

## PERMITTING, COMPLIANCE & ENFORCEMENT

Companies doing business today face a gauntlet of ever-changing regulatory requirements and litigation risks related to the environmental impacts of their operations and products. Industrial operations face permitting challenges, product composition restrictions, and limits on the types of industrial byproducts that may be discarded or reused. These requirements, and others like them, arise under international, federal, regional and state law and impact all environmental media (air, water and soil, for example).

KMCL attorneys have experience in all of the major regulatory sub-disciplines of environmental practice, including Clean Air Act, Clean Water Act, CERCLA (or "Superfund"), Resource Conservation and Recovery Act (both in the solid waste and hazardous waste elements), Emergency Planning and Community Right to Know, Endangered Species Act, wetlands, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Toxic Substances Control Act (TSCA), and others. Our work in these areas includes regulatory counseling, permitting, and enforcement defense in both federal and state contexts.

KMCL routinely handles permitting for facility construction and operation, defends clients in agency enforcement actions, negotiates consent decrees, counsels clients on the design and implementation of corporate environmental compliance programs, guides clients through the perils of voluntary disclosure to regulatory agencies, and counsels clients on complex regulatory requirements for the construction and operation of their facilities.

KMCL is a recognized leader on these issues. For example, KMCL provides clients with a full range of services under the Clean Air Act and other air quality laws. This range includes representation in rulemakings and administrative proceedings, new and existing source permitting and compliance counseling, appellate litigation, enforcement defense, and business transactions. We have specific, groundbreaking experience in matters pertaining to utility emissions, clean coal, carbon capture and storage, and vehicle emissions. Likewise, our lawyers negotiated for business and industry on the provisions and rules of the Georgia Hazardous Site Response Act, and we have spearheaded recent business and industry efforts to legislate and operationalize Georgia's innovative Voluntary Remediation Program.

### Representative Matters

- Handled simultaneous defense of enforcement investigations by the U.S. Environmental Protection Agency, the U.S. Department of Transportation, the U.S. Agency for Toxic Substances and Disease Registry, the Georgia Environmental Protection Division, the Alabama Department of Environmental Management, and the Georgia Department of Health, along with a major private class action, concerning a pesticide release to the air allegedly exposing population within a 200 square mile area. Obtained favorable resolution of enforcement actions and settlement of class action.
- Defended largest municipality in Southeast and obtained favorable resolutions in administrative enforcement actions involving the municipality's landfills and water reclamation facilities.

- One of KMCL's attorneys served as Associate General Counsel for one of the country's largest forest products companies and was responsible for environmental compliance, company-wide.
- Another KMCL attorney was in-house corporate counsel at a major chemical manufacturing facility, responsible for all aspects of environmental compliance.
- Have represented numerous clients responsible for the remediation of petroleum releases that involved issues such as tank ownership and apportionment of liability to negotiating with regulatory agencies on the appropriate assessment and remediation strategies. Have handled hundreds of matters in Georgia and elsewhere.
- KMCL attorneys are primary outside environmental counsel to a major utility with regard to the company's investigation and cleanup of dozens of contaminated sites located throughout the Eastern United States.
- Counseled Fortune 50 worldwide transportation and logistics company on dozens of regulatory compliance issues arising in dozens of states and numerous U.S. EPA Regions.
- KMCL lawyers have participated in several ongoing challenges to EPA's unprecedented GHG program, including challenges before the DC Circuit and a pending Petition for Certiorari before the U.S. Supreme Court.
- KMCL attorneys provide assistance in complex environmental compliance obligations for a national firm providing housing on military bases throughout the United States.
- Represented the American Automotive Leasing Association and National Association of Fleet Administrators, as amicus curiae, in litigation before the United States Supreme Court regarding the scope of federal preemption of state and local mobile source emission control programs under section 209 of the Clean Air Act.
- Designed and implemented environmental audit program for *world's largest producer of outdoor power products* at facilities throughout the United States. Counseled client through successful voluntary disclosures to U.S. EPA in connection with certain regulatory findings made during the audit process.
- Representing a major national corporation in the business of renovating and refurbishing residential properties, negotiated a favorable settlement in an enforcement action by EPA arising out of alleged widespread violations of lead-based paint disclosure requirements.
- Successfully defended first-of-its-kind Clean Air Act enforcement related to company feedstock that would have required many millions of dollars in unnecessary add-on controls and that potentially threatened entire industrial sector.
- Successfully represented a manufacturing company in an enforcement action under the Georgia Air Quality Act, which included recognition by Georgia EPD of new defenses to penalty claims.
- Defended clients for alleged violations of ozone-depleting substances regulations, in connection with a U.S. EPA Criminal Investigation Division investigation into releases of hazardous air pollutants.
- As counsel for industrial advocacy organization, appeared as amicus curiae in a nationally prominent appeal involving first impression decision about carbon dioxide regulation at power plants. The appellate court reversed consistent with our briefing.
- Successfully resolved federal Clean Air Act Title V challenge over periodic and continuous air monitoring that would have set damaging national precedent for industrial sector.

