

Environmental and Land Use Representative Matters

Contaminated Land - Remediation and Redevelopment

- **Thames Gateway.** K&L Gates lawyers are actively involved on behalf of a number of clients in redevelopment proposals for the Thames Gateway. Clients include Laing O'Rourke, Lafarge, APEX and Commodore Kitchens. Development proposals include up to 1,500 new residential units, related transportation infrastructure and new public open space.
- **Henley Town Centre Redevelopment.** K&L Gates act on behalf of the Old Henley Brewery Company Limited, in connection with the redevelopment of the Old Henley Brewery and surrounding area. Development proposals include residential, hotel, restaurant and retail uses. Significant issues arose out of the likely contamination of parts of the brewery site.
- **Advising client First London Holdings Limited** on environmental liability issues arising out of the purchase of a petrol station portfolio from Texaco, including briefing environmental consultant, drafting terms of appointment, reviewing consultant's reports and drafting appropriate provisions for the legal agreements.

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- ***Crane Co. v. U.S. et al.*** On behalf of Crane Co. and its subsidiary Unidynamics/Phoenix, Inc., K&L Gates has sued the United States government and certain of its executive departments, agencies and officials, seeking contribution under CERCLA for costs of remediation at two former ordnance manufacturing facilities (near Phoenix, Arizona and Crab Orchard, Illinois). We have alleged that the governmental defendants are liable under CERCLA, and should share in the cost of addressing contamination at the sites, because of the government's ownership of the sites or equipment used at the sites (from which there were releases of hazardous substances), because of the government's pervasive control of operations at the sites during World War II and the Cold War (including operations associated with site contamination), and because of the government's supply of government-owned chemicals and raw materials (the release of which has led to site contamination). Active litigation is presently in abeyance while the parties explore the potential for resolution of Plaintiffs' claims through alternative dispute resolution.
- **Lower Passaic River Study Area Site PRP Group.** K&L Gates was selected from among fifteen competing firms to serve as coordinating counsel for the Lower Passaic River Study Area Site PRP Group, which has been formed to respond to enforcement initiatives instituted by EPA

and the New Jersey Department of Environmental Protection. The site includes the lower seventeen miles of the Passaic River, one of eight pilot contaminated urban river systems identified by the Army Corps of Engineers for priority remediation and restoration. The project will include an EPA-sponsored remedial investigation and feasibility study, a feasibility study sponsored by the Army Corps of Engineers, using WRDA and local sponsor funding and natural resource damage assessments by the federal and state natural resources trustees.

- LiPari Superfund Site in Pitman, NJ. This is the top site on the National Priorities List and K&L Gates served as settlement counsel for one of the major PRPs. K&L Gates lawyers negotiated two complex consent decrees with the Department of Justice and the NJDEP containing unusual protective provisions, including a special covenant not to sue, a cap on remediation costs, a time payout of a past cost settlement, a credit for amounts spent by the company under the second consent decree against payment obligations under the first consent decree and a cost sharing arrangement designed to motivate EPA to save costs.

- Helen Kramer Landfill Superfund Site, Mantua Township, NJ. K&L Gates serves as lead counsel for a group of direct defendants at this site, which is ranked fourth on the National Priorities List. K&L Gates lead negotiation of innovative consent decrees with EPA and the NJDEP, resolving claims for response costs and natural resource damages. K&L Gates also supervised a complex allocation process and operation and maintenance activities that have saved the companies substantial sums of money. K&L Gates also served as lead counsel in defense of a companion toxic tort suit.

- Woodland Private Study Group, NJ. K&L Gates is common counsel to the group, comprised of three major companies remediating two Superfund sites in the Pinelands National Preserve in Burlington County, New Jersey. K&L Gates lawyers negotiated administrative consent orders with NJDEP under which the remedy for the sites has been changed in amended records of decision, with the result that the sites are being restored more rapidly and at a fraction of the costs originally estimated.

- Groundwater Remediation Project, Northeastern U.S., 2004. Client purchased a site with known groundwater contamination by VOCs. K&L Gates assisted the client in negotiating and procuring remediation cost cap insurance and in negotiating a design and construction contract with a remediation contractor.

