jurisdictions, defending emotionally charged severe injury and death cases, and litigating complex medical and scientific issues.

#### **Natural Resource Damages Claims**

McGuireWoods represents public and privately held companies in negotiating NRD assessments and claims with state and federal agencies and trustees. The firm resolves clients' potential NRD liability claims, with a focus on contaminated sediment sites in rivers, bays and estuaries containing substances such as PCBs, heavy metals, PAHs, dioxins/furans and mercury. Firm lawyers also address NRD liabilities arising from contaminated groundwater, wetlands and soils, where sediment and groundwater sites typically raise complex legal, technical, economic and political issues associated with remediation and NRD.

#### **Public and Private Nuisance Litigation**

McGuireWoods defends clients against public and private nuisance cases, including some of the largest, most complicated nuisance litigation in the nation. Team lawyers serve as:

- national coordinating counsel for a Fortune 100 chemical manufacturer in multiple state and federal jurisdictions in suits seeking billions of dollars;
- trial and appellate counsel for an international animal agriculture company in several sets of high-dollar nuisance cases involving hundreds of plaintiffs in several states;
- trial and appellate counsel for a Fortune 200 utility in multiple multibillion-dollar nuisance cases alleging environmental contamination due to global warming and fly ash residue; and
- trial counsel in mass tort and class action nuisance suits alleging environmental contamination against numerous clients in the transportation, utility, chemical, automotive, solid waste and agricultural industries.

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# WHAT OTHERS SAY

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## **Nationally recognized for Environment**

