

Steptoe & Johnson LLP

China Central Place, 29th Floor,
Tower 2
79 Jianguo Road, Chaoyang
District
Beijing, 100025
Tel: +86 10 5834 1000
Fax: +86 10 5969 6099

Avenue Louise 489
3rd Floor
B-1050 Brussels
Belgium
Tel: +32 2 626 0500
Fax: +32 2 626 0510

115 South LaSalle Street
Suite 3100
Chicago, IL 60603
Tel: 312.577.1300
Fax: 312.577.1370

2121 Avenue of the Stars
Suite 2800
Los Angeles, CA 90067
Tel: 310.734.3200
Fax: 310.734.3300

633 West Fifth Street
Suite 700
Los Angeles, CA 90071
Tel: 213.439.9400
Fax: 213.439.9599

1114 Avenue of the Americas
New York, NY 10036
Tel: 212.506.3900
Fax: 212.506.3950

201 E. Washington Street
Suite 1600
Phoenix, AZ 85004
Tel: 602.257.5200
Fax: 602.257.5299

1330 Connecticut Avenue, NW
Washington, DC 20036
Tel: 202.429.3000
Fax: 202.429.3902

Steptoe & Johnson

99 Gresham Street
London, EC2V 7NG
England
Tel: +44 20 7367 8000
Fax: +44 20 7367 8001

Environment & Natural Resources

Nanotechnologies Resource Center

Steptoe & Johnson LLP has a broad-based practice in the areas of environmental and natural resource law. Our practice group is widely recognized as a leader among major firms. The principal areas in which our lawyers practice are outlined below.

Soil & Groundwater Contamination

Characterizing and remediating contaminated sites involve some of the most complex and difficult issues for environmental lawyers and their clients. Problem areas include responding to regulators; negotiating enforcement settlements; negotiating or litigating cost allocation and recovery claims; working with consultants and regulators to develop efficient, cost-effective remediation approaches; and selling, buying, or developing contaminated properties.

Steptoe's clients have included industrial, mining, technology, pharmaceutical, defense, steel, foundry, waste disposal, transportation, oil and chemical companies; municipalities; and real estate developers.

Steptoe attorneys are experienced with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), the Resource Conservation and Recovery Act (RCRA), and similar state counterpart laws in a large number of jurisdictions including Arizona, California, Connecticut, the District of Columbia, Massachusetts, Montana, New Jersey, North Dakota, Oregon, Virginia, Texas, Utah, Wisconsin, Oklahoma, Ohio, Illinois, New York, North Carolina, South Carolina and Washington.

The firm's attorneys have practiced before the EPA in Washington, DC, and in all 10 EPA regions. This wide range of experience provides Steptoe with the ability to devise sound, creative, cost-effective approaches.

Among our current and recent Superfund representations are the following:

- Chairing a steering committee for a federal Superfund site involving more than 100 parties and managing the remediation of the site.
- Negotiating clean-up agreements with state regulatory agencies for manufacturing facilities in multiple states including Arizona, California, the District of Columbia, New Jersey, Virginia, Wisconsin, and Montana.
- Negotiating the sale or purchase of state Superfund sites and other contaminated property.

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- Negotiating numerous consent decrees and administrative orders with EPA, the US Department of Justice and various states involving hundreds of millions of dollars.
- Working with technical experts on risk-based remediations.
- Convincing EPA to apply its Technical Impracticability Guidance to change the remedy at various NPL sites.
- Serving as Court Appointed Liaison Counsel for a group of over 150 third-party defendants, and also representing 25 parties in private cost allocation litigation arising from the SCP-Carlstadt Superfund Site in New Jersey.
- Negotiating a *de minimis* settlement for 30 parties with other members of a cooperating PRP group and with EPA.
- Achieving settlement in a complex private cost recovery action involving a site near Washington National Airport. Steptoe represented the plaintiff property owner in an action against the site operator and approximately 25 additional waste generators seeking response costs.
- Pursuing cost recovery claims for a \$500 million clean up.

Steptoe is also heavily involved on the legislative side of Superfund matters, and includes among its partners and professionals with decades-long experience in Congress on CERCLA reforms. Steptoe lawyers worked with the Environmental Law Institute to prepare *The Superfund Desk Book*, the first major publication to assess the impact of the Superfund Amendments and Reauthorization Act (SARA). Since that time, Steptoe has monitored Superfund legislative developments at the federal level and in states such as California, Arizona, Wisconsin, and New Jersey.

Hazardous Waste Regulatory Matters

Steptoe's environmental practice group provides ongoing compliance advice to clients in the industrial, municipal, and transportation sectors. We regularly work with clients on federal and state solid and hazardous waste compliance issues, including facility plans, waste classification, and permit and disposal requirements.

