



Clifton J. McFarland Partner

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Practice Areas

Environmental Enforcement Defense | Environmental Remediation & Due Diligence | Environmental/Toxics Litigation | Regulatory Law & Business Permitting

Clif McFarland is an experienced environmental lawyer with a strong science background who represents aerospace, energy, real estate, natural resources and other companies and investor groups.

He works with clients throughout California and nationally on remediation, administrative and regulatory, enforcement and litigation matters. Clif regularly defends clients in contaminated property and regional groundwater contamination litigation. Clients also rely on Clif for advice and counsel on a broad range of environmental law and policy questions. Representative clients include Lockheed Martin, Sacramento Municipal Utilities District, Dow Chemical, Sierra Pacific Industries, and Plains All-American Pipeline.

Clients from a variety of industries look to Clif, an MIT-trained engineer, to resolve difficult legal problems that are intertwined with complex scientific issues. He is skilled at helping clients resolve unique one-off problems where there is no “cookbook” or standard practice to follow, particularly problems involving issues of environmental law and science.

Clif has helped close hundreds of commercial real estate deals involving potentially contaminated property. He is adept at providing practical advice under transactional pressure to enable clients to make critical decisions. He knows how to press for real-time discussions with regulators to bring increased certainty to liability determinations, move properties through the cleanup process and obtain closure.

Environmental enforcement matters usually require more attention to factual and scientific issues than to legal issues. Clif has handled numerous enforcement matters opposite EPA, the Regional Boards, DTSC and various Air Districts. His persistence, tenacity and strong grasp of the scientific and factual issues have allowed his clients to minimize or avoid fines and penalties.

Experience

Litigation

- Represented a brother and sister who inherited a former gas station property in Los Angeles from their father. A small businessman purchased the property to build a fast food restaurant. Gasoline contamination was discovered and the case wound its way to the Supreme Court. The Court ruled unanimously in favor of the brother and sister, and held that cleanup costs could not be recovered under the Resource Conservation and Recovery Act. *Meghrig v. KFC Western*, 516 U.S. 479 (1996).
- Served as lead counsel representing a group of agricultural interests in an appeal successfully challenging certain portions of the Central Valley Regional Board's so-called agricultural waiver—a regulatory program governing return flows from irrigated agriculture.
- Substituted into a Clean Water Act citizen suit case alleging stream sediment, soil and groundwater contamination at a former rail yard in Northern California. A motion that defeated plaintiff's key claim shifted the momentum of the case, which settled favorably on the eve of trial.
- Counsel for an aerospace company in a major toxic tort action, including successful multi-day hearings, which resulted in the exclusion of plaintiff's groundwater modeling and air dispersion modeling experts.
- Defended an aircraft manufacturer in a toxic tort suit in which plaintiffs alleged that groundwater contamination stemming from the manufacturing operations had impacted their drinking water wells. Plaintiffs dismissed their lawsuit after it was demonstrated that their wells were not located downgradient of the manufacturer's operations.
- Represented a major defense contractor in a multi-party CERCLA cost recovery action brought by the United States regarding five defense plants located in three different states.
- Represented a fuel service operator in a multi-party soil and groundwater contamination matter at the San Francisco International Airport. Achieved a favorable resolution of the matter in mediation.
- Achieved a favorable settlement for an electronics company in multi-party groundwater contamination matter brought by the local water district.
- Represented a responsible party at the Operating Industries Superfund site. Crafted an argument that the waste disposed of by the client was comprised solely of naturally-occurring substances that did not meet the statutory definition of a hazardous substance. Negotiations with the major parties and EPA resulted in a significant reduction in liability.
- Defeated a private-party Superfund claim against an auto parts manufacturer involving four separate plant sites in Ohio. A successful summary judgment motion demonstrated that the indemnity provision in the relevant purchase and sale agreement did not shift cleanup liability onto the client manufacturer.

Regional Groundwater Contamination Matters

- Served on the team that conducted multi-year consent decree negotiations with EPA regarding a regional groundwater contaminant plume in the San Fernando Valley. The cleanup was, at the time, the largest groundwater pump-and-treat remedy in California.
- Counsel to a group of aerospace companies with respect to a regional groundwater plume located in San Bernardino County. An extensive remedial investigation demonstrated to the Regional Water Board that the plume originated from a facility operated by a third party.
- Represented a major defendant in a regional groundwater contamination matter brought by the City of Lodi pursuant to a unique municipal cleanup ordinance. Voluntary cleanup under Regional Water Board

supervision undermined City's claims.