— *Chambers USA*

## **Nationally recognized in Environmental Litigation**

— *Legal 500 United States*

## **No. 1 law firm to defend Fortune 500 companies in tort litigation**

— *Corporate Counsel* magazine

## **Litigation Powerhouse**

— *Law360*

## **Environment practice recognitions in North Carolina, Virginia and Washington, D.C.**

— *Chambers USA*

## **Partner named “Environmental Law MVP” multiple times**

— *Law360*

## **Multiple partners named Environmental Law “Lawyers of the Year”**

— *Best Lawyers*

## **Multiple partners named “Energy & Environmental Trailblazers”**

— *The National Law Journal*

## REPRESENTATIVE MATTERS

- Defense of a joint state/federal criminal and civil investigation of an international food processing company for allegations related to purported failure to report air and water discharges of hazardous substances. The team worked cooperatively with state and federal investigators, and no criminal charges or civil penalties were issued.
- Representation of the leading provider of solid waste management services in the defense of class actions in New York and Ohio federal courts alleging negligence and creating a nuisance in the operation of its landfills due to odors and noxious fumes. The team handled a concurrent citizens suit filed by a community organization and area residents over the same site, alleging violations of RCRA and the Clean Air Act.
- Defense of a joint state/federal criminal and civil investigation of a global chemical company for allegations of unpermitted releases of wastewater to a river and related allegations of falsifying testing and monitoring records.
- Representation of an American multinational automobile manufacturer in a class action in Missouri federal court accusing it of negligence and creating a nuisance in the operation of its manufacturing facility due to toxic fumes and odors. Class certification was denied.
- Representation of a global chemical company in a case before the U.S. Circuit Court of Appeals for the 7th Circuit, which reversed a headline-grabbing \$6 million jury verdict against the company and two other paint manufacturers on allegations that they sold lead-based paint that caused brain damage to three men as youths. The appellate decision will impact many similar cases that seek to broaden the scope of Wisconsin's product liability law.
- Representation of a utility in the handling of a billion-dollar mass tort action filed by property owners who live close to a golf course constructed on coal ash. The suit alleged personal injury, property damage and nuisance damages arising from alleged groundwater contamination and air pollution.
- Representation of a global chemical company in defense of a RCRA "imminent and substantial endangerment" citizens suit brought by the Sierra Club and NRDC relating to historic mercury deposits in the South River. The team attained a unique settlement involving a six-year study of the mercury issues and an "adaptive management" plan for remediation.
- Representation of a global chemical company in negotiating a favorable consent decree with the state and federal NRD trustees covering 125 miles of mercury deposits in the South River.
- Defense of New Mexico-based dairy farmers in nuisance actions. The team obtained summary judgment against the plaintiffs' punitive damages claim and excluded the plaintiffs' expert testimony on public health and odor models. These successes and others significantly lowered the value of the plaintiffs' collective case. A favorable global settlement followed shortly thereafter.
- Representation of a gas utility company in the defense of class actions and individual claims after an inadvertent release of natural gas in Massachusetts in connection with work on a natural gas distribution system. The incident allegedly resulted in destruction of more than 80 homes and businesses, 130 structural fires, at least one death, multiple injuries and the four-day evacuation of 8,600 residents.
- Representation of an American pork producer and food-processing company and its subsidiaries in numerous mass tort, class action and environmental citizen suits in Missouri, North Carolina, Florida and Utah, relating to allegations of personal injury, property damage and environmental degradation arising from the company's farming operations.
- Representation of several companies defending enforcement actions and citizen suits alleging violations of the Clean Air Act's NSR program. Team experience in these cases included prevailing on an early motion to dismiss, discovery and motion practice, cases that went to bench trial and beyond. The team negotiated NSR settlements, both early in the case and, where necessary, to obtain a better settlement after years of litigation.
- Representation of one of the largest salvage and recycling businesses on the East Coast in the defense of enforcement actions, citizen actions and regulatory scrutiny.
- Representation of a large grocery chain in a wetlands permitting appeal seeking to halt construction of a \$200 million distribution center project based on environmental justice concerns. The petitioners alleged that the permitting process failed to ensure fair treatment and meaningful involvement of residents in a historically Black community located near the distribution center site. On an issue of first impression under a new state environmental justice statute, the team persuaded the court to hold that the permitting process satisfied all applicable environmental justice requirements.



## REPRESENTATIVE SUPERFUND SITES

McGuireWoods has successfully negotiated EPA enforcement and CERCLA litigation cases at more than 110 sites across North America. Below is a partial list of CERCLA Superfund sites where the team works to achieve an equitable outcome through technical study, negotiation and, when necessary, trial.

