

Joseph R. Brendel

Member

Joseph R. Brendel's experience includes regulatory compliance counseling, covering all environmental media (e.g., air, water, solid and hazardous waste), administrative enforcement actions, site remediations, brownfield redevelopment, environmental auditing and compliance programs, negotiation of environmental provisions of acquisition and divestiture agreements, and related litigation. He has assisted clients in the development and maintenance of environmental management systems designed to minimize potential environmental liabilities. Joseph has also represented clients in numerous states, and before many state environmental agencies and regional offices of the U.S. Environmental Protection Agency. Joseph has been named a Pennsylvania Super Lawyer, an honor bestowed upon the top five percent of Pennsylvania lawyers.

Representative Matters

Special Environmental Counsel

- Served for several years as an adjunct member of the corporate legal department of a leading consumer products company working closely with the corporation's environmental managers, monitoring outside litigation counsel and participating in periodic educational and training programs for plant personnel.

Solid and Hazardous Waste

- Represented owners of former bus garage and maintenance facility in Pennsylvania federal court action against national transportation company in action involving soil and groundwater contamination from the operation of petroleum underground storage tanks under several common law and statutory legal theories including claims under the Pennsylvania Storage Tank and Spill Prevention Act and the Pennsylvania Clean Streams Law. This matter settled before trial and the settlement proceeds were used to remediate the property under Pennsylvania's Act 2 Land Recycling Program.
- Negotiated amended Resource Conservation and Recovery Act ("RCRA") hazardous waste permits and/or consent orders with state agencies for addressing trichloroethylene ("TCE") and other solvent and heavy metal contamination at sites in Mississippi and South Carolina.
- Provided legal assistance to numerous clients on compliance with regulatory requirements for identification, handling, storage and disposal of solid, residual and hazardous wastes.
- Defended fiberglass-reinforced plastics manufacturer with respect to EPA investigation of hazardous waste handling practices.
- Successfully defended client in citizen suit alleging violations of several state and federal statutes including the Pennsylvania Solid Waste Management Act. *Allegheny Environmental Action Coalition v. Westinghouse Electric Corporation, et al.*
- Successfully defended former property owner in action by current owner under the Pennsylvania Storage Tank and Spill Prevention Act. *William F. Murdoch, Jr. v. Atlantic Richfield Co., et al.*

Superfund

- Successfully defended white oil manufacturing facility in administrative enforcement proceeding by Pennsylvania DEP under the Pennsylvania Hazardous Sites Cleanup Act alleging that wastes from several petroleum-related manufacturing facilities caused widespread groundwater contamination (Bear Creek Area Chemical Site). The DEP accepted our evidence that waste from our client's facility did not contribute to the groundwater contamination. The DEP collected approximately \$23 million in settlements from other companies and those funds were used for the construction of over 60 miles of water line to provide public water to approximately 900 residents in a two-county area. The representation also included successfully defending the client against a class action lawsuit filed on behalf of affected property owners in the Court of Common Pleas of Butler County, Pennsylvania.
- Successfully represented client in federal court cost recovery action alleging that client sent hazardous substances to local landfill. District court entered summary judgment for client on basis that plaintiff failed to comply with the National Contingency Plan prior to bringing the action. The Sixth Circuit Court of Appeals affirmed the district court. *Pierson Sand and Gravel, Inc. v. Pierson Township, et al.*
- Represented past owner/operator of manufacturing facility in Manning, South Carolina in cost recovery action by current owner in federal court. Plaintiff sought approximately \$14 million in past and future damages for



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Education

J.D., The College of William and Mary, Marshall-Wythe School of Law, Williamsburg, Virginia, 1984

B.A., Cornell University, Ithaca, New York, 1981

State Bar Licenses

Pennsylvania

Court Admissions

Supreme Court of Pennsylvania

U.S. District Ct., W.D. of Pennsylvania

U.S. District Ct., W.D. of Michigan

U.S. Court of Appeals, 3rd Circuit

U.S. Court of Appeals, 6th Circuit

- TCE groundwater contamination. MTD Products, Inc. v. Sunbeam Corporation
- Representation of clients identified as potentially responsible parties ("PRPs") at Superfund sites in numerous states.
- Obtained dismissal of French corporation from private cost recovery action under the New Jersey Spill Compensation and Control Act for lack of personal jurisdiction. Fortunato t/a R&R Realty Co. v. Napp Chemicals, Inc., et al.
- Participation on PRP steering, allocation and litigation committees. These Superfund sites include, but are not limited to: Thermo Chem Site, Muskegon, Michigan; Organic Chemicals, Inc. Site, Grandville, Michigan; J.C. Pennco Site, San Antonio, Texas; Metcoa Site, Pulaski, Pennsylvania; Breslube Penn Site, Coraopolis, Pennsylvania; Fisher Calo Superfund Site, Kingsbury, Indiana.