- Represented a group of tenants at Lindbergh Field Airport in San Diego against the State Tank Fund. Successfully argued that regulatory provision precluding tenants from filing separate claims against the Fund contradicted legislative intent.
- Represented a large manufacturer in connection with a commingled contaminant plume in San Bernardino County. The matter included chemical fingerprinting to differentiate contaminant sources, treatment of municipal water supply wells and complex public relations issues.
- Steering committee member at a major regional groundwater operable unit in Southern California.

Real Estate

- Represent numerous brownfields developers in all environmental aspects of projects, including due diligence, transactional documents, voluntary cleanup actions, negotiating deed restrictions and procuring environmental insurance.
- Served as environmental counsel for a commercial real estate developer in the redevelopment of former petroleum tank farm into a transshipment warehouse in Los Angeles Port area. Regional Water Board provided expedited closure letter.
- Represented real estate developer against its former environmental consultant regarding latent soil and groundwater contamination issues that were overlooked during due diligence. The consultant settled for the full demand at the initial mediation session.
- Represented a major ranch owner in connection with soil and groundwater contamination issues related to tenant activities.
- Represented a local utility district in connection with remediation of PCB contamination at its former facility in anticipation of the sale of the property for mixed-use development.
- Handled all environmental aspects of an industrial redevelopment project in Vernon, including due diligence at purchase, insurance, remediation, land use covenants and ultimate disposition of a fully-tenanted property.
- Represented the developer of a mixed use multi-family and retail project in Sacramento, including investigation, remediation and resolution of vapor intrusion issues.
- Represented the developer of an infill commercial project in an underserved area of Los Angeles, including remediation, lender negotiations and vapor intrusion issues.

Enforcement

- Negotiated a favorable resolution of an enforcement action involving substantial proposed fines stemming from groundwater and stream sediment contamination at former landfill.
- Represented a major equipment leasing company in an enforcement action alleging that a defect in a piece of rental equipment resulted in major diesel spill.
- Negotiated a favorable resolution of an enforcement action brought by EPA under the Risk Management Program of Clean Air Act at a products storage facility at the Port of Los Angeles.

- Represented a bottling facility in an enforcement action alleging that violations of hazardous waste regulations led to worker safety issues in nearby sewer lines.

Standard Setting Proceedings

- Successfully challenged the drinking water standard set by the Office of Environmental Health Hazard Assessment for perchlorate on grounds that the agency had not conducted the legally-required external peer review of the standard.
- Successfully challenged the maximum contaminant level for hexavalent chromium established by the Department of Public Health on grounds that the agency has not conducted the required economic feasibility analysis.

Professional & Community Service

- Capital Stage Theater, Board of Directors, 2007-2017; Chair, 2012-2017
- Sacramento Tree Foundation, Board of Directors, 2015-2016
- California Manufacturers & Technology Association, 2014-present
- California EPA, Brownfields Redevelopment Advisory Group, 2008-2012
- Environmental Law Institute, Council of Partners, 2005-2007
- City of Davis, Commissioner, Natural Resources Commission, 2011-2013
- City of Davis, Commissioner, Historical Resources Management Commission, 2009-2011
- ABA Natural Resources & Environmental Magazine, Senior Editor, 1994-2005
- MIT Educational Council, 1981-1985; 2007-2012

Education

- J.D., Columbia University School of Law, 1988
- B.S., Massachusetts Institute of Technology, 1981

Speaking Engagements / Events

- *PFAS Snapshot – What You Need to Know Now and How to Manage Liability*, Mapistry's Environmental, Health and Safety (EHS) Virtual Summit, August 27, 2020
- *ELI Western "Boot Camp" on Environmental Law - CERCLA*, Presenter, Environmental Law Institute, 2012-2017
- *California Water Law - Legal Ethics*, Presenter, Argent Communications 31st Annual California Water Law & Policy Conference, 2016
- *Hazardous Waste Regulation of Returned Products*, Presenter, California Grocers Association, 2013

- *ELI Western "Boot Camp" on Environmental Law - Legal Ethics*, Presenter, Environmental Law Institute, 2008-2011

Legal Alerts

- *FDA Announces Three-Year Phase-Out of PFAS Used in Food Packaging; FDA Studies Indicate Non-Detectable Levels of PFAS in General Food Supply*, August 31, 2020
- *Compliance with Water Board Requirements During the Coronavirus 2019 (COVID-19) Emergency*, March 20, 2020