



STEPHEN MCKAE

Attorney

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Oakland, California

A veteran litigator, Stephen has more than 40 years of experience in environmental and employment law at both state and federal levels. He has represented employers and individuals in class action and other complex litigation, guided business executives on policy and operational questions, and argued cases at all levels of the federal judicial system, including the Supreme Court of the United States. Stephen is experienced at successfully employing alternative and creative approaches to conflict resolution.

Environmental Litigation

Stephen's current practice focuses primarily on environmental matters, including contaminated site remediation, brownfield development, cost recovery litigation, and related toxic tort and stigma damage claims. He has guided clients in public agency review of environmental permitting, claims related to chemical handling, response to abandoned tank sites, quarry restoration, landfills, and solid waste management issues.

Creative Conflict Resolution

Stephen pursues creative solutions to address business needs and community concerns, including mediation. He has planned for integration of institutional controls with permitting to reduce requirements for engineered remedies. He is experienced in fashioning agreements for funding of neighborhood relocation to obtain community support for an in-place remedy, the use of historical resources including federal archives to increase contribution from other parties, and marshaling scientific evidence for cost apportionment and allocation.

Employment and Employee Benefits Experience

Stephen's employment, civil rights and employee benefits law experience includes work with employers, public entities and labor unions in a variety of administrative and litigation matters. He has handled matters under ERISA, Title VII, ADEA, Americans With Disabilities Act, Executive Order 11246, OSHA, the Family and Medical Leave Act, and corresponding state legislation, as well as proceedings before the National Labor Relations Board, the California Labor Commissioner, and in contract arbitrations and negotiations. He has extensive collective bargaining experience. He has represented numerous construction industry pension, health and apprenticeship trust funds with assets exceeding \$500 million in matters arising under ERISA, including plan structure, benefit improvements, withdrawal liability, COBRA and HIPAA implementation, and fiduciary liability.

Leadership

Active in civic and professional organizations, Stephen served as president of the Danville-Sycamore Valley Rotary Club, and serves as an early neutral evaluator and mediator for the

United States District Court. Stephen served in the United States Naval Reserve as an active duty engineering officer from 1969 through 1972.

EDUCATION

- J.D., University of California, San Francisco, Hastings College of the Law
- B.A., *with distinction*, Stanford University
- United States Navy Submarine School, Groton, CT

REPRESENTATIVE CASES

Stephen's experience in environmental matters includes:

- Cost recovery and enforcement litigation respecting industrial plants, agricultural chemical distributors and formulators, bulk storage facilities, chemical drum recyclers, and transmission pipeline releases under CERCLA, RCRA and HSAA, including cost recovery against the United States government for wartime chemical and ordnance plants and missile launch facilities
- Toxic tort and stigma damage litigation based on exposures to contaminated sites
- Contaminated site investigation, cleanup, closure and health risk management
- Community relations for contaminated sites and community relocation
- Public agency review of environmental permitting
- Underground Storage Tank Fund claims and other claims related to chemical handling and manufacturing, petroleum refining and abandoned tank sites
- Contract and permit matters related to landfill operation, expansion, long-term closure costs and transfer of ownership
- Quarry restoration and redevelopment
- County solid waste management planning and waste importation agreements
- Development of waste recycling programs and household hazardous waste programs
- Operating agreements, agency approvals and waste stream guarantees in connection with a proposed waste-to-energy project
- Brownfields redevelopment
- Occupational safety regulation and enforcement in the construction, demolition, waste disposal, dry cleaning and manufacturing industries

The contaminated sites where Stephen has served as litigation or environmental counsel, or both, include among others:

- Brown & Bryant (Arvin Plant), Arvin, California, EPA ID# CAD052384021 (Atchison, Topeka & Santa Fe Railway, etc. v. Brown & Bryant, Inc.), representing The Dow Chemical Company
- Hookston Station, Pleasant Hill, California (Block, et al. v. Helix, et al. and Huddleston, et al. v. Union Pacific Railroad Company, et al.), representing Hookston Station property owners
- Former Kaiser Marquardt aerospace plant, 56 acres at Van Nuys Airport (Kaiser Marquardt, Inc. v. The Marquardt Company), representing Kaiser Marquardt, Inc.