- Led simultaneous enforcement negotiation and private party litigation defense for major manufacturer involving up to \$500 million in remedial costs. Finalized what was termed the most complex agreement ever entered by U.S. EPA Region 4 that provided for investigation and cleanup of up to 12,000 residential parcels potentially impacted by PCBs and metals, and litigated issues concerning the contribution protection effects of that agreement.
- At a site named by the Director of the Georgia Environmental Protection Division as the state's "Number One Superfund Site," negotiated a cleanup plan that resulted in a first-of-its-kind delisting of hazardous waste at the site, saving at least \$15 million. Obtained a unique agreement for the Georgia EPD to fund a portion of the work out of the state trust fund, saving our clients several million additional dollars.
- Led defense of wide-ranging RCRA criminal and civil investigations and simultaneous private party lawsuit concerning a major manufacturer's misappropriated hazardous waste.
- Involved in negotiating the remediation plan for the century-old Atlantic Steel mill site near downtown Atlanta, long considered undevelopable due to environmental issues and now recognized as one of the most significant brownfield redevelopment projects in the nation resulting in 12 million square feet of developed mixed-use space.
- At one of North America's largest paper mills, negotiated a complex RI/FS CERCLA Consent Order with U.S. EPA with an approach that saved our client tens and possibly hundreds of millions of dollars.
- Under both federal and state programs, we have assisted clients in navigating the complex requirements for investigation and cleanup of hundreds of former disposal sites. Our work in these matters has included not only the conventional regulatory requirements, but assisting in community relations, government affairs, and overall project management, including projects exceeding \$100 million in cleanup costs.
- Handling numerous air permit applications and renewals, including Title V and synthetic minor permits, and involving a number of creative permit strategies, such as fuel substitutions, definitions of "process" for control purposes, and regulation of fugitive sources.
- Handling permitting for wastewater discharges, including a major discharge on the Chattahoochee River, the first such source to be permitted in decades.
- In the area of wetlands, we have counseled clients in many permitting and mitigation matters, including a complex matter where we not only challenged a mitigation decision by the Corps of Engineers, we backed up that challenge with a corresponding challenge to a state Section 401 certification.
- For a client facing strict requirements for wastewater pre-treatment, we were able to negotiate discharge limitations that avoided costly and technically questionable requirements.
- Handling numerous alleged storm water violations and stream buffer encroachments, including obtaining variances under state and local ordinances.
- KMCL attorneys have assisted clients in dealing with hazardous waste compliance, universal waste requirements, landfill siting and closure, as well as more exotic challenges, such as the purchase and redevelopment of a landfill for a school recreational facility. In one notable case, we were able to obtain regulatory approval for conveyance of a hazardous waste operation to insulate the officers and directors of the owner company from future liability.

- Extensive experience in handling historic preservation requirements, including integrating historic preservation obligations with incompatible requirements for complex site cleanups.