

Environmental Regulatory & Due Diligence

Most businesses in the United States are subject to a complex web of federal and state environmental laws. Cozen O'Connor is a leading adviser on the application and interpretation of those laws.

The Environmental Regulatory & Due Diligence team is well versed in all major federal and state environmental laws, including the Clean Air Act, Clean Water Act, CERCLA and SARA, Endangered Species Act, Resource Conservation and Recovery Act (RCRA), Toxic Substances Control Act, and the Safe Drinking Water Act. It also includes attorneys with detailed knowledge of regulatory sub-areas, including New Source Review, National Emission Standards for Hazardous Air Pollutants, Outer-Continental Shelf Air Regulations, and the Solid Waste Disposal Act.

Cozen O'Connor's ability to help clients interpret and comply with these statutes is greatly enhanced by having former environmental regulators in our ranks, a number of whom were involved in writing current provisions. The team is led by the former Special Assistant to the EPA's Director of Civil Enforcement who helped draft regulations implementing amendments to the Clean Air Act. It also includes the former Regional Counsel for the U.S. Environmental Protection Agency Mid-Atlantic region and former National Director of the Offices of Pesticides Programs.

To provide relevant, actionable advice, regulatory attorneys must understand the underlying business as well as they understand the environmental laws; Cozen O'Connor immerses itself in client operations, financials, and industry dynamics, and tailors all guidance accordingly.

Regulatory Counseling

The firm works closely with corporate clients to establish their responsibilities under federal and state environmental statutes and design compliance regimes. We conduct comprehensive on-site assessments and audits, make recommendations, and assist in implementation.

Permit Approvals

The firm helps clients navigate the process of obtaining permits and authorizations from federal and state agencies, including permits for New Source Review, Freshwater Wetlands, Outer Continental Shelf Sources, National Pollutant Discharge Elimination, Underground Storage Tank Closures, and others.

Due Diligence

Our team conducts comprehensive due diligence to support a wide range of corporate and real estate transactions, particularly in the utilities, energy, industrial, commercial, and maritime industries. Assistance may include: Phase I and Phase II reports, compliance reviews and audits, inspections, resolution of areas of noncompliance, environmental liability analysis, environmental liability allocation, environmental insurance review, and transferring necessary permits or authorizations.

Experience

Secured a favorable American Arbitration Association award on behalf of a nationally recognized environmental remediation firm concerning responsibility for a leaking wastewater pipe beneath a TSCA-regulated cap. Following a four-week arbitration hearing, involving four expert witnesses and multiple fact witnesses, our client prevailed and was awarded attorneys' fees and costs in excess of \$1.5 million.

Analyzed fabric supplier certifications under the Oeko-Tex Standard 100 Annex 4 and 5 for per- and poly-fluoroalkyl substances (PFAS) content and negotiated PFAS insurance on behalf of a garment



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Related Practice Areas

- Business
- Environmental Litigation & Enforcement
- Environmental, Social & Governance
- Infrastructure

manufacturer.

Advised a leading methane emissions verification consultancy on applicability issues related to the California Air Resources Board's *Compliance Offset Protocol for Mine Methane Capture Projects* and the AB 32 Cap-and-Trade regulatory program.

On behalf of a wastewater treatment technology company, successfully negotiated a lift of an EPA import ban of a natural biological substance under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) by demonstrating that the product at issue was not intended for use as a pesticide. The matter posed an issue of first impression involving the extent to which FIFRA could be extended to regulate a water pollution control technology, and the resolution -- which included an EPA determination of non-enforcement -- enabled the client to continue its business enterprise.

Favorably resolved a cost recovery claim in 2019 on behalf of our client against a California municipal utility, arising out of a 1980's massive gasoline spill which caused extensive groundwater contamination on our client's property and required approximately \$1.8 million in remediation expenditures. Under the terms of the settlement the municipal utility paid in excess of \$5 million in damages and assumed responsibility for future remediation on the property. In successfully resolving the client's 32-year environmental liability, we analyzed 25 years of soil and groundwater data, historical reports, surrounding properties, subsurface geology, and infrastructure to determine the origins of a gasoline contamination plume all of which supported a novel inverse condemnation theory of recovery culminating in the settlement.