- All Service Metal Treating Company Site (New Jersey)
- Alton Site (Illinois)
- ASARCO Hayden Plant (Arizona)
- ASARCO Taylor Springs (Illinois)
- Azurite Mine Site (Washington)
- B & L Woodwaste Fill (Washington)
- Barker Hughesville Mining District Superfund Site (Montana)
- Big River Mine Tailings/St. Joe Minerals Corp. Site (Missouri)
- Black Pine Mine Tailings (Idaho)
- Bonanza Mining District Site (Colorado)
- Buchans Mine (Newfoundland)
- Bunker Hill Mining & Metallurgical Complex Superfund Site (Idaho)
- California Gulch Site (Colorado)
- Cherokee County Superfund Site (Kansas)
- Circle Smelting Site (Illinois)
- Combination Mine Site (Montana)
- Commencement Bay/Near Shore/Tideflats (CB/NT) Superfund Site (Washington)
- Coy Mine Site (Tennessee)
- Deming Mine Site, Dona Ana Site, Blackhawk Site, Deming Mill and Tailings Site, Magdalena Mine Site, Dona Ana Metals Survey Site, Blackhawk Mine Site, and Stephenson-Bennett Mine Site (New Mexico)
- East Helena Site (Montana)
- Diamond Alkali Site (New Jersey)
- El Paso County Metals Survey Site (Texas)
- El Paso Smelter Site / Amarillo Zinc Smelter Site (Texas)
- Encycle Site (Texas)
- Everett Smelter Site (Washington)
- Federated Metals Superfund Site (Texas)
- Flux Mine Site (Arizona)
- Gila River, Mineral Creek, San Pedro River Site (Arizona)
- Glover Smelter Site (Missouri)
- Gold Hill Site/ Belshazzar Site (Utah)
- Golden King Site (Washington)
- Golinsky Copper Mine (California)
- Green River Disposal, Inc. Site (Kentucky)
- Gulf Metals (Texas)
- Helvetia Site (Arizona)
- Heritage Minerals Site (New Jersey)
- Hylebos Waterway Site (Washington)
- International Boundary Water Commission Site (Texas)
- Iron Mountain Mine Site (Montana)
- Jack Waite Mine & Mill Site (Idaho)
- Kalamazoo River Site (Michigan)
- Kusa Plant Site (Oklahoma)
- Los Angeles Harbor Site (California)
- Madison County Mines Site (Missouri)
- Magdalena Site (New Mexico)
- McFarland Site (Washington)
- Metro Parks Tacoma (Washington)
- Mission Mine (Arizona)
- Monte Cristo Mining District Site (Washington)
- Murray Smelter Site (Utah)
- Newton County Mine Tailings Superfund Site (Missouri)
- Omaha Lead Superfund Site (Nebraska)
- Oronogo-Duenweg Mining Belt Superfund Site (Missouri)
- Perth Amboy Site (New Jersey)
- Peterson/Puritan, Inc. Site (Rhode Island)
- Ragland Site (Alabama)
- Richardson Flat Tailings Site (Utah)
- Sacaton Site (Arizona)
- Sand Springs Site (Oklahoma)
- Selby Smelter Site (California)
- Silver Bow Creek/Butte Area Superfund Site (Montana)
- Silverton Site (Colorado)
- South Plainfield Site (New Jersey)
- Stephenson – Bennett Mine (New Mexico)
- Sturgis Municipal Wells Site (Michigan)
- Summitville Mine Site (Colorado)
- Sweetwater Mine Site (Missouri)
- Tacoma Smelter Plume (Washington)
- Tar Creek Superfund Site (Oklahoma)
- Terrible Mine Site (Colorado)
- Trench Mine Site/Salero Site (Arizona)
- Triumph Mine Tailings Piles Site (Idaho)
- Troy Mine Site (Montana)
- Henryetta Plant Site (Oklahoma)
- Upper Blackfoot Mining Complex/Mike Horse Site (Montana)
- Van Buren Site (Arizona)
- Van Stone Mine (Washington)
- Vasquez Boulevard & Interstate 70 (VB/I-70) Superfund Site (Colorado)
- Viburnum Trend Lead Haul Roads Superfund Site (Missouri)
- Wallace Branch Site (Idaho)
- Wallace Yard and Spur Lines Site (Idaho)
- West Fork Mine Site (Idaho)
- Whiting Site (Indiana)

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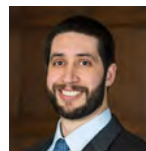
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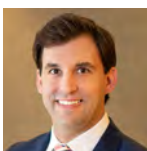
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## **ABOUT OUR ENVIRONMENTAL ENFORCEMENT AND REGULATORY COUNSELING PRACTICE GROUP**

McGuireWoods' national environmental enforcement and regulatory counseling practitioners draw on their varied backgrounds as former regulators and practicing engineers, while advising and representing clients before Congress and state legislatures and environmental and natural resources agencies. We have decades of experience and deep contacts with regulatory agencies — including the Environmental Protection Agency (EPA), U.S. Department of Justice (DOJ), Occupational Safety and Health Administration (OSHA) and Chemical Safety and Hazard Investigation Board (CSB), among others. The team defends environmental enforcement proceedings, counsels clients on environmental compliance, advises clients on development of contaminated property, closes deals and participates in the administrative process. Our lawyers also coordinate closely with colleagues from the firm's lobbying and public affairs subsidiary, McGuireWoods Consulting, to facilitate greater access to decision-makers in legislative bodies and administrative agencies.

