

### Environmental

The attorneys in the Environmental Department at Greenbaum, Rowe, Smith & Davis bring comprehensive knowledge and experience to the task of advising and representing clients on issues within this complex, continually evolving area of the law. Our practice encompasses the full spectrum of federal, state and local environmental laws and regulations and their impact on real estate, business and lending transactions and business operations, with a particular focus on New Jersey.

Our environmental attorneys are adept at guiding clients through the intricacies of environmental issues. Our clients in this area include real estate developers, property and business owners and operators, manufacturers, REITS, privately and publicly held companies, landlords, tenants, financial and lending institutions, investors, trustees and individuals.

#### **Brownfield Cleanups and Remediation of Contaminated Properties**

We represent purchasers, sellers and lenders in brownfield redevelopment projects and transactions at the sites of former industrial and commercial facilities, factories, landfills, gas stations and other contaminated properties. We assist in evaluating the viability of each transaction and redevelopment project by identifying and balancing risks against potential gains from a business perspective.

We draw upon extensive experience as we negotiate the allocation of liability and evaluate the use of risk reduction tools such as environmental insurance, commencing with initial due diligence and the contract drafting phase. We guide clients through all phases of environmental permitting and the coordination of remediation with redevelopment activities.

Brownfields aside, we represent a wide range of clients in all aspects of contaminated site remediation. We provide counsel on issues including reporting obligations, analysis of remedial options, and legal oversight of soil, groundwater, air and surface water cleanup and compliance obligations. We assist in evaluating the use of cost-saving cleanup mechanisms including institutional controls (such as deed notices and Classification Exception Areas) and engineering controls (such as capping), alternative cleanup standards, and risk-based cleanups.

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We stay on the cutting edge of issues bearing upon the remediation process, including regulatory priorities such as the impact of vapor intrusion on indoor air quality, and legislative developments such as New Jersey's Site Remediation Reform Act and its Licensed Site Remediation Professional (LSRP) program.

#### **Transaction-Triggered Environmental Laws**

New Jersey's Industrial Site Recovery Act (ISRA) mandates the environmental evaluation and, if necessary, the cleanup of a wide array of industrial and commercial properties upon the occurrence of triggering events such as the sale of a property or cessation of operations. ISRA's predecessor, ECRA, was the first transaction-triggered environmental law in the nation. We are well versed in transaction-triggered environmental laws, including ISRA, and counsel our clients on the unique compliance requirements associated with these laws.

#### **Contractual Allocation of Environmental Risks**

Our attorneys stay abreast of the latest case law interpreting environmental clauses in agreements, leases and other transactional documents, making practical use of this knowledge to develop targeted transactional solutions to manage environmental liability under the federal Superfund law (CERCLA), New Jersey's Spill Compensation and Control Act (Spill Act), and other laws and regulations.

Contractual protection techniques are incorporated into our negotiation of proposed contract clauses among parties to transactions and redevelopment projects, and play a major role in the drafting of purchase and sale agreements, leases, settlements, consultant and other service agreements, and insurance policies.

#### **Environmental Due Diligence**

The value of information gathered during environmental due diligence as it relates to controlling or avoiding environmental liabilities, remediation timeframes and cleanup costs, cannot be overstated. Our Environmental Department has comprehensive knowledge of federal and state innocent purchaser standards, as well as standards applicable to those who are knowingly acquiring contaminated sites. We take a detail-oriented approach to compliance within the context of business and real estate transactions.

We oversee and coordinate pre-acquisition environmental due diligence activities to ensure the protection of our clients' interests and to preserve their rights to pursue financial incentives, focusing attention on "innocent purchaser" and bona fide prospective purchaser requirements, preliminary assessments and site investigations under New Jersey law (and similar approaches in other states), and audits/due diligence activities under EPA rules and ASTM standards.

#### **Reimbursement and Financing of Cleanup Costs**

## Departments (Cont.)

We have considerable experience related to the identification and pursuit of project cost reimbursement and funding through a variety of state, federal and municipal grant and loan programs, and work closely with clients who are redeveloping contaminated properties to identify financing options that will best assist in overcoming financial hurdles. These include economic incentives such as Brownfield Redevelopment Agreements under New Jersey law, grants and loans under New Jersey's Hazardous Site Discharge Remediation Fund (HSDRF) program, low interest loans through the New Jersey Environmental Infrastructure Trust (EIT), financing through New Jersey Redevelopment Area Bonds (RAB), tax credits and abatements.

### **Environmental Land Use and Development**

Many of our clients seek assistance with the environmental aspects of state land use issues in transactions and development projects. Our attorneys understand the critical importance of identifying environmental land use issues prior to entering into a business or real estate transaction. Our strategic objectives in handling these matters are focused on maximizing the developer's ability to use land to its fullest potential while minimizing environmental liability and permit requirements.

We are highly skilled at navigating the complexities of state and federal environmental laws and regulatory requirements that govern land use. We work closely with environmental consultants, engineers and state agencies on a broad range of issues generated by the regulation of development in coastal and freshwater wetlands, flood hazard zones and natural wildlife habitats. We handle all facets of coastal permitting for waterfront development projects.

### **Environmental Compliance, Workplace Safety and Product Stewardship**

We assist our clients in developing strategies for addressing compliance issues, ensuring workplace and product safety, responding to government inspections, and handling enforcement actions including representation at administrative agency hearings.

