



## Environment, Natural Resources, & Public Lands

### CHEMICAL & WASTE REGULATION

Superfund cleanups. Natural resource damages claims. Private cost recovery actions. Brownfields projects. Hazardous and solid waste materials management. Electronic waste (e-waste). Facility siting, permitting, and expansion. Risk mitigation, environmental management systems, and operational compliance. Environmental planning in corporate, lending, and real property transactions.

#### *Experience and Depth of Knowledge*

With one of the leading hazardous waste practices in the nation, Van Ness Feldman calls upon a depth of experience and broad abilities to assist clients in meeting critical environmental challenges. For thirty years, the firm has handled high-profile and ground-breaking disputes under most of the nation's principal environmental laws, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), the Clean Air Act, and the Clean Water Act. The firm counsels leading industrial and manufacturing companies, as well as major industry coalitions and associations, in significant regulatory and environmental liability issues, including challenges to proposed regulations, preparation of complex permit applications, and prosecution of appeals from adverse regulatory decisions.

We assist clients in mergers, acquisitions, and other financial transactions by evaluating potential environmental liabilities and negotiating agreements concerning allocation of those risks. We also advise clients in the development of management and human resource policies that reflect organizational commitment to environmental compliance.

#### *Hazardous and Solid Waste Liabilities*

Members of the firm have actively represented clients since the early 1980s in matters arising under the federal hazardous waste laws, including investigations and cleanups under CERCLA and regulatory permitting and compliance under RCRA. We also help clients minimize their financial liabilities for older facilities that have been sold or are no longer in productive use.

**CERCLA Actions** – We are frequently involved in negotiations regarding the scope and timing of cleanup, the propriety of governmental requests and activities, the terms and conditions of settlement agreements and consent decrees, and the reasonable and fair allocation of cleanup costs. Members of the firm have been principal participants on steering committees that have negotiated novel and groundbreaking settlement agreements, including most recently a work take-over in

which the environmental contractor hired by the settling parties agreed to become a party to the consent decree; the settling parties purchased an insurance policy on which the Environmental Protection Agency (EPA) was an additional insured; and EPA agreed to take any future cleanup enforcement action against the contractor, in the first instance, and to accept the insurance policy as financial assurance for the cleanup.

**RCRA Permitting and Compliance** – We have expert knowledge of the complex regulations governing the cradle-to-grave management of hazardous wastes. In addition to counseling numerous clients regarding their responsibilities as generators of such materials, members of the firm have represented owners and operators of hazardous waste treatment, storage, and disposal facilities with respect to their ongoing permitting, compliance, and corrective action obligations. These facilities include a commercial hazardous waste incinerator and numerous waste management and recycling facilities owned and operated by a major national hazardous waste management company.

**Mitigation and “Brownfields” Matters** – Many clients of the firm have industrial and manufacturing sites that have been vacated or abandoned because of business consolidation or relocation to better markets. We work with these clients to find innovative solutions for minimizing the financial liabilities associated with these sites and creating value through use of voluntary cleanups, negotiation of prospective purchaser agreements, “brownfields” site initiatives, joint community development, and other mitigation opportunities. We are currently assisting clients with potential “brownfields” development of old industrial sites in Seattle, Washington and Houston, Texas.

### *Enforcement Proceedings and Litigation*

Van Ness Feldman is an effective advocate before agencies and in the courtroom, whether clients face a difficult enforcement action or potentially costly cleanup liability. Among other matters, we have represented clients in private cost recovery actions, enforcement proceedings brought by EPA or state agencies, and review proceedings concerning conditions or denials of permits based on environmental or ecological requirements. These representations have resulted in numerous settlements and voluntary cleanup agreements, both with private parties and with governmental entities, and have greatly reduced both costs and uncertainty for our clients. In one case, after almost ten years of dialogue and additional study, EPA finally agreed to amend its Record of Decision and dramatically scale back the remedy it had chosen under CERCLA to clean up a closed municipal landfill. In another, EPA agreed to assign cleanup liabilities in a former mining district based upon the geographic location of each company’s former activities, notwithstanding EPA’s position that the environmental harm was indivisible throughout the mining district.

Although we have enjoyed considerable success in resolving conflicts informally and collegially, we do not hesitate to recommend more adversarial approaches. The firm’s litigation team includes former enforcement officials of the agency, some of whom were instrumental in developing key provisions of EPA’s settlement policy. Members of the firm have handled numerous environmental litigations, including judicial challenges to major EPA regulations. One such challenge, to effluent limitations for the secondary precious metals industry under the Clean Water Act, resulted in the government’s agreement to proposed revised regulations (which were ultimately enacted).

### *Environmental Compliance*

Drawing on our broad-based understanding of regulation, policy, complex transactions, and enforcement, Van Ness Feldman is able to provide its clients with assistance on numerous matters related to environmental compliance.

**Environmental Management Systems** — Members of the firm have extensive experience reviewing the scope and structure of corporate environmental programs, and the assignment of environmental responsibilities within each organizational unit, in order to ensure that clients have effective and responsive environmental management systems in place. We have worked with clients to develop clear and well-defined environmental policies, and have designed assessment programs that enable senior management to meet their corporate responsibilities and to achieve corporate environmental goals.

**Regulatory Compliance** — Clients rely upon us for our experience and practical strategies for meeting the complex requirements of environmental laws and regulations. We assist clients with the important task of ensuring their ongoing compliance with numerous environmental requirements – which includes obtaining and renewing necessary permits and approvals, identifying potential problems, and applying creative solutions to existing enforcement concerns. We have advised clients on such related issues as audit privilege and investigations of noncompliance, and work with clients to respond to governmental inquiries, or notices of violation, in ways that will avoid costly litigation and unfavorable publicity.

**Commercial Transactions** – Our environmental lawyers have broad experience managing environmental issues in real property and commercial business transactions. Typical projects may involve evaluation of potential liabilities and regulatory compliance, and negotiation of key environmental terms of the transaction. Our careful attention to representations and warranties as well as indemnity provisions can assist clients in later cleanup disputes between purchasers and sellers of contaminated industrial property. In numerous cases following a transaction closing, clients ask us to continue supervision of significant environmental concerns, including permit compliance, remedial actions and development of environmental management systems. Types of contaminated properties in matters we have handled include metal scrap yards, abandoned urban industrial facilities, landfills, hazardous waste management facilities, petroleum and chemical refineries, and other heavy industrial manufacturing facilities.