## **ABOUT OUR PRODUCT LIABILITY AND MASS TORT PRACTICE GROUP**

McGuireWoods' product liability and mass tort litigators leverage decades of experience successfully defending leading companies in complex, high-stakes litigation. They represent clients in cases involving automobiles and automotive products, food and beverage products, electronic devices, lithium-ion batteries, medical devices, power tools, outdoor power equipment, recreational products, chemicals, tobacco products, pharmaceuticals, aircrafts, trains, building products, and other consumer and industrial products. They defend cases arising from alleged exposure to toxic substances such as PFAS, asbestos, lead, silica, latex, mold, formaldehyde, benzene, solvents, PCBs, VOCs and other chemicals. The team guides clients through recalls, labeling disputes and investigations by the Consumer Product Safety Commission, EPA, California Air Resources Board, and other regulatory and law enforcement agencies. In addition, we advise clients on comprehensive risk management issues from state, national and global perspectives.

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## **ABOUT OUR GOVERNMENT INVESTIGATIONS AND WHITE COLLAR LITIGATION DEPARTMENT**

McGuireWoods' Government Investigations and White Collar Litigation Department is a nationally recognized team of more than 80 attorneys representing Fortune 100 and other companies and individuals in civil and criminal investigations and enforcement matters at federal and state levels. The senior team includes former federal officials, including a former Deputy Attorney General of the United States, former U.S. Attorneys, more than a dozen federal prosecutors and an Associate Counsel to the President of the United States. Strategically centered in Washington, D.C., McGuireWoods' government investigations and white collar litigation team is an elite practice most recently honored in *Chambers USA* with a highly regarded nationwide ranking for corporate crime and investigations, honored twice as a White Collar Practice Group of the Year by *Law360*, and consistently ranked among the world's leading investigations firms in the *Global Investigations Review 100* guide to top cross-border investigations practices. *The Legal 500* United States, a premier list of the country's best law firms, also commended McGuireWoods for the "exceptional quality" of its powerhouse white collar litigation practice.

## **ABOUT OUR INSURANCE RECOVERY PRACTICE GROUP**

McGuireWoods has a long history of representing corporate policyholders on insurance matters and helping clients get the most from their insurance programs and policies. The firm's insurance recovery lawyers know every aspect of insurance, from advising clients on appropriate coverage and risk management strategies, to pursuing and managing claims, to litigating coverage disputes wherever and whenever necessary. The team combines its insurance recovery experience with the premier trial and litigation capabilities for which McGuireWoods is well known. Our lawyers litigate high-profile, large-exposure insurance-coverage actions in state and federal courts nationwide. They also represent policyholders in high-stakes international insurance arbitrations in Bermuda, and litigation and arbitration in London regarding policies subject to English and U.S. law.

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## **ABOUT McGUIREWOODS**

McGuireWoods has 1,100 lawyers in 21 offices across the United States and other countries. Over its 189-year history, the firm has earned the loyalty of its many longstanding clients with a deep understanding of their businesses and broad skills in complex regulatory and compliance matters, high-stakes disputes, and transactional matters. For more than a decade, McGuireWoods has been ranked on BTI Consulting Group's "Client Service 30" list of law firms serving Fortune 1,000 companies — elite firms singled out for client service excellence based on unprompted feedback from corporate counsel. For more information, visit [www.mcguirewoods.com](http://www.mcguirewoods.com).

## **ABOUT McGUIREWOODS CONSULTING**

McGuireWoods Consulting is a full-service public affairs firm offering federal, state and local government relations, infrastructure and economic development, strategic communications and grassroots mobilization services. McGuireWoods Consulting is a subsidiary of the McGuireWoods law firm, and since 2010, has been ranked in the top 20 among the 1,900 government relations firms in Washington, D.C., by *The National Law Journal*.

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