

Environmental Law

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Fredrikson's environmental attorneys are widely recognized for our sophisticated legal representation of clients ranging from small businesses to Fortune 500 companies, providing cost-efficient advice and solutions focused on our clients' business needs. We offer counseling and assistance to our clients in every aspect of environmental law at the federal, state and local levels, including:

- Regulatory compliance
- Permitting
- Management of environmental liabilities in mergers and acquisitions and real estate transactions
- Site assessment and remediation
- Environmental review
- Defense of civil and administrative enforcement actions
- Litigation
- Rulemaking

Our lawyers assist in business strategy development and regularly provide training to our clients. We represent clients before federal and state courts and agencies in jurisdictions across the country.

We take a team approach to our legal representation, both internally and externally, building and maintaining strong relationships across client-service teams, including local and co-counsel, environmental consultants and engineers, expert witnesses, and insurance experts. In addition, our attorneys are frequent lecturers and authors on new and developing issues in environmental law, and we hold or have held leadership positions in the environmental sections of the American Bar Association, Minnesota State Bar Association, and Hennepin County Bar Association.

Experience

Counseling & Compliance

- We conduct environmental audits, both directly and through management of environmental consultants and engineers, addressing compliance with all major environmental programs, including solid and hazardous waste management, wastewater and stormwater discharges, Emergency Planning and Community Right-to-Know Act (EPCRA), air emissions and pollution prevention.
- We assist clients in assessing applicability of environmental permitting requirements across programs and obtaining necessary environmental permits (or

establishing records evidencing non-applicability of permitting requirements).

- We advise clients regarding environmental permit transfer, modification, and reapplication requirements in connection with mergers, acquisitions, dispositions and real estate transactions.
- We advise clients regarding proposed legislation, rules and applicable regulatory requirements and guidance relating to emerging contaminants, including PFAS.

Land Use & Brownfield Redevelopment

- Represent real estate developers, construction companies, property management companies and investment firms in connection with the acquisition, redevelopment, ownership and management of brownfield sites.
- Advise clients in securing federal and state (e.g., CERCLA and MERLA) liability protections and assurances with respect to contaminated property, including through the Minnesota Pollution Control Agency's (MPCA) Brownfield Programs.
- Assist clients with the implementation of and compliance with institutional controls, including numerous environmental covenants and easements prepared in connection with MPCA environmental response projects and liability assurances.
- Counsel clients with respect to brownfields grant applications and compliance and negotiate subgrant agreements with municipal and county grant partners.
- Advise energy, mining, and commercial/retail clients with respect to land use and zoning matters, including obtaining and assessing conditional and special use permits, right-of-way permits, and building permits, and negotiating development, drainage and road use agreements.
- Drafted and negotiated numerous access agreements concerning contaminated property remediation under CERCLA and MERLA.

Mergers, Acquisitions & Real Property Transactions

- We manage the environmental aspects of mergers and acquisitions and real estate transactions involving all types of businesses and operations, including manufacturing, chemical, power generation, agribusiness, oil and gas and service industries. Representative transactions include the following:
 - Represent national middle-market private equity firms in over one thousand add-on and platform acquisitions and divestitures in a wide variety of industries.
 - Represented national manufacturer in \$450MM+ asset purchase of multi-location manufacturing division.
 - Represented private equity-sponsored, franchisor of home service brands in its acquisition of professional service companies.
 - Represented energy company in the acquisition of power plant and HVDC transmission line.

- Represent national real estate investment firm in sale-leaseback transactions involving industrial and commercial properties.

Litigation, Enforcement & Regulatory Investigations

- We have extensive experience in state and federal courts, as well as arbitration. We represent clients in administrative appeals, enforcement proceedings, real estate litigation, environmental and regulatory disputes, environmental appeals, and construction litigation, including, e.g.,:
 - Claims arising from the transfer of contaminated property
 - Defense of citizen suits
 - Environmental Protection Agency (EPA) and state regulator enforcement proceedings
 - Cost recovery and insurance claims
 - Litigation of federal and state Superfund claims
 - Defense of toxic tort claims
 - Litigation of claims arising from exposure to asbestos

Representative examples of litigation and enforcement cases include the following:

