ENVIRONMENTAL REGULATORY AND PERMITTING

Our Clients

Katten’s Environmental team handles regulatory issues for clients in a range of industries, including oil and gas, energy, chemical, construction, maritime, and transportation. We also advise on transactional matters for real estate developers, builders, owners, lenders, industrial facilities, retailers and public institutions.

Our Services

Katten’s Environmental team represents companies on environmental issues covering all media across a broad range of disciplines, including regulatory counseling, transactional due diligence, project siting and permitting. Combining in-depth knowledge of environmental regulations and the legislative process with a commitment to understanding our clients’ needs and expectations, we tailor our advice and counsel to each set of circumstances. By responding quickly and comprehensively, our Environmental practice provides real-world solutions to clients’ unique needs in a cost-effective and efficient manner. Our attorneys represent clients before the US Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and other federal and state agencies, as well as in federal and state courts.

Air

When it comes to the increasingly stringent regulatory requirements under the Clean Air Act (CAA), our attorneys counsel clients on permitting and regulatory compliance issues. Our practice combines strong, substantive knowledge of the CAA and state air regulations with significant experience with the EPA and state environmental agencies, enabling us to partner with our clients to navigate the complex regulation of emissions and to achieve creative, effective solutions. We represent applicants in all aspects of the environmental permitting process. This includes scoping regulatory and permitting requirements during the early stages of project planning, pre-application counseling and application development, negotiating permit terms and conditions with permitting agencies and working with consultants and stakeholders during the administrative review process to ensure timely permit issuance.

We seek to avoid permit challenges and possible delays by assisting our clients in developing strong legal positions and communicating with potential project opponents in advance to discuss their concerns. When a permit challenge becomes unavoidable, our team is well positioned to manage the process towards a successful conclusion.

Waste

Katten has broad experience in matters relating to landfills, industrial, hazardous and municipal waste disposal, recycling, and remediation. We provide counsel on compliance issues with the Occupational Safety and Health Act; Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); Resource Conservation and Recovery Act (RCRA); and other federal and state regulations. Our attorneys are well-versed in working with and responding to the EPA, the US Bureau of Land Management, California Department of Toxic Substances Control (DTSC), the
California Division of Occupational Safety and Health (DOSH), and the Texas Commission on Environmental Quality (TCEQ).

We are highly experienced assisting clients with obtaining, negotiating, modifying and transferring permits, including wastewater discharge permits, Commercial Hazardous Waste Treatment, Storage and Disposal Facility permits, landfill permits and National Pollutant Discharge Elimination System (NPDES) permits. We also counsel on siting requirements and permit compliance. For companies facing enforcement actions, criminal prosecution, citizen-led litigation or other third-party claims related to environmental waste matters, our attorneys have extensive experience with resolving claims by motion practice, trial and favorable settlement.

Water

Our Water practice covers all major programs of the Clean Water Act (CWA), with a particular focus on the NPDES permit program and state counterparts, dredge and fill program, and spill program. We advise on traditional NPDES permitting and compliance matters related to wastewater and stormwater discharges and provide strategic guidance on evolving issues such as, potential post-construction stormwater requirements, and the jurisdictional extent of waters of the United States.

Recognizing that water availability for new projects and sustainability of water sources at existing facilities have become significant concerns, Katten attorneys assist clients in evaluating the best groundwater and surface water options for projects, identifying any required authorizations to use available water, and assessing whether and to what extent the water will be available in drought conditions.

Katten attorneys use their broad experience to maximize accuracy, predictability and timeliness in the permitting process. When compliance and enforcement issues arise, we provide our clients with effective representation in federal and state CWA administrative, civil and criminal enforcement actions.

Environmental Issues in Real Estate

We assess, manage and mitigate environmental issues within the context of our clients' business activities and objectives. Our attorneys work closely with the firm's transactional teams to identify environmental issues, potential liabilities and operational constraints in transactions. We devise strategies that maximize efficiencies, options and profit potential. Clients seek our advice on the technical and regulatory requirements associated with environmental due diligence, including all appropriate inquiry and continuing obligation standards. Through our experience with every major federal environmental statute and state law counterparts, we address the full range of environmental issues that arise in the acquisition, ownership, disposition and financing of impacted real estate.

