



## MANUFACTURED GAS PLANTS

For the past 20 years, we have been representing utilities on various environmental issues related to former "manufactured gas plants." Until natural gas was widely available, gas was manufactured from coal and other organic materials. When those MGPs were closed in the early- to mid-20th century, the residuals were often left in place, leading to a modern-day environmental legacy that began to receive serious regulatory attention in the mid-1980's. We have been involved in well over 30 MGP sites on behalf of a wide variety of utility clients, handling state and federal regulatory requirements, community relations, cost recovery, and toxic tort litigation.

Before natural gas was widely available, gas for heating homes, lighting streets, and cooking was manufactured from coal and other materials. These "manufactured gas plants" (or "MGPs") were miracles of engineering—even to this day, the same kinds of technologies are often touted as ways to convert coal into clean-burning gaseous fuel.

Unfortunately, though, when natural gas was made widely available, mostly during the period from 1930 to 1950, the old MGPs were often decommissioned and abandoned in place—leaving the residues of these operations buried in the ground.

The environmental challenges of abandoned MGP sites did not begin to be recognized by utilities, municipal governments, and corporations until the 1980s. Over the two decades since, and nearly three dozen MGP sites later, KMCL's attorneys have developed innovative legal and economic tools that cover a wide array of litigation, transactional, and regulatory solutions to the MGP problem.

## LITIGATION

Representing clients in both plaintiff and defendant roles, KMCL attorneys have handled private cost recovery lawsuits, insurance coverage disputes, toxic tort claims, toxic torts, and common law property damage claims.

Noteworthy matters in which KMCL attorneys have represented major clients include:

- We represented a major utility in a toxic tort class action lawsuit with potentially dramatic political overtones. By combining a vigorous litigation strategy with an innovative settlement alternative, all claims were resolved favorably to the client out of court.
- We filed suit against a number of insurance carriers for a utility client seeking coverage for cleanup costs at more than a dozen sites. After five years of hard-fought litigation, the client secured tens of millions of dollars in recoveries after all costs.
- Capitalizing on a cost-recovery lawsuit, we were able to develop extensive evidence of participation by other potentially responsible parties. This, in turn, led to a multi-party settlement with the EPA and a greatly reduced cost to the clients.

## TRANSACTIONAL

The KMCL attorneys' earliest exposure to MGP sites arose in the context of corporate transactions where we recognized the risks posed by the acquisition targets' historical connection to the industry. Through the course of this work and dozens of subsequent transactions, we developed a stable of legal and economic tools that have allowed deals to proceed despite significant potential liabilities. Building on this base, our experience with transactional work has grown to include "brownfield" redevelopments, liability transfers, strategic reacquisitions, corporate mergers, and urban renewal projects.

Representative matters include:

- We facilitated a pre-remediation sale of an MGP site located in an urban historic district, which addressed an extensive array of contractual and regulatory complexities. Then, just before closing, we restructured the transaction to substitute parties and use the state's new brownfield law, immunizing the purchasers against further obligations, and in the process easing the burden on our client of future indemnity obligations. The deal closed with a multi-million dollar profit for the client.
- On behalf of a utility client sued by the current owner of a former MGP site, we orchestrated the acquisition of a defaulted first mortgage, foreclosed on the property, thereby addressing claims relating to alleged diminution in property value, and then used this rearrangement to structure a very favorable settlement. We then assisted the client in designing a cleanup based on future commercial reuse, allowing the client to resell the property subject to restrictive covenants at a substantial profit over the acquisition costs.
- Because former MGP sites are often located in the heart of urban core areas, we have developed a holistic approach to ensure reuse of the properties that benefits the public and is economically beneficial to the client. For example, in one instance, a site included not only the former MGP, but also a former city-owned landfill, a railroad, a lumber yard, and a river. Further complicating matters, the site was located within the boundaries of a major urban redevelopment zone. With sensitivity to the political interests and the timing of various funding options, we coordinated these competing interests to produce a site-wide cleanup strategy, the cost of which was very favorable to the client.

## REGULATORY

For more than 20 years, the KMCL attorneys have counseled clients as they have navigated the complex regulatory shoals governing MGP sites. What we have found in our involvement with dozens of regulatory negotiations is that EPA and its state counterparts have developed a number of conventions for dealing with MGP sites. Often, those conventions are not effective or cost-effective when it comes to the peculiar challenges of addressing sites that frequently operated for more than 100 years, with essentially no environmental controls, and then were abandoned in place 50 to 90 years ago. Our approach to dealing with regulators on these sites recognizes these unique complications.

Among our experiences are the following:

- We represented a client confronted with the redevelopment of a waterfront MGP site into a luxury marina and mixed-use complex. We handled not only the state and federal cleanup requirements, but also the wetland issues, in-stream impacts, and claims for NRD.
- On behalf of a municipal clients in New England, we negotiated a memorandum of understanding with the state environmental agency to conduct a joint investigation of more than ten acres impacted sediment on the bottom of the river that passes through the heart of town.
- For many clients, we have addressed the special problems created by the locations of MGPs along waterways. MGP impacts in such areas necessitate not only costly cleanups of difficult media, but also numerous regulatory complexities involving "ecotoxicity" assessments and criteria, multiple agencies with overlapping jurisdictions, and complicated permitting requirements. The KMCL attorneys have been successful in minimizing both the cost and the complications inherent in these difficult circumstances.

## CORPORATE

Our extensive experience as outside counsel to publicly traded companies has given the KMCL attorneys unique insights into counseling corporate clients regarding the important corporate issues raised by MGP legacies.

Of special significance, our accomplishments include:

- Among the most challenging requirements of Sarbanes-Oxley compliance are those covering environmental cost disclosure controls in general, and controls for disclosure of MGP costs in particular. We have developed a comprehensive mechanism to address these requirements, one of the first to be subjected to extensive outside review and confirmation.
- We assisted one client in outsourcing the entire in-house MGP program to an experienced outside MGP consulting firm.
- While a vigorous defense to litigation can be essential, a better course is often found in avoiding litigation altogether, which can require a substantial deviations from normal legal and corporate reaction to threatened claims. For example, in one community where a disastrous dispute seemed inevitable, we assisted the client in totally revamping the corporate strategy, leading to a very aggressive community relations plan, legally prudent acknowledgement of the presence of impacts, an aggressive cleanup program, appropriate compensation to landowners for legitimate losses, along with other such measures. Incredibly, the net result of the program was that the client's standing in the community was actually enhanced, costly lawsuits were avoided, and the cleanup was managed to a degree that the company saved money in the process.