ECKERT SEAMANS

Environmental

OVERVIEW

The roots of Eckert Seamans' Environmental practice trace back to the firm's early days of representing Pittsburgh's traditional heavy industrial and manufacturing clients in the steel, glass, aluminum, chemical, coal and natural gas sectors in the 1960s. Over the years, Eckert Seamans' Environmental Group has expanded the practice into representing clients in a wide range of other industries such as steel, consumer products, electric, gas, water and waste water utilities, construction and high tech companies, as well as governmental and quasi-governmental organizations, and the professional service-related organizations that support these industries, activities and services, including financial institutions and real estate developers.

Eckert Seamans' Environmental Group is national in scope and our practice is as diverse and broad-based as the subject matter itself. The firm's environmental lawyers assist and counsel clients with compliance, enforcement, self-disclosure, permitting, government rulemaking, responding to information requests, strategic planning and other matters that are subject to the major environmental regulatory programs, including the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Toxic Substances Control Act (TSCA), the Emergency Planning and Community Right-to-Know Act (EPCRA), and the Safe Drinking Water Act. We also have significant experience working with state and local counterparts to these federal programs in numerous jurisdictions across the country, including areas where state and local programs tend to diverge from the core structure of environmental requirements established by federal law.

The firm has represented clients in a variety of environmental enforcement actions and regulatory and permit proceedings before federal and state courts and administrative tribunals under all of the major environmental programs. Our attorneys also routinely provide counseling on environmental compliance under all of the major environmental programs and are experienced with providing "on the spot" advice and guidance when contacted by environmental or management personnel during the course of day-to-day operations, whether with regard to routine matters or emergency situations. We also have substantial environmental experience assisting in the creation and implementation of environmental management systems as part of strategic environmental program development as well as in response to self-disclosures and enforcement initiatives. We have assisted clients in evaluating the success of their programs and with the development of remedial corrective action plans in response to the evaluation of those programs.

The firm's environmental lawyers work closely with our corporate business attorneys to assist in due diligence and the evaluation of environmental risk in a variety of business transactions, including environmental issues related to public offerings and public disclosures, the negotiation of terms and conditions in asset and stock purchase agreements, and providing the assistance needed to resolve environmental issues and facilitate the successful closing of transactions. This work involves not only an evaluation of compliance status and compliance risks – i.e. is a facility in compliance with its permits – but also evaluation of business risks and limitations – i.e. does the facility have all the permits it should have, and can it obtain the permits it needs to expand or modify its business.

Environmental law is a constantly changing field, as science and regulations are always evolving. Our attorneys recognize that clients need to stay ahead of emerging trends and potential liabilities. For example, our attorneys are tracking and advising clients regarding PFAS/PFOA regulations and potential contamination, including testing and remediation issues associated with this family of chemicals. Issues of climate change exposure, resiliency and sustainability are also continuing to gain increasing attention and investment across a wide range of clients and industries. (Please click here to learn more about Eckert Seamans' PFAS practice focus)

The following matters reflect the group's capabilities across a range of industries and issues:

AIR

The firm's environmental attorneys have extensive experience in litigation and counseling with respect to matters arising under the federal Clean Air Act (CAA) and many state air programs with significant focus on

New Source Review/PSD and Title V facility operating permit development, implementation and compliance. They work closely with clients and outside consultants in the areas of engineering, computer modeling, risk assessment, meteorology and toxicology. This experience includes, among others:

Air Permitting and Compliance. Our attorneys have substantial experience in the development, implementation, compliance and correction of New Source Review/PSD and Title V air permit applications for major sources of criteria and hazardous air pollutants and in the development of compliance plans associated with the same at numerous facilities in multiple jurisdictions. Firm environmental attorneys have advised clients and assisted in the development of synthetic minor source demonstrations, successfully counseled a client in securing permits to install and operating permits for start-up facilities, and successfully defended administrative and civil challenges by a citizens' group to an installation permit for a municipal waste incinerator resource recovery facility.

Clean Air Act Litigation: Our attorneys also have experience in defending clients from government enforcement and citizens suits arising from NSR/PSD, Title V and MACT compliance, including negotiation and implementation of complex consent decrees. We routinely respond to US EPA information requests targeting potential NSR and PSD issues and have defended clients in actions alleging violations of fugitive dust rules and nuisance issues. In addition, we have also assisted clients in addressing hazardous air emissions and contesting misleading government use of scientific information.

WATER

The firm's environmental attorneys have represented clients in litigation and counseling with respect to matters arising under the federal Clean Water Act and many state water programs, including NPDES permitting and monitoring, stormwater, POTW pretreatment requirements, drinking water protection and compliance, effluent trading and wetlands mitigation and credit trading. They work closely with clients and outside consultants in the areas of engineering, aquatic biology, toxicology, hydrogeology and hydrology. This experience includes:

Direct and Indirect Discharge Permitting. The firm's environmental attorneys routinely work with clients to develop applications for permits and authorizations for direct and indirect discharges of process and non-process wastewaters. Our attorneys assist clients in preparing applications, negotiating appropriate effluent limits, evaluating the legal bases for treatment or pre-treatment requirements and the modification of permit terms and conditions to appropriately address changes in operations or processes. This includes working with clients to evaluate and negotiate water quality-based effluent limits, total maximum daily loading limits, whole effluent toxicity limits, technology-based limits and testing requirements. The firm's attorneys have provided assistance and counsel to clients with regard to the design and implementation of mixing zone studies in an effort to obtain relaxed effluent standards for toxicity and specific pollutants. Our attorneys are often successful in negotiating acceptable terms and conditions prior to the issuance of a final permit and when necessary have litigated many permit appeals before a variety of state agencies and administrative tribunals.