- Manufactured Gas Plants ("MGP") in Massachusetts. We have resolved through settlement a series of private party cost recovery actions brought



by the current owner and former operator of various MGP facilities in Massachusetts against our client, a global chemical company, whose successors operated tar processing facilities on the MGP facilities. The sites were contaminated with various MGP residuals, including tars. These complex matters involved diverse issues such as various allocation theories, claims for diminution in value and stigma, soil and sediment contamination, viability of proposed remedial alternatives, and a factual record from as far back as the 1850s. Through a combination of mediation, negotiation, and aggressive litigation, these matters were all resolved in a manner that was satisfactory to our client.

- Manufacturing Client in Michigan. K&L Gates represented a client with the acquisition of a former Superfund site needed to expand its facility. K&L Gates negotiated a reduced purchase price from seller due to increased contamination, release from environmental liability from the state and indemnification and a covenant not to sue from the U.S. agency that caused the contamination.
- Residential Developer located in Pennsylvania. K&L Gates advised this client on the requirements to remediate contamination discovered on a parcel of land it was developing and to obtain liability protection under Pennsylvania's brownfields statute. K&L Gates also advised the client on cost recovery options against former owners and the state's Hazardous Site Cleanup Fund.
- Glass Manufacturer located in Pennsylvania. K&L Gates represented this client in the cleanup of three historical disposal sites under Pennsylvania's brownfields program and obtaining liability protection under this program. One site was remediated to statewide health standards and another pursuant to an HSCA/Act 2 consent order and agreement. K&L Gates assisted the client in the purchase of the third site and development of site-specific cleanup standards.
- San Gabriel Valley Superfund Site. K&L Gates is representing a major manufacturer in each of two "operable units" of the largest Superfund site in the nation. Prior to K&L Gates's involvement in the San Gabriel Valley, EPA selected a "migration control" groundwater remedy for one operable unit valued at \$100 million. K&L Gates obtained a decision from EPA not to list K&L Gates's client in that unit as a Potentially Responsible Party ("PRP") on the basis of evidentiary and corporate successor analysis. At a second operable unit, where K&L Gates's client had reported a large release of VOCs into soil and groundwater, K&L Gates negotiated an interim allocation with 40 other PRPs, negotiated a consent order with EPA for performance of an RI/FS, and obtained a remedy-selection decision from EPA that avoided

siting the remedy in the vicinity of the client's facility. Response costs at this operable unit are estimated at \$100 million.

• ***United States v. A&D Recycling***, Civil Action No. 99-1:CV-99-1329 (M.D. Pa.) [Jack's Creek/Sitkin Smelting Superfund Site]. K&L Gates serves as chair of the Jack's Creek PRP Group, leading the successful negotiation of a global response action settlement with nearly 200 parties (including generators, government PRPs, and an owner/operator). K&L Gates's brief to the EPA National Remedy Review Board resulted in reportedly the first-ever rejection and reversal of a region's remedy selection. Efforts led by K&L Gates resulted in a remedial action cost savings of over \$60 million compared to EPA's originally proposed remedy. Since negotiation of the remedial action consent decree, K&L Gates has lead the executive committee in oversight of remedial action implementation, including negotiation of the remedial action contracts, access agreements, and ongoing coordination issues with the site owner/operator.

• ***Aluminum Company of America v. United States et al.***, Civil Action No. 96-1098 (W.D. Pa.). K&L Gates represented Alcoa as plaintiff in the nation's first comprehensive CERCLA cost recovery suit against the United States for environmental harm arising from the federal government's World War II activities at five manufacturing and one mining facility. Through aggressive initial case investigation and historical research, targeted depositions, and the use of private mediation, K&L Gates was able to achieve a favorable settlement for the client without the need for extensive formal discovery or motions practice.

• ***United States v. Horsehead Industries, Inc., Viacom International, Inc., and TCI Communications, Inc.***, Civil Action No. 3CV: 98-0654 (M.D. Pa.) [Palmerston Zinc Superfund Site]. K&L Gates represented the current owner of a recycling facility in a cost recovery action. The government claimed joint and several liability against K&L Gates's clients as well as against the prior owner of a zinc smelting and refining facility at the site. K&L Gates successfully opposed partial summary judgment as to our client and obtained a preliminary injunction against enforcement of a unilateral administrative order.

• Pools Prairie Superfund Site, Neosho, Missouri. K&L Gates is currently representing a PRP that formerly operated this jet engine overhaul facility under contract with the United States Air Force. The representation involves all aspects of the site, including negotiation of consent agreements with EPA Region VII, and mediation and allocation issues with other PRPs including the United States and the State of Missouri.