Transactions

- Performed environmental due diligence for client's stock acquisition of an international railway services company on transaction valued at approximately \$1.8 billion.
- Negotiated agreements with environmental consultants, contractors and disposal facilities for performance of remedial activities and disposal of resulting wastes.
- Conducted environmental due diligence for client's simultaneous acquisition of three publicly-traded consumer products companies. The combined value of the transactions was approximately \$2.4 billion.
- Coordinated environmental due diligence and negotiated environmental provisions of agreement for client's acquisition of five former food processing facilities located in an urban area for conversion into residential lofts.
- Coordinated environmental due diligence responses for \$350 million private equity investment in gas exploration and production client, as well as for subsequent \$4.7 billion acquisition of client.
- Performed environmental due diligence for client's acquisition of a publicly-traded logistics and refurbishment company, in an all-cash merger valued at \$512.6 million.
- Performed environmental due diligence and negotiated environmental provisions of stock purchase agreement for client's \$300 million acquisition of a rail equipment supplier with nine manufacturing facilities in Illinois, Ohio and Pennsylvania.
- Regularly counsel clients on the environmental provisions of acquisition and divestiture agreements.
- Performed environmental due diligence and negotiated environmental covenants and indemnity provisions, including a buyer-seller agreement with the Pennsylvania Department of Environmental Protection, for client's \$35 million acquisition of a manufacturer of railroad track and signaling products.
- Negotiated environmental representations, warranties and related disclosures with respect to stock sale of steel tube and wire business with 14 facilities in four states, two Canadian provinces and England. The value of the transaction was approximately \$350 million.
- Negotiated environmental representations, warranties, covenants and indemnifications with respect to client's sale of a furniture manufacturing business with six facilities in five states. The value of the transaction was more than \$70 million.
- Negotiated environmental representations, warranties, covenants and indemnifications with respect to client's sale of a time and temperature measurement device business. The value of the transaction was approximately \$6 million.
- Drafted and negotiated buyer-seller agreement with Pennsylvania DEP as well as environmental provisions of agreement for asset sale of a 25-acre fittings and flanges manufacturing facility located in Lawrence County.

Water Pollution Control

- Appeal of NPDES permit and negotiation of consent order with the state agency resulting in the relocation of discharge outfalls to obtain less stringent water quality-based effluent limitations.
- Numerous negotiations of civil penalties assessed by state agencies with respect to alleged unpermitted discharges or discharges which exceeded permitted effluent limitations and related testing and testing program issues.
- Appeal of NPDES permit and negotiations with the South Carolina Department of Health and Environmental Control with respect to a requirement for whole effluent toxicity testing.

Energy and Natural Resources

- Performed environmental due diligence for financing of several renewable energy projects including an 80 MW wind farm in southcentral Pennsylvania and a 417 MW run-of-the-river hydroelectric facility located on the Susquehanna River.
- Coordinated environmental due diligence responses for a privately-owned oil and natural gas exploration and

development company based in Pennsylvania in connection with an approximately \$350 million private equity investment.

- Advised clients on permitting issues for mining of waste coal for cogeneration facilities.
- Successfully defended West Virginia mining company with respect to landowner's claims of water loss from deep mining activities
- Represented owner of environmentally-impacted property in oil and gas lease negotiations with oil and gas exploration company.

Water Pollution Control

- Negotiation of numerous National Pollutant Discharge Elimination System ("NPDES") permits in various states for discharges from operating manufacturing facilities (e.g., metals, plastic molding, glass) and groundwater remediation sites (CERCLA sites and RCRA post-closure care sites).
- Successfully defended former owner of "company town" in action by local sewer authority for the recovery of a portion of the cost of a 537 Plan study required under Pennsylvania Sewage Facilities Act. *Burgettstown-Smith Township Joint Sewage Authority v. Langeloth Townsite Company*, 403 Pa. Super. 84 (1991).
- Counseled oil and gas exploration company with respect to environmental permits (e.g., stream encroachment) associated with Marcellus Shale well drilling sites in Pennsylvania.
- Successfully defended citizens suits alleging violations of NPDES permit effluent limitations on the basis that the alleged violations had ceased prior to the filing of the citizens suit.
- Representation of municipal authority with respect to updating and revising its industrial discharge pretreatment ordinance to conform to the U.S. Environmental Protection Agency's pretreatment program.