Our attorneys use their knowledge of the CERCLA defenses and exemptions, familiarity with the EPA and state agencies, and connections with leading environmental consultants to provide speedy and successful identification and resolution of issues. We are skilled in assessing potential future compliance obligations under other environmental regimes, including the CAA, RCRA and CWA. We advise on how to structure transactions to minimize risk and maximize operating flexibility and opportunity, and we assist in drafting representations, warranties and indemnifications in real estate and commercial transactions. When projects involve property with environmental issues, Katten attorneys negotiate federal and state compliance requirements and plans, insurance policy provisions, and other risk-shifting mechanisms to protect our clients and their business objectives.

Our Experience

Air

- Representation of clients on contested case hearings before TCEQ and the Texas State Office of Administrative Hearings (SOAH) on permitting cases, successfully obtaining air quality permits for a coal-fired power plant and a concrete batch plant, wastewater discharge permits, hazardous and non-hazardous injection well permits, a hazardous waste landfill permit, and an in situ uranium mining permit.

- Representation of clients in successfully obtaining Single Property Designations from the TCEQ for air quality regulatory purposes.

- Representation of a Fortune 50 energy company in connection with a variety of Title V regulatory concerns affecting Alaska offshore drilling platforms.
• Representation of a client in an administrative contested case hearing and appeals before the Travis County District Court and the Texas Eleventh Court of Appeals. Successfully obtained a Texas Clean Air Act preconstruction permit for an 800 megawatt coal-fired electric generating facility with a CO2 capture unit.

Waste

• Representation of permit applicant in hotly contested case hearing, successfully obtaining a municipal solid waste Type I landfill permit before TCEQ and the SOAH.

• Provision of ongoing regulatory compliance counseling on air, water, waste and cleanup issues for two waste management facilities (a municipal solid waste Type I landfill and an RCRA permitted hazardous waste landfill) in Texas.

• Representation of client in an administrative contested case hearing and district court appeal. Successfully obtained renewal and new Class 1 hazardous waste injection well permits from TCEQ.

• Representation of client in successfully negotiating settlement of administrative proceedings, involving a contested case hearing, on an application for renewal and major modification of Commercial Hazardous Waste Treatment, Storage and Disposal Facility permit.

Water

• Representation of a leading lawn and garden manufacturer in connection with a pilot study relating to the design and construction of a wastewater treatment system and associated NPDES permitting concerns, including the applicability of the RCRA wastewater treatment unit exemption.

• Representation of a client in a contested case hearing on a municipal wastewater discharge permit proceeding that settled prior to the hearing on the merits.

• Defense of a Class I railroad in a statewide Clean Water Act citizen suit litigation alleging unpermitted discharges of coal from railcars to the waters in Washington State.

• Defense of federal agency actions including Clean Air Act rulemakings, Clean Water Act permits and federal contributions to cleanups under RCRA and CERCLA.

Environmental Issues in Real Estate

• Representation of a foundation in evaluating environmental issues in connection with site selection for the construction of a presidential center, including negotiating environmental agreements with site owners for detailed environmental investigation of the candidate sites. Katten persuaded site owners to agree to our subsequent enrollment of the selected site in the voluntary remediation program, and to reimburse related investigation and future remediation costs.

• Negotiation and implementation of a strategy for our client's acquisition of certain assets of a disposal company, and leasing of other assets—including disposal wells—by a client subsidiary. Katten's strategy minimizes long-term liability associated with the seller's alleged prior unauthorized spraying of roads with benzene-containing brine waste from oil field fracking operations.

• Negotiation of environmental provisions of our client's contract for the purchase of a packaging company, including historically contaminated property owned by the company. The contract provides Katten's client with significant environmental indemnities, which were supplemented by the negotiation an environmental insurance policy that provides substantial coverage for matters that are not frequently covered by such policies, including known contamination.

• Evaluation of remediation and regulatory liabilities and related legal risks associated with our client's proposed acquisition and brownfield-type redevelopment of a contaminated property. Tasks included determining potential for, and likely extent of, protections from comfort letters and/or prospective purchaser agreements with the EPA, and evaluating possible risk reduction tools, including insurance products and environmental liability transfer to a remediation firm.