- We negotiated a dismissal with prejudice of all claims filed against an agricultural company in a lawsuit brought by the Minnesota Pollution Control Agency that alleged willful violations of NPDES permit conditions and sought over a half million dollars in civil penalties in addition to attorney's fees. No payment was required as part of the settlement.
- A client manufacturer was sued along with 200 other companies under the Superfund laws for the costs of a multimillion-dollar cleanup of contaminated groundwater under a landfill that was used 20 years ago. We got our client dismissed from the case as a result of our investigation which proved that our client actually never sent wastes to the landfill. We were also successful in obtaining reimbursement from our client's insurance carriers for the expenses of litigation.
- **Friends of Towner Hill Park v. Foxfire Properties, LLC et al and Vermilion Enterprises, LLC, et al, Minn. Ct. App. (March 2, 2020):** Successfully defeated a neighbor challenge to a residential project in the City of Minneapolis. In an effort to stop a development project, the neighbors argued that the Minnesota Environmental Rights Act (MERA) should stop the project. The Minnesota Court of Appeals affirmed the trial court's order dismissing the MERA claim as barred by collateral estoppel. As a result, the project can proceed. Friends of Tower Hill Park, Appellant, vs. Foxfire Properties, LLC, et al., Respondents, Vermilion Enterprises, LLC, et al., Respondents, MN Court of Appeals, A19-1111.
- We counseled an automotive aftermarket parts manufacturer in its response strategy to EPA information requests under Clean Air Act Section 114, relating to compliance with Clean Air Act Title II emission standards. No enforcement

actions were pursued.

- We represented a safety company in responding to EPA Clean Air Act Section 114 information requests and negotiated a consent agreement and final order resolving alleged Clean Air Act Title VI violations.
- We served as lead counsel to a pipeline company in a contested case hearing seeking individual 401 Water Quality Certificate from the Minnesota Pollution Control Agency. We also represented the pipeline company in an appeal challenging the Minnesota Pollution Control Agency decision to grant individual 401 Water Quality Certification for the pipeline. The agency's decision was affirmed.
- We defended a national manufacturer against EPA civil penalty claims for alleged violations of the Clean Air Act. While the civil penalty claims were in the seven-figure range, the ultimate settlement included only a de minimis penalty amount.
- We achieved dismissal of all claims filed against a Fortune 100 company in an environmental contamination case alleging violation of the Minnesota Environmental Response and Liability Act, trespass, nuisance, negligence, and willful and wanton conduct. The Minnesota Court of Appeals dismissed the plaintiffs' appeal.
- We mediated a very favorable resolution with more than 80 named plaintiffs in an environmental contamination case, after taking the depositions of all of the named plaintiffs.
- We represented taconite mining company in appeal of first Minnesota reissuance of tailings basin NPDES permit in three decades, arguing environmental issues of first impression before the Minnesota Court of Appeals and Minnesota Supreme Court.
- **Minnesota Center for Environmental Advocacy v. City of St. Paul Park, 711 N.W.2d 526 (Minn. App. 2006):** Defeated challenge by environmental group to 665-acre multi-use housing project on Mississippi River.
- **EHW Properties v. City of Eagan, U.S. District Court, District of Minnesota, Case No. 00-CV-690 (JMR/FLN):** Takings claim and challenge to City's action of downzoning client's property from commercial to single-family residential zoning classification. City settled prior to trial by restoring prior zoning and paying damages.
- **New Brighton vs. the United States of America (U.S. District Court, District of Minnesota):** Contamination of New Brighton's municipal water supply from the Twin Cities Army Ammunition Plant. The City has recovered more than \$90 million in cash and water treatment and supply facilities.

Agricultural Matters

- We represented an agricultural company in a proceeding before the Minnesota Office of Administrative Hearings, obtaining an order that a longstanding water quality policy of the Minnesota was invalid as an unadopted rule.

- We represented an agricultural company in working with state environmental protection agency to develop and finalize unique, multi-site individual industrial stormwater permit.
- We represented an agribusiness company in its response to Minnesota Department of Agriculture request for agricultural chemical incident investigation and corrective action.

Environmental Review & Cultural & Tribal Resources

- We frequently counsel clients regarding environmental, cultural, and tribal review requirements at both the federal (i.e., NEPA, NHPA) level and with respect to state equivalents (e.g., MEPA). Representative examples include the following:
 - Counseled renewable energy developer in connection with federal environmental review of an approximately 200 MW wind project and transmission line, including development of an environmental assessment and Finding of No Significant Impact under NEPA, and negotiation of a Memorandum of Agreement under Section 106 of the National Historic Preservation Act.
 - Represented renewable energy developer through the development of an Environmental Impact Statement, Section 7 consultation, a Biological Opinion and a Conference Opinion for a 400 MW wind farm and associated transmission line.
 - Advised mining company on environmental review matters regarding mine pit progression project.