Assisted Ocean Wind, a subsidiary of the Danish company Ørsted, in the preparation and prosecution of its application to the New Jersey Board of Public Utilities for the rights to build up to 1,100 megawatts of offshore wind power off the coast of New Jersey, resulting in an award of all 1,100 megawatts of capacity. This was the first offshore project of that scale to be awarded to any one offshore wind bidder in the United States (Ocean Wind I).

Represented a fracking sand company in the siting and permitting of a transload facility.

Represented South Jersey Gas Company in developing a project in partnership with Wawa, Inc. to develop a CNG fueling system at an existing Wawa fueling station.

Represented Perdue AgriBusiness Incorporated in various aspects of the development of a Soybean Processing Facility in Lancaster County, PA. We obtained an air plan approval from the Pennsylvania Department of Environmental Protection for use of the solvent hexane in the soy oil extraction process and defended the approval in an appeal before the Pennsylvania Environmental Hearing Board under a Lowest Achievable Emissions Rate ("LAER") standard. We also arranged the purchase of Emission Reduction Credits ("ERCs") for the plant, which is located in a nonattainment area, and defended use of ERCs.

Represent the PennEast Pipeline Company, LLC in environmental matters associated with the PennEast Pipeline, a new 113-mile interstate natural gas pipeline connecting markets in New Jersey with the natural gas production area of the Marcellus Shale region of Pennsylvania. We provide advice and counsel in securing and defending the necessary environmental permits and approvals issued by regulatory bodies, including the Departments of Environmental Protection in New Jersey and Pennsylvania, and the Delaware River Basin Commission.

Represented a group of energy companies in securing environmental permits for the construction of 100+-mile natural gas pipeline from the Marcellus Shale region.

Advised a client on environmental due diligence associated with its bid for various generation assets

of a mid-Atlantic electric generation company which ultimately sold for approximately \$1.6 billion.

Conducted environmental due diligence and drafted a “fatal flaw” analysis of two hotly-contested biomass-fired power plants under development in Florida.

Represented a leading technology company in the negotiation of a commercial agreement to deploy the largest privately funded network of electric vehicle charging infrastructure in the world at the time.

Represented a biofuel refiner in connection with the registration of a biofuel additive with the EPA pursuant to the Clean Air Act §211(b). We worked with health effects consultants in developing Tier 1 and Tier 2 information on combustion, evaporative emissions, and toxicity in support of registration.

Represented a biofuel refiner in waiver petition filed with the EPA demonstrating pursuant Clean Air Act §211(f) that a biofuel-gasoline blend was “substantially similar” to a prior EPA waiver, and therefore did not cause or contribute to a failure of any vehicle emission control device or system.

Represented a petroleum refiner in the negotiation of a Hurricane Sandy emergency administrative order and consent agreement with EPA and state/local permitting agency allowing for temporary suspension of Clean Air Act Title V permit limits on fluid catalytic cracking units to allow for increased refinery production to respond to the Northeastern United States petroleum supply shortage.

Represented a Fortune 500 company in the complete revamping of a corporate environmental compliance program for facilities located throughout North America. We developed the recommended principles of an environmental compliance program, drafted corporate environmental policies, and structured an environmental auditing program and protocols.

Represented a potentially responsible party at the Former Macon Naval Ordnance Plant Site in connection with the EPA's proposed addition of the site to the Superfund National Priorities List. We developed and submitted technical arguments demonstrating that mercury contamination in a local stream did not originate from the site, but was more likely derived from other local sources.

Developed and managed the regulatory strategy that secured liability protection and a covenant-not-to-sue for Pennsylvania's largest brownfield site.

Negotiated the first multi-party, multi-site agreement in Pennsylvania involving three major petroleum companies, the Pennsylvania Turnpike Commission and the Pennsylvania Department of Environmental Protection to remediate 21 properties with current and former gasoline service station operations.