We advise manufacturers and business owners on all aspects of compliance with the federal and state Clean Air and Clean Water Acts and the management of solid and hazardous waste under the federal Resource Conservation and Recovery Act (RCRA) and New Jersey's solid and hazardous waste laws. We also counsel clients on permitting and compliance obligations triggered by the siting or expansion of facilities and business operations.

We work with small businesses and major corporations to develop environmental compliance and auditing programs, ensuring that Environmental, Health and Safety (EHS) policies are in accord with state and federal regulations. We provide legal oversight throughout all stages of the compliance audit process, from determining the scope of the audit through the resolution of issues uncovered by the audit, with the ultimate goal of minimizing liabilities, avoiding enforcement actions and enhancing the client's business operations.

## Departments (Cont.)

Our work in this area encompasses approvals, modifications and renewals of federal and state water pollution control permits (industrial waste water pre-treatment, NPDES); permitting and compliance associated with federal and state air pollution requirements, including Prevention of Significant Deterioration (PSD), National Emissions Standards for Hazardous Air Pollutants (NESHAPs), and Title V permitting; management of regulatory requirements for the handling, transportation, recycling and disposal of solid and hazardous waste; DOT and FAA hazardous waste transportation requirements; reporting and permitting requirements related to the operation and closure of underground storage tanks; regulation of polychlorinated biphenyls (PCBs) and other chemicals under the federal Toxic Substances Control Act (TSCA); and Occupational Safety and Health (OSHA) and right-to-know requirements.

### **Federal and State “Superfund” Laws**

We represent parties who are confronted with potential liability for environmental investigation and cleanup under the federal Superfund law and state analogs such as New Jersey’s Spill Act, including those named as potentially responsible parties (PRPs) at federal Superfund sites and at sites subject to the Spill Act and other state Superfund-type laws. We offer sophisticated counsel and creative solutions to address issues including responding to federal or state information requests, negotiating and litigating liability in cost recovery and government enforcement actions; allocating cleanup costs in contribution actions; determining the appropriate nature and scope of site remediation, and addressing the imposition of environmental liens and “super” liens.

### **Environmental Litigation and Cleanup Cost Recovery**

In conjunction with the members of the firm’s Litigation Department, our environmental attorneys handle all phases of civil litigation, enforcement and penalty actions and administrative proceedings on environmental issues. We practice in state and federal courts, before administrative agencies and other regulatory bodies, arbitration tribunals and mediators. We are fully experienced in litigating issues of site remediation liability and cost recovery under New Jersey and federal statutes and allocation of responsibility among multiple PRPs.

We have deep experience in asserting claims against insurers, and when necessary pursuing litigation against insurers. We have extensive experience in environmental liability insurance coverage cases. We have litigated the scope of insurance policy coverage for environmental contamination. Our litigation practice in the environmental arena covers CERCLA/Superfund/New Jersey Spill Act actions, natural resource damages (NRD) cases, and criminal defense matters.

### **Environmental Laws in Lending Transactions**

A specific set of concerns must be addressed when managing lender liability issues in transactions involving contaminated properties.

## Departments (Cont.)

Evaluating the environmental condition of a property is an important step in making business decisions associated with loan issuance, workout or foreclosure. We regularly counsel lenders in evaluating whether property is contaminated and if so, how that affects the credit worthiness of the borrower and the value of the collateral. We also assist lenders in considering whether environmental issues, such as indoor air impacts, have the potential to disrupt the income stream required to pay the debt service. In a foreclosure setting, we counsel lenders regarding the steps required to limit their liability risks under statutes such as CERCLA and New Jersey's Spill Act.

### **Environmental Insurance**

Our team has broad-based experience in reviewing, analyzing, negotiating and consummating the new environmental insurance policies that were developed by insurers specifically to address environmental risks in both transactional and operational settings by insuring against cleanup cost overruns and pollution legal liability. Our experience incorporates policies written to cover multi-million dollar environmental cleanups, Brownfield and other high-stakes development and redevelopment projects, as well as long-term groundwater remediations. We also assist clients in connection with the claims process under these policies, including negotiation and settlement of claims.

Aside from our work with environmental insurance policies, we have spearheaded many successful claims against insurers for environmental remediation cost liability under the older general liability policies. Our emphasis on resolution of these claims through negotiated settlements has resulted in numerous settlements through which our clients have recouped millions of dollars in cleanup and associated costs.

### **Sustainable and Green Development**

In recent years, many of our clients have incorporated green building standards and alternative energy initiatives, including building retrofits and solar installations, into their development and redevelopment projects. Our legal services in this sub-sector of the market incorporate the "greening" of leases and contracts, the pursuit of federal and state grants, public and private funding options and other incentives, and compliance matters including those related to LEED certified projects under U.S. Green Building Council guidelines.

Our environmental lawyers work closely and collaboratively with members of our other departments to provide seamless representation on the multi-faceted issues that arise in transactions, litigation and administrative proceedings involving environmental issues.

### **OF NOTE**

"Greenbaum, Rowe, Smith & Davis LLP has noted strength in contaminated site remediation, particularly brownfield cleanups. Also adept at conducting environmental due diligence and providing counsel on air, water and wetlands laws and permits. Proficient in advising on the environmental elements of commercial transactions. Sought out by a diverse range of clients, including developers, property owners and manufacturers."

## Departments (Cont.)

- 2023 edition of *Chambers USA* (a publication of Chambers and Partners) Practice Review