

Uncommon Wisdom
Common Sense®

Even the most responsible companies receive enforcement orders from government agencies. An effective defense requires a rapid assessment of the challenges facing the company and the design and implementation of a vigorous strategy for an effective response to the government's claims.

Leonard, Street and Deinard's Environmental, Health and Safety Enforcement Defense team provides timely and qualified representation for businesses of all sizes in defending enforcement proceedings before administrative agencies and in courts of law. The following list represents the types of cases we are prepared to handle:

- Notices of violations
- Administrative penalty orders
- Civil penalties
- Stipulation agreements and consent decrees with federal and state agencies
- Internal investigations
- Fraud allegations
- Representation of individuals and companies in grand jury proceedings
- Defense of federal and state criminal enforcement of environmental laws
- Federal and state investigations and subpoenas
- Insurance coverage for environmental liabilities
- Contaminated property settlements
- Defense of government cost recovery actions
- Administrative contested cases
- Zoning and land use enforcement actions
- Defense of corporate officers and employees

REPRESENTATIVE EXPERIENCE

Our team includes attorneys with experience in civil and criminal defense, cost recovery, insurance coverage and negotiated settlements. As the following case highlights illustrate, our experience covers a broad range of clients and situations.

Successfully guided the initial investigation and response actions, and compelled a responsible party to perform all additional investigation and remediation in the worst operable unit, in connection with the highly complex environmental contamination at the 230-acre Shoreham Yard in Minneapolis, Minnesota. Our work included leading the efforts of numerous expert scientists, successfully prosecuting claims against responsible parties in federal court and advancing the client's interest in continuing its business use of the property. This was a major success for our client in that the cost of investigation and remediation of the worst operable unit is estimated at nine figures. We continue to assist with the client's efforts at the other operable units and in maintaining productive relationships among the client, responsible parties, regulatory agencies and a citizen group.

Represented a large public company after it learned that the industrial wastewater treatment facility to which the company sent its wastewater was not functioning properly and the operator had been allowing discharges of untreated wastewater into the receiving water body. The U.S. Environmental

Protection Agency (EPA) took the position that the company was responsible because it was the only company that discharged to the facility. The EPA and U.S. Department of Justice brought a civil enforcement action, demanding millions of dollars in penalties. Through extensive negotiations and working closely with technical experts, we convinced the government that if the matter proceeded to trial, it would be impossible or at best difficult to prove several of the government's key claims. We were able to achieve a settlement for one-third of what the government had demanded, with no admission of liability by our client. The actual penalties were also within 10% of the estimate we had given this client at the outset of the case three years earlier, which the client requested for purposes of SEC filings and establishing reserves.

Successfully represented the former owner of a plastic intrusion plant after solvent contamination was found in residential wells near the plant. The current owner sought indemnification under its purchase agreement with the prior owner, and the prior owner, in turn, sought indemnification under its purchase agreement with our client. We guided a complex, area-wide investigation of groundwater conditions and installation of filtration systems, and successfully managed the tenuous relationships among our client, the current and prior owners of the plant, regulators and area residents. Through swift and meaningful action that addressed the residents' immediate need for safe drinking water, we persuaded regulators and area residents to forestall enforcement efforts and litigation. Working with Leonard, Street and Deinard's insurance coverage attorneys, we also persuaded our client's insurance carrier to assume all investigation and remediation obligations in excess of the deductible under the policy.

Successfully defended a major corporation against statutory and common law claims made by a Minnesota city in the city's effort to recover the cost of remediating petroleum-contaminated soil and groundwater. The city had performed the cleanup without notifying the company. Our primary defense strategy was demonstrating that the city's cleanup was poorly documented, unnecessary and unreasonable, with a majority of the cleanup costs owing to remediation above and beyond what risk-based cleanup standards required. The matter eventually settled for a modest sum.

Represented a national marketer and distributor of food ingredients after an OSHA inspection revealed a number of serious violations. Our representation included counseling the client on corrective actions and settlement negotiations with the agency. We were able to show that the client corrected the deficiencies promptly and obtained a 30% reduction in the penalties sought by the agency.

Successfully represented a corporate property owner in negotiating a multi-party settlement with the Minnesota Pollution Control Agency (MPCA), a municipality and demolition contractors to allocate responsibility for a highly publicized mercury spill caused by vandals. Our environmental attorneys evaluated the unique facts and theories of liability and guided the client through protracted negotiations, including a formal mediation with a third-party neutral. We obtained a significant reduction of the MPCA penalties and cost-sharing with the contractors and an insurance company for cleanup costs.

Successfully negotiated stipulation agreement between manufacturer and MPCA regarding alleged RCRA violations.

Successfully negotiated access agreements, no association agreements and coordinated VIC program compliance to obtain a no association letter for a natural gas utility installing pipeline through existing Superfund site.

Represented a recycling company charged with criminal violations of State of Minnesota laws regulating the out-of-state disposal of waste.

Represented a manufacturing client in response to an enforcement action brought by the Hennepin County Environmental Protection Division alleging air quality, water quality and RCRA violations. We succeeded in eliminating a number of the allegations, substantially negotiating down the proposed

penalty and fostering a cooperative resolution of the matter.

Represented a construction contractor in response to allegations of improper disposal and management of asbestos. We successfully defended against the claims of illegal disposal and negotiated an out-of-court resolution of the remaining issues.

Represented a natural gas utility in condemnation proceedings that included obtaining clearance to site a gas pipeline through an existing Superfund site. We negotiated access terms with the landowners who were subject to a Superfund and RCRA consent decree, obtained MPCA approvals to build the pipeline through a groundwater monitoring field, advised the client how to conduct the construction without associating with the existing contamination, and obtained VIC approvals and no association letters with respect to the project.

Represented a recycling company charged with criminal violations of State of Minnesota laws regulating the out-of-state disposal of waste. This matter was favorably resolved by a pretrial diversion agreement, following a detailed discussion of the underlying facts, the company's good faith and a potential statutory challenge under the Commerce Clause.

Represented a former supervisor of a company that was targeted in a federal criminal investigation of violations of various EPA regulations. The violations allegedly occurred during the supervisor's tenure. After the U.S. Department of Justice declined prosecution of the criminal matter, we continued to represent the former employee through the civil enforcement proceedings that followed. The former employee maintained his cooperative posture and ultimately avoided any liability.

Represented a successor-in-interest PRP in the country's largest Superfund remediation project to date in seeking coverage from hundreds of insurance policies with over \$1 billion in coverage. The client's former owner eventually accepted responsibility for indemnifying our client, and therefore controlled the coverage litigation, but nonetheless requested that we stay involved in the matter, which resulted in a favorable jury verdict sustained on appeal.

Obtained a landmark Minnesota trial court decision, successfully obtaining environmental cleanup coverage, under client's pre-acquisition policies, for contamination resulting from operations of an entity not acquired by client until years later.

A Professional Association

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