Steptoe attorneys have been involved in the development of EPA's hazardous waste program since regulations were first issued in 1980. In 1996, Steptoe won a very significant victory invalidating EPA regulations classifying certain carbamates as hazardous wastes when disposed. *Dithiocarbamate Task Force v. EPA*, 98 F.3d 1394 (D.C. Cir. 1996).

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Pesticide Regulation & Registration

Step toe has a nationally known and respected practice in the regulation and registration of pesticide products under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and its state equivalents. Working with the Chemical Manufacturers Association's Biocides Panel and many individual registrants, Step toe has represented the interests of the industrial biocides industry before EPA, OMB, Congress, courts, and several states. We have worked on a wide range of issues, including regulation development, registrations, reregistration, data call-ins, data compensation, and FIFRA preemption of state law tort claims. In all these activities, Step toe attorneys work to ensure that there is rational regulation that considers the economics of the industry and the real health and safety concerns that regulators should address.

Step toe attorneys are active in the implementation of the Food Quality Protection Act (FQPA) of 1996. Step toe also represents individual companies seeking to register pesticide products. We have an experienced staff of non-lawyer specialists in pesticide matters, who deal with EPA registration officials virtually every day. By maintaining constant contact with EPA's Office of Pesticide Programs, Step toe has developed a wealth of experience on the manner in which the registration process should work and the problems other registrants and applicants have encountered. Step toe's registration specialists also regularly work with pesticide regulatory officials in many states.

In connection with EPA's Reregistration Program under the 1988 Amendments to FIFRA, Step toe has been advising registrants—and groups of registrants formed into data generation “consortia”—in responding to the demands of reregistration. In this area, we generally work with registrants to determine whether EPA has properly evaluated existing data, and to ensure that new data requirements are appropriate for the products and uses involved.

We currently are working with registrants on the following data call-ins issued by EPA:

- Inorganic Arsenical Wood Preservative Data Call In
- Chloropicrin Data Call In
- Tributyltin Data Call In
- Copper Naphthenate Data Call In

Step toe lawyers also assist pesticide registrants in the data compensation activities that have become increasingly important as the value of data submitted to EPA expands. We work with our clients to develop defensible demands for data

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compensation, negotiate with follow-on registrants, and handle FIFRA data compensation arbitrations.

Step toe also has been very active on pesticide issues at the state level. We coordinated the industrial biocides industry's response to California's Birth Defects Prevention Act (also known as SB 950) by developing an approach that responded to the state's health and safety concerns while minimizing the additional data requirements imposed on registrants. Step toe also has been active on California's Proposition 65, and on FIFRA Section 18 registrations and groundwater protection fee programs in several states. We currently are working on pesticide issues in Arizona, California, Florida, Minnesota, New York, Oregon, Washington, and Wisconsin, and have strong ties with knowledgeable attorneys in these and other jurisdictions to ensure that both local and national issues are fully addressed.

Clean Water Act Matters

Step toe's Clean Water Act experience has included:

- Representing a paper company on secondary treatment and water quality issues requiring the use of bioassays in order to demonstrate the acceptability of the company's discharge to rare sturgeon during spawning.
- Representing a major oil/mining company with respect to its surface water discharges to a feeder stream of a Wild and Scenic River and the impact of highly treated discharges to the stream's food chain.
- Litigating a surface water discharge enforcement action for a major steel company in which the state sought more than \$1 million in damages, but was awarded \$45,000 instead.
- Negotiating toxic discharge regulations relating to the use of algicides and slimicides by pulp and paper mills in their wastewater treatment process.
- Representing a consortium of businesses with respect to user fees proposed by Milwaukee and litigation brought by Chicago against Milwaukee relating to storm event by-pass discharges into Lake Michigan.
- Representing a major malting company with respect to user fees proposed by the metropolitan sewer district to which it discharged.

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- Counseling a developer on dredge and fill matters with the Corps of Engineers and litigating against a state agency on whether a wetland was in the “bed” of an adjacent river.

Step toe’s lawyers regularly advise clients on NPDES and pretreatment matters, the acquisition of Clean Water Act § 404 permits and § 401 certifications, and on storm water permit issues. The firm’s attorneys are familiar with toxicological issues, bioassays, toxic discharge regulations, and Wild and Scenic River issues.

As counsel to the major cities in the Phoenix metropolitan area on issues relating to the triennial review of surface water quality standards, Step toe’s lawyers worked with five groups of toxicologists in lengthy rule-making negotiations to establish priority pollutant numeric water quality standards and acute and chronic narrative/biomonitoring analytical methodologies.