- Zeneca/Campus Bay (formerly Stauffer Chemical) Site, Richmond, California, EPA ID #: CAD009123456, representing Cherokee Investment Partners III, L.P., and Cherokee Investment Partners III Parallel Fund, L.P.
- Former Fuller-O'Brien Site, South San Francisco, CA, EPA ID #: CAD005130455, representing Cherokee Investment Partners II, L.P. and others
- North Beach Manufactured Gas Plant site, Marina District, San Francisco, Envirostor ID # 60001239, representing residential property owners
- Brown & Bryant (Shafter Site), Shafter, California, EPA ID# CAD009531823 (Atchison, Topeka & Santa Fe Railway, etc. v. Brown & Bryant, Inc.), representing The Dow Chemical Company
- Del Amo Site, Torrance, California, EPA ID# CAD029544731 (Cadillac Fairview, California, Inc. v. The Dow Chemical Company, et al., (Pit Site); Shell Oil Company v. United States (Plant Site); Amcena Properties v. Shell Oil Company, et al. (Coca-Cola Bottling Company); and related cases), representing The Dow Chemical Company
- Del Monte/Oahu Plantation (Kunia Plantation), Hawaii, EPA ID # HID980637631, representing The Dow Chemical Company
- Industrial Waste Processing, Fresno, California, EPA ID# CAD980736284 and Pinedale Groundwater Site, Fresno, California (Calcot, Ltd. v. Vendo, et al.), representing The Dow Chemical Company
- La Mirada Products, La Mirada, California (La Mirada Products v. The Dow Chemical Company), representing The Dow Chemical Company
- Santa Fe Springs Oilfield, Santa Fe Springs, California (Beaumont Trust, et al. v. The Dow Chemical Company, et al.), representing The Dow Chemical Company
- United Heckathorn Company, Richmond, California, EPA ID # CAD981436363 (Levin Metals Corp. v. Parr-Richmond Terminal Company, et al.), representing The Dow Chemical Company
- Napa Bulk Terminal (Bay Cities Oil Marketers v. Commercial, Electrical, and Mechanical Maintenance Company, et al.), representing Chevron Products Company
- Port of Oakland, Berths 23 and 24 (Port of Oakland v. ExxonMobil Oil Corporation), representing the Port of Oakland
- Dumbarton Quarry restoration and park development, representing the East Bay Regional Park District
- Mouren-Laurens and Leach Oil Company sites, Los Angeles and Gardena, California, representing Union Carbide Corporation
- Yosemite Creek sediment site, San Francisco, representing The Dow Chemical Company and Rohm and Haas
- Nebraska Ordnance Plant, representing the Dow Chemical Company, EPA ID # NE6211890011

Employment and Employee Benefits Experience

Stephen's employment, civil rights and employee benefits law experience includes work with employers, public entities and labor unions in a variety of administrative and litigation matters. He handles matters under ERISA, Title VII, ADEA, Americans With Disabilities Act, Executive Order 11246, OSHA, the Family and Medical Leave Act, and corresponding state legislation, as well as proceedings before the National Labor Relations Board and in contract arbitrations

and negotiations. He has extensive collective bargaining experience. From 1976 through 1980, Stephen was the Northern California Home Builders Conference member of the standing Board of Adjustment under the Carpenters 46 Northern California Counties master residential construction agreement.

He has represented numerous construction industry pension, health and apprenticeship trust funds with assets of more than \$500 million in matters arising under ERISA, including plan structure, benefit improvements, withdrawal liability, COBRA and HIPAA implementation, and fiduciary liability.

AWARDS AND HONORS

- Awarded “Best Paper” by the ABA Section of Environment, Energy and Natural Resources in its 39th Annual Conference on Environmental Law, March 18-21, 2010, for “The New ‘Classic’ Divisibility: Pre-Liability Apportionment By Degree”

AREAS OF PRACTICE

- Employment
- Environmental
- Litigation

PROFESSIONAL AND COMMUNITY ACTIVITIES

- President, Danville-Sycamore Valley Rotary
- Early Neutral Evaluator and Mediator, U.S. District Court
- Member, Labor and Employment Law Section, American Bar Association
- Member, Natural Resources, Energy and Environmental Law Section, American Bar Association
- Member, Environmental, Land Use and Sustainability Section, Alameda County Bar Association

ADMISSIONS

- California
- U.S. District Court, Northern, Eastern and Central Districts of California
- U.S. Court of Appeals, Ninth Circuit
- U.S. Supreme Court
- U.S. Court of Federal Claims