

# REPRESENTING BUSINESSES IN CERCLA CONTAMINATION MATTERS

Our California contamination lawyers represent manufacturers, chemical producers, energy companies, waste management companies, property owners and financial institutions in property contamination matters, including site remediation, Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) litigation, cost recovery and natural resource damages claims across the country. Our CERCLA practice continues to include negotiations with agencies over remedies and with co-PRPs over allocation of cleanup costs.

## **Emerging CERCLA Issues**

While CERCLA has been in place since 1980, and most of the legal interpretation issues have been resolved in the courts, there are new emerging issues that our lawyers work on every day. CERCLA sites are becoming more and more complex as EPA moves from landfill sites to contaminated sediments in major rivers and waterways and multi-party complex commingled groundwater plume sites. These sites have increasingly complex remediation plans for miles of river or acres of groundwater, with hundreds of possible sources, including non-point sources and orphan shares.

As a result, CERCLA now involves a more cooperative tactic, focusing on working with other PRPs and the government to promote the most efficient and cost-effective remedies and allocations. In addition, post-CERCLA cleanup issues are now percolating to the forefront, including natural resource damages, requiring expertise, strategic advanced planning during the investigation and remedy phases, and focused attention. We have experience working in these areas alongside renowned experts in the field to anticipate, prepare and defend NRD cases that could be even more costly than the remedy itself.

## **CERCLA Liability**

CERCLA establishes liability for persons responsible for releases of hazardous waste at sites where

there was a release or threat of release of hazardous substances. Responsible parties include an owner or operator of a vessel or facility, a past owner or operator during a time period when a release of a hazardous substance occurred, a transporter of hazardous waste, or a generator or arranger of disposed hazardous waste. In the past, lenders and secured creditors and purchasers of real property were caught in the CERCLA web of joint and several liability. For that reason, lender liability rules and prospective purchase agreements were established to mitigate and allocate the risks of future CERCLA liability that may attach to a company or property.

CERCLA (as well as the Clean Water Act and the Oil Pollution Control Act) can also impose natural resource damages (NRD). Federal and state trustee agencies and tribal governments can bring NRD claims.

In addition, as a result of CERCLA, real property transactions now require an assessment of potential environmental liabilities. Bick Law has represented buyers, sellers and lenders in these transactions.

## **Our Experience with CERCLA Issues**

Our California contamination lawyers have deep experience across the country working with EPA lawyers and project managers to negotiate cleanups and Consent Orders that mitigate the costs and uncertainty that our clients otherwise face at these sites. We have experience collaborating with the entire spectrum of the remediation community, including project managers, regulators, engineers, and hydrogeologists.

Our lawyers help clients negotiate settlements with EPA and state agencies to perform reasonable cleanups. We also work with experts to prepare fair and reasonable allocations between multiple PRPs and we represent our clients vis-à-vis other PRPs in contribution or cost recovery actions to obtain funds for cleanups.

The California contamination lawyers at Bick Law LLP have been in the forefront of efforts to help clients resolve potential NRD liability at major CERCLA sites with contaminated sediment sites in rivers, bays, harbors and estuaries, as well as sites with contaminated groundwater, wetlands, and soils. We have helped clients hire experts who assess natural resource injuries and evaluate the strengths and weaknesses of the methodologies used by trustees for quantifying and valuing damages claims. Bick Law has experience working cooperatively with trustees to attempt early settlement to head off unnecessary and costly litigation.

Bick Law has extensive experience guiding clients through risk assessment, the hazard ranking process, NPL site listing, negotiating with multi-party PRPs groups, agreements to conduct remedial investigation and feasibility studies, records of decision and entry into administrative orders and

consent decrees. We have defended claims brought by Department of Justice, EPA and state environmental agencies, conducted searches for responsible parties and their successors, negotiated allocation schemes at sites with multiple PRPs and negotiated de minimis settlements for clients. In addition to our experience with federal CERCLA, we have experience with state hazardous substance laws including cases under California's Carpenter-Presley Hazardous Substance Act.

Our California contamination lawyers help clients assess future risks of CERCLA liability and mitigate or allocate those risks to best suit the business transaction.

Our experience includes sites with:

- Soil contaminated with volatile organic compounds, metals, asbestos, PCBs, mercury and other heavy metals; and
- Ground water and surface water contaminated with chlorinated solvents such as TCE, TCA or PCE, Perchlorate 1,4, Dioxane, NDMA, MTBE and Freon 113.

We have worked cooperatively with EPA and state agencies in the cleanup process, defended EPA and state cost recovery cases, handled precedent setting litigation with other responsible parties in allocating liability, advised clients with respect to liability avoidance and dealt with all these issues in unique circumstances. We are well-positioned to handle issues with the latest EPA changes, including the [Proposed Regulatory Determination for PFAS](#) released in March 2020.

Bick Law has also helped parties dealing with Chapter 11 debtors with contaminated properties who have attempted to avoid CERCLA liability via bankruptcy. We have been involved in unique remedies, including contaminated sediment river matters with hundreds of PRPs, and long-term groundwater remedies requiring cooperation and coordination with private water companies. In criminal cases, our California contamination lawyers have defended clients charged with illegal disposal of hazardous substances.