Clean Air Act Matters

Step toe’s Clean Air Act experience has included representation of mining companies, paper companies, window covering companies, cosmetic manufacturers, and appliance appliqué manufacturers. Step toe lawyers have assisted clients with federal, multi-state, and multi-county air quality compliance issues including determining permit requirements, preparing permit applications, and performing compliance audits and lobbying.

Mining Matters

Step toe’s mining experience has included representing an oil/mining company with respect to the permitting of the 10th largest underground zinc-copper ore body in the world. The case involved 75 consultants, including five different hydrogeologic experts, and involved preparing the legal case for a \$750 million, 10,000 tpd project involving air emissions, surface water discharges, and solid waste and groundwater contamination issues. The project involved two dozen permits and negotiations with federal and state officials, three counties, two towns, and three Native American communities. In addition, new state reclamation laws and regulations were negotiated with environmental groups over a five-year period.

Toxic Tort Defense

Step toe’s toxic tort defense attorneys are in court daily representing manufacturers throughout the nation. This group has successfully defended cases ranging from chemical exposures (e.g., mercury, VOCs, MTBE, workplace chemicals of all kinds, and arsenic) to alleged noise-induced hearing loss. We have successfully defended personal injury and property damage claims allegedly caused by exposure to pesticides, including the establishment of federal preemption in a FIFRA state tort claim. Our toxic tort defense practice is nationwide with cases in state and federal courts from Hawaii to New Jersey.

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Defense of Criminal Matters

Step toe has a national practice in defending against white-collar, environmental, and health and safety criminal claims. Step toe attorneys include former federal prosecutors from a wide variety of backgrounds including the Environmental Crimes Section of the Department of Justice, other sections of the Department of Justice, and various US Attorney's offices. Step toe attorneys defend both corporate and individual clients against state and federal environmental and health and safety criminal claims.

Among the matters in which the firm recently has been involved are the following:

- Defending a cement manufacturer in an investigation involving alleged storage, treatment and disposal of recycled materials constituting hazardous waste.
- Defending an airbag manufacturer in a grand jury investigation and in plea negotiations involving an explosion that killed one construction worker and severely burned another.
- Defending a company under investigation for alleged burning of hazardous wastes without required permits.
- Defending an individual accused of hazardous waste violations.
- Defending an employee of a large company suspected of violating an NPDES permit.
- Defending individuals accused of fraud in the testing of generic drugs.
- Representing a drug manufacturer's employees in connection with a grand jury investigation of the manufacturer.
- Representing a chemical company whose employees were accused of illegal disposal activities.

The firm's strong background in criminal law and knowledge of the underlying substantive areas have combined to provide the best possible representation in these cases. The firm has concentrated on applying the Federal Sentencing Guidelines for Organizations to environmental offenses and investigations and has worked with clients to assess the adequacy of the clients' compliance programs under the Sentencing Guidelines.

The firm has also served as counsel to corporate clients conducting independent reviews of the adequacy of their environmental compliance programs. Projects

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have included compliance system investigations for manufacturers in the following fields: major electronics, petrochemical, chemicals, and cement.

The firm has also represented many clients in dealing with debarment and suspension from federal and state programs arising from environmental prosecutions.

National Environmental Policy Act Matters

The firm has extensive experience in NEPA issues, both on compliance matters and in assessing the adequacy of environmental impact statements.

Natural Resources Law Matters

Both Steptoe's DC and Phoenix offices have experience dealing with the environmental aspects of mining (both deep and strip mining); mineral leasing (oil, gas, and geothermal); forestry, grazing, land exchanges (federal, state, and private); and water rights and wildlife law (including the Endangered Species Act and Marine Mammal Protection Act).

Acquisitions & Divestitures

The firm arranges and participates in environmental audits related to property or corporate acquisitions and divestitures, including one that involved 26 commercial facilities in 12 states with a transaction value of \$500 million. We frequently perform the environmental portion of pre-acquisition due diligence reviews and draft transactional documents to clearly define environmental responsibility.

Redevelopment of Contaminated Land

The firm has been active in negotiating liability agreements providing for the redevelopment of contaminated land (i.e., Brownfields). It has represented both buyers and sellers of Superfund sites.

Congressional and Administrative Agency Representation

The environmental practice group has in-depth experience continuously representing clients on environmental matters before Congress, state legislatures, and federal and state administrative agencies, both in developing legislation and in formulating its regulatory implementation.

Noteworthy

- Ranked Band One, *Legal 500 Europe, Middle East & Africa* for EU Regulatory Chemicals (REACH) 2011 and 2012 (Belgium)
- Ranked, *Chambers USA 2010: America's Leading Business Lawyers; Environment, including water rights* (Arizona)

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- Steptoe Brussels Regulatory Environment Group Ranked as Leading Firm by *Chambers Europe 2009*
- Ranked, *Chambers USA 2008, America's Leading Lawyers; Environment (Arizona)*