Enforcement Defense: We have negotiated consent decrees on behalf of industrial dischargers to address non-compliant discharges and corrective action. We represented a major industrial discharger in negotiation and implementation of a complex federal consent decree involving a multi-phased set of corrective action while avoiding ongoing penalties for non-compliance. We have also helped a number of dischargers in several states defend and resolve state enforcement proceedings.

Drinking Water and Sanitary Sewage Authorities. Firm attorneys have represented drinking water providers with respect to permitting and compliance issues under Safe Drinking Water Act regulations as well as emerging issues such as PFAS/PFOA sampling and contamination. We have negotiated compliance orders for sanitary sewage authorities and have successfully litigated on behalf of a drinking water authority to ensure protection of its source water.

Treatment Technologies. We have worked with clients to develop innovative approaches to meeting effluent limitations. We assisted a client in developing the Best Available Technology to address the discharge of extracted groundwater that had been contaminated from past industrial activities, including successfully negotiating a settlement agreement that provided for the construction of a wastewater treatment plant and the imposition of effluent limits based upon the actual operating capabilities of the treatment plant.

Wetlands and Encroachments. The firm's environmental attorneys have experience with wetlands and related issues in a number of contexts. Firm attorneys have defended federal and state wetlands

enforcement cases. We have negotiated with the Pennsylvania Department of Environmental Protection and the U.S. Army Corps of Engineers to obtain authorization to relocate a stream and a permit authorizing development of a wetland area as part of the siting and development of a residual waste landfill. Firm attorneys have also helped develop and utilize wetlands mitigation banks in several states.

SOLID/HAZARDOUS AND RESIDUAL WASTE

The firm's environmental attorneys have extensive experience in litigation and counseling with respect to cases arising under the federal Resource Conservation and Recovery Act (RCRA) and many state solid and hazardous waste programs. We work closely with clients and outside consultants in the areas of engineering, hydrogeology and risk assessment. Firm experience in this area includes:

Hazardous Waste Characterization and Management. Firm environmental attorneys routinely counsel clients as to whether solid waste constitutes hazardous waste regulated under state and federal hazardous waste programs. We have assisted clients on a range of hazardous waste management issues including satellite accumulation, obtaining US EPA identification numbers, hazardous waste manifest system, pre-transportation requirements, accumulation times, recordkeeping and reporting requirements, special requirements for small quantity generators, personnel training, preparedness and prevention requirements, preparation of contingency plans and emergency procedures, and financial assurance requirements. Our attorneys have also worked with clients with respect to preparation and pursuit of delisting petitions before the US EPA.

Site Remediation: Our attorneys routinely represent clients with respect to investigation and remediation of contaminated and potentially contaminated property and assist clients to interface with outside technical consultants and government agencies. Firm environmental attorneys have served as counsel on two of the country's largest industrial RCRA corrective action sites. We have experience in helping clients complete remediation projects and obtain liability releases under state voluntary cleanup programs. Our attorneys counsel clients regarding a range of emerging and developing remediation issues, from vapor intrusion to PFAS/PFOA contamination.

CERCLA. The firm's attorneys have extensive experience representing clients in CERCLA proceedings and litigation, as well as in matters involving "state superfund" laws and contractual and common law cost recovery actions. This experience includes defense of U.S. EPA, state agency and private cost recovery actions. The firm's attorneys have successfully avoided imposition of liability and negotiated favorable settlements for multiple clients in a number of EPA regions and states. This work has included evaluation of potential risk and exposures, challenges to waste-in lists, and negotiation and resolution of liabilities in settlements and consent decrees in a cost-effective manner. The firm has also represented clients as plaintiffs in CERCLA, state law and common law cost recovery cases.

Spill prevention and emergency response. Firm environmental attorneys have assisted clients in developing programs to address spill prevention as well as in conducting emergency response at numerous manufacturing facilities in multiple states for a variety of materials. These efforts have included helping establish prevention programs, spill response and notification, and spill remediation. Firm attorneys have defended clients in the spill response context under contentious circumstances, including potential state and federal criminal investigations, in which the clients were absolved.

ADDITIONAL PRACTICE AREAS

Climate Issues: The firm's attorneys have experience advising clients on the rapidly evolving issues of climate change and sustainability. This experience includes counselling clients with respect to greenhouse gas reporting, and accounting for climate related issues in contingency and planning requirements. Our attorneys also have experience with sustainability issues, including developing a sustainability program for a major US airline and analyzing sustainability issues at small airports.

Emergency planning and EPCRA toxic release and inventory reporting. Firm attorneys have been involved with EPCRA planning and reporting requirements and have provided counselling since the inception of the federal program in 1987. Firm attorneys have assisted clients in resolving a number of compliance issues both through the voluntary self-disclosure program at the federal level as well as numerous administrative settlement agreements.

TSCA. Firm attorneys have substantial experience providing counsel and helping establish compliance programs and defense of compliance under the TSCA PCB program, both in industrial facilities and under

the PCBs in gas pipelines program. Firm attorneys also have experience with the chemical control and notification provisions of TSCA under the inventory update rule, health effects notification, pre-manufacture, significant new use and the export/import rules.