Regulatory Compliance Counseling

- Coordinated environmental compliance audit program covering six facilities in five states for a metal fabrication company.
- Assisted metal fabrication and finishing company in development of environmental management system to reduce potential environmental liabilities.
- Assisted rural market telecommunications company in self-reporting violations of several environmental statutes pursuant to the United States EPA's Self Audit and Disclosure Policy. Negotiated consent agreement which resulted in EPA's waiver of approximately \$675,000 in civil penalties, with the negotiated civil penalty being less than \$10,000.
- Coordinated environmental compliance audit program covering 21 facilities in 12 states for a leading consumer products company. Following the completion of the facility audits, developed individual facility action plans and a corporate-wide environmental compliance manual.
- Advised client on disclosure of noncompliance with continuous release reporting requirements at 21 facilities under the United States EPA's Self Audit and Disclosure Policy. The EPA decided not to seek any penalties with respect to the failures to report continuous releases.

Site Remediation/Brownfield Redevelopment

- Negotiated amended consent order for the remediation of groundwater contamination emanating from manufacturing facility in Louisiana. The plume had contaminated municipal water supply wells.
- Advised client on TCE and other solvent groundwater remediation at facilities located in Kansas, Tennessee and other states.
- Obtained closure of other contaminated sites under Pennsylvania's Land Recycling and Remediation Standards Act (i.e., Brownfield Program).
- Negotiated Consent Order and Agreement for Special Industrial Area to obtain relief from liability under Pennsylvania's Act 2, to allow redevelopment of 105-acre industrial site in Luzerne County.
- Obtained closure under Pennsylvania Act 2 Special Industrial Area Standard for an approximately 65-acre site in Beaver County.

Solid and Hazardous Waste

- Negotiation of amount and documentation of financial assurance (e.g., performance bonds and standby trust agreements) for post-closure care at permitted RCRA sites.
- Appeal of DEP denial of permit modification application for expansion of fly ash disposal site.
- Assisted specialty resins and coatings company in responding to multiple EPA information requests and negotiated Consent Agreement and Final Order with greatly reduced penalties for alleged violations of RCRA hazardous and universal waste storage and monitoring requirements.

Permits and Licenses

- Negotiated a fifty percent reduction of the Federal Aviation Administration's proposed civil penalty for client's alleged violations of Department of Transportation's Hazardous Materials Regulations.
- Developed program of institutional controls and financial assurance for termination of Nuclear Regulatory Commission (NRC) radioactive materials license under restricted use condition. Coordinated the presentation of the proposed institutional controls to the NRC and the "Site Specific Advisory Board" established under the NRC's regulations.

Air Pollution Control

- Representation of other clients with respect to PSD enforcement activities by the United States EPA.
- Defended a carbon manufacturing facility against Pennsylvania DEP allegations that the facility had operated in violation of the Pennsylvania air pollution control regulations and the facility's Title V air permit. Negotiated a consent order and agreement that included not only a substantial reduction in the proposed civil penalties, but also an agreement by the DEP to increase the VOC emissions limit contained in the facility's Title V permit for a specific source based upon the client's position that this permit limit was calculated improperly based upon incorrect information submitted to the DEP by the former owner/permittee of the facility. Following the client's submission of a new reasonably available control technology ("RACT") application, the DEP issued the revised RACT approval.
- Numerous negotiations of administrative consent orders with the EPA and state agencies to settle alleged violations of visible and particulate matter emissions from metals melting and casting operations and other industry categories.

Publications/Presentations

- Presenter, "COVID-19 Chaos, Environmental Noncompliance, and Presidential Elections - What's a Regulated Entity to Do?" Clark Hill Webinar, October 15, 2020.
- [Pennsylvania Supreme Court Completes revival of Environmental Rights Amendment June 27, 2017.](#)
- "eDisclosure to Modernize Implementation of the EPA's Audit Policy," E-Alert, June 2015.
- "Revised ASTM Standard for Phase I Environmental Site Assessment Awaits EPA Approval," Breaking Ground, November 2013.
- "EPA's Direct Final Rule Signals End of ASTM E1527 Revision Process," E-Alert, September 2013.
- Speaker, "Investigation-Derived Waste - To Drum or Not to Drum," Environmental Field Methods Refresher Course, Pennsylvania Council of Professional Geologists, November 14, 2012 and December 5, 2012.
- Speaker, "Statutory and Regulatory Background for Storm Water Regulation in Pennsylvania," Current Issues in Storm Water Regulation in Pennsylvania, Lorman Education Services, September 21, 2012.
- Speaker, "Current Developments in CERCLA Landowner Liability Protections and Environmental Due Diligence," Allegheny County Bar Association, Environmental and Energy Law Section, May 7, 2012.
- Speaker, "Environmental Issues for Brownfield Site Transactions," NAIOP Pittsburgh CE for Commercial Agents and Brokers, December 6, 2011.
- Speaker, "Expert Opinions in Environmental Litigation: a Daubert Update," Energy & Mineral Law Foundation Annual Institute, Amelia Island, Florida, May 2010.
- "Pennsylvania Environmental Quality Board Proposes Rules For Administration Of The Uniform Environmental Covenants Act," Communiqué, March 2010.
- "EPA Rule Establishes New Requirements for Stormwater Discharges from Construction Sites," Communiqué, December 2009.
- "New Standard Available for Conducting All Appropriate Inquiries of Large Tracts of Forestland or Rural Property," Communiqué, February 2009.
- Presenter, "Pennsylvania Environmental Law Considerations for Contractors and Developers," Thorp Reed & Armstrong Webcast, March 26, 2008.
- "Performing All Appropriate Inquiry Under EPA's Final Rule," The Business of Brownfields Conference, April 20, 2007.
- "Supreme Court Misses Opportunity to Clarify Scope of Federal Jurisdiction Over Wetlands," Communiqué, July 2006.
- "Environmental Issues Associated with Easements," Law of Easements: Legal Issues and Practical Considerations in Pennsylvania, Lohman Education Services, August 30, 2006.
- "Ethics Dilemmas Associated with Environmental Due Diligence," Western Pennsylvania Brownfields Forum and Allegheny County Bar Association, Environmental Law Section, September 13, 2006.
- "DEP Publishes Stormwater Best Management Practice Manual," PUCA News, July 2006.
- "Stormwater Issues for County Solicitors," County Commissioners Association of Pennsylvania, Third Annual

