

The environmental practice of Skadden offers transaction, litigation and regulatory counseling for a wide range of environmental issues. For more than 25 years, we have helped clients forge strategic and practical approaches to environmental matters that maximize business opportunities and minimize risk. *Chambers USA* repeatedly has recognized Skadden's lawyers as leaders in the field of environmental law.

## Corporate Transactions

We have advised clients with respect to environmental risks and opportunities in thousands of corporate transactions. In the past two years alone, Skadden's attorneys have advised on the environmental aspects of more than 500 mergers, asset sales, joint ventures, financings and offerings for clients in a wide variety of business sectors worldwide, including manufacturing, energy and mining, chemical and petrochemical, health care and pharmaceutical, communications, electronics and hi-tech, infrastructure, and real estate. Our transactional advice generally includes: (1) evaluating environmental liabilities and compliance through legal and technical diligence (including with respect to emerging chemicals); (2) developing environmental risk allocation strategies; (3) preparing and negotiating contracts and other instruments to implement such strategies; and (4) providing post-closing advice on environmental compliance and operational issues, transaction-triggered environmental assessment and remediation requirements, and implementing indemnity and cost-sharing agreements. We also frequently advise on strategies to minimize risk in transactions in which there will be no indemnification or recourse after closing. These strategies include finding and negotiating insurance policies (including pollution legal liability policies and rep and warranty policies that will cover environmental representations) and liability-transfer agreements in which a third-party assumes liability for known pollution matters.

## Complex Project Development

We have assisted with complex and controversial projects around the world. This often requires creating and implementing strategies that account for: (1) the disparate interests of various stakeholders, including developers, lenders, investors, joint-venture partners, community-based groups, foreign and domestic environmental organizations, international financial institutions and various governmental entities; and (2) complex and overlapping environmental, social and natural resource concerns. Our work in the project area has involved renewable/alternative energy projects, innovative technology, projects in the fields of carbon sequestration, traditional energy and petrochemical production, transportation, mineral development and processing, and urban/brownfield redevelopment. Our work on these projects often parallels our transactional work, but also involves developing and implementing strategies to secure governmental approvals and permits, including National Environmental Policy Act review and other cultural and natural resource-based assessments and authorizations, major environmental emission and discharge permits, and hazardous and nuclear waste and materials handling and disposal permits. We also assist with development community support for controversial projects.

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## Litigation

Skadden's environmental practice has extensive experience helping clients achieve strategic resolutions of contested, high-stakes contamination, regulatory and enforcement matters, often achieving summary dismissal or an early and favorable settlement. Our attorneys represent clients on environmental matters in federal and state trial courts and appellate courts, before federal and state administrative agencies, and in alternative dispute resolution proceedings nationwide and internationally. Environmental litigation frequently raises substantive and political issues outside of the courtroom, and we help our clients control the debate on these issues, working with them from the policy perspective and in their relations with the regulatory, business, environmental and local communities. We consistently develop and implement litigation approaches designed to aggressively and strategically resolve matters in a manner that achieves our clients' business needs and objectives.

### Cleanup and Toxic Tort Litigation

We have both defended and asserted cleanup- and toxic tort-related actions involving a wide range of claims, including: (1) claims involving contamination caused decades ago, multiple contaminant sources, and complex and protracted corporate histories; (2) claims involving challenges to cleanup standards, methodologies and costs; (3) complex causation, fate-and-transport and exposure claims; (4) natural resource damages claims; and (5) multiparty cases involving the intersection of toxic torts and regulatory cleanup issues. Our representations have included Superfund removal and remedial actions, Resource Conservation and Recovery Act corrective actions/closures, state-based cleanups, private cost recovery and contribution claims, natural resource damages claims, and toxic tort claims. In addition to cleanup issues, many of these cases also have involved complex liability and allocation matters. Through formal discovery, independent historical and factual investigations and expert assistance, we have defended and asserted joint and several liability claims and litigated complex allocation claims.

We have teamed with Skadden's Mass Torts, Insurance and Consumer Litigation Group on a number of litigations, and our experience includes: (1) matters leading up to the impact of human exposure to toxins, including environmental fate and transport issues, toxicity issues, environmental-related causation issues, environmental regulatory requirements and policies, and environmental cleanup and damage issues; and (2) procedural and substantive class action issues, legal and technical human health and damage valuation issues, and causation issues. Additionally, both Skadden groups have significant experience developing and litigating cases involving complex technical/scientific matters and the identification and development of complex operational and causation issues.

### Environmental Compliance Disputes, Contested Regulatory Proceedings and Administrative Law Challenges

We have advised clients on a wide-range of environmental compliance matters — both preemptively to ensure compliance and avoid enforcement attention, and responsively to strategically and aggressively defend high-stakes civil and criminal enforcement actions. This includes matters involving regulatory and enforcement regimes, long-term operations involving extensive agency and business records and decades of alleged violations or liability generating actions, and complex technical and scientific matters. We also have represented clients in contested administrative permit proceedings, as well as in administrative rule and record challenges.

### Transaction- and Contract-Based Claims

We have experience both defending and asserting bet-the-company and contract-based environmental claims, including disputed matters involving fraudulent conveyance allegations, successor liability claims, parent and shareholder claims, indemnity and liability assumption claims, breach-of-contract claims, cleanup contractor malpractice, and fraud and unfair trade practices claims. We are able to leverage our vast experience with transactional matters to identify and secure strategic advantages for our clients in litigating and favorably resolving these disputes.

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## Corporate Restructuring

Skadden's environmental practice regularly advises clients in connection with strategic planning for distressed companies, including advising on solutions involving bankruptcies, idling, reorganization, and liquidation of distressed assets and business units. Our non-judicial restructuring experience includes advising distressed companies on wind-downs and asset sales, advising on the environmental requirements that may be triggered through a temporary or permanent shutdown of facilities or the sale of assets, and advising lenders to financially distressed companies on environmental issues associated with foreclosing on environmentally contaminated properties, the borrowers' compliance with affirmative covenants and other credit agreement obligations, and the nature and extent of the borrowers' environmental liabilities.

In the bankruptcy context, we have counseled clients on the intersection between environmental law and bankruptcy law, having represented debtors, creditor committees and equity committees in some of the nation's largest and most complex Chapter 11 reorganizations.

Our debtor representations typically include: (1) negotiating, litigating and resolving environmental claims brought by private parties; (2) discharging environmental cleanup obligations owed to governmental entities; (3) establishing trusts to hold and manage contaminated properties, thereby allowing the debtor to reorganize free from legacy liabilities; (4) abandoning idled property that is of no value to the debtor; (5) resolving insurance coverage claims; (6) developing the plans of reorganization to address environmental concerns and defending against objections to such plans; and (7) negotiating sales under Section 363 of the Bankruptcy Code for both debtors and buyers, including scoping the court order approving such sales to adequately address successor liability and other environmental liability concerns.

In representing official creditor and equity committees, we have sought to maximize the value of the debtors' estate and, where necessary, have developed alternative plans of reorganization that address environmental liabilities to maximize returns to the creditors and equity holders. When representing equity holders, we have also successfully defeated debtors' arguments that environmental liabilities have destroyed all equity in the company.

## Compliance and Regulatory Counseling

We have frequently counseled clients on a wide variety of compliance and regulatory matters and strategic business opportunities and solutions. Our work in this area has varied and has included: (1) advising on novel regulatory matters (including emerging regulations related to greenhouse gas emissions); (2) counseling on permit matters; (3) evaluating and developing environmental compliance assurance programs and management systems; (4) managing internal and governmental compliance investigations; and (5) developing sustainability and climate change strategies and programs.