- Solicitors' Conference, June 23, 2006.
- "Getting Started: Discovering the Environmental Risks," The Business of Brownfields Conference, April 25, 2006
- "New Environmental Due Diligence Rule Will Require Greater Effort, Time and Coordination," Communique, February 2006.
- "Developers: EPA Publishes All Appropriate Inquiries Rule for Landowner Liability Protection," Construction Law News, January 2006.
- "The All Appropriate Inquiry Rule," Air and Waste Management Association, Allegheny Mountain Section, January 12, 2006.
- Quoted in "Let the Redevelopment Begin," Forbes.com, Ashlea Ebeling, November 23, 2005.
- "Year-End Regulatory Wrap-Up," Western Pennsylvania Brownfields Forum, November 30, 2005.
- Occasional lecturer on environmental law for Masters of Business Administration Program at Robert Morris College.
- "New Brownfields Law Reforms Superfund Liability," Communique, February 2002.
- "New Federal Law Promotes Brownfields Redevelopment," Communique, January 2002.
- "New Wetlands Regulation Revises Definition of Dredged Material," Communique, April 2001.
- "Some Questions and Answers on the Superfund Exemption for Scrap Recyclers," American Recycler, May 2000.
- "Real Estate Purchases Impacted by Environmental Considerations," Pittsburgh Business Times, February 4 - 10, 2000.
- "Superfund Exemption for Scrap Recycling Requires Due Diligence," Communique, February 2000.
- "The Proper Relationship Between Environmental Law and Science," presented to the Tripartite Symposium and jointly sponsored by the Society for Analytical Chemists of Pittsburgh, the American Chemical Society and the Spectroscopy Society of Pittsburgh, May 17, 1995.
- "Environmental Issues in Estate Planning," presented at a Pennsylvania Bar Institute seminar on "Today's Tough Problems in Estate Planning," 1994.
- "Environmental Law: Civil and Criminal Liability," presented to the Independent Oil and Gas Association of Pennsylvania, April 15, 1992.
- "Regulation of Underground Storage Tanks," presented at Government Institutes, Inc.'s seminar titled "Fundamentals of Pennsylvania Environmental Laws," June 11, 1991.

Practices, Industries & Services

Administrative Law
 Automotive & Manufacturing
 Construction
 Energy & Utilities
 Environment, Energy & Natural Resources
 Oil & Gas
 Real Estate

Areas of Emphasis

Administrative Law
 Brownfields Redevelopment
 Environment, Energy & Natural Resources Litigation
 Environmental Assessments, Due Diligence & Audits
 Oil & Gas – Environmental
 Oil & Gas – Finance & Lending
 Oil & Gas – Transactional
 Opportunity Zones
 Permits & Licenses
 Remediation & Natural Resource Restoration
 Solid & Hazardous Waste Management

Memberships

- Pennsylvania Bar Association (Environment and Energy Law Section)
- Allegheny County Bar Association (Environmental and Energy Law Section) (Council 2006-2012; Program Chair 2012-2013; Chair 2013-2014)
- American Bar Association (Section of Environment, Energy and Resources; Center for Professional Responsibility)
- Graduate, Leadership Pittsburgh XXVII
- Voting Member of ASTM International's Committee E50 on Environmental Assessment, Risk Management and Corrective Action; and participant on the ASTM task group reviewing the E1527 Standard Practice on Phase I Environmental Site Assessments
- Energy and Mineral Law Foundation

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- Pennsylvania Independent Oil & Gas Association
 - Air and Waste Management Association

Honors

- 2009-2015: Super Lawyers - Selected for inclusion in Pennsylvania Super Lawyers list.