

## **ENVIRONMENTAL LAW**

Companies who buy, sell or conduct business on commercial or industrial property must deal with the environmental considerations inherent in such ventures. The Cole Schotz Environmental Law attorneys have the experience to shepherd clients successfully through a wide range of environmental matters, leveraging our extensive knowledge of the state and federal laws regulating environmental site assessment, remediation and cleanup, as well as the development of contaminated or environmentally sensitive properties.

### **Real Estate Transactions**

We routinely represent clients who are selling, buying, leasing or financing real property, advising them on how to avoid or minimize liability under environmental laws. We also coordinate due diligence and environmental site assessments, and assist clients with the purchase of environmental liability insurance. When necessary, we are adept at finding creative ways to close transactions involving contaminated properties.

### **Environmental Remediation and Cost Recovery**

Environmental cleanups must be performed according to the guidelines set forth in certain state and federal laws, including the New Jersey Spill Act and the Industrial Site Recovery Act, the federal Superfund law and various underground storage tank laws. We assist clients in adhering to these regulations, and in helping them to recover, or avoid spending, significant remediation costs. To that end, we are often successful in obtaining Brownfields grants and other funds under federal and state government programs. We also investigate the availability of insurance funds, and pursue payment from insurance companies on our clients' behalf.

### **Real Estate Development**

We assist our clients in the development of contaminated commercial, industrial and residential properties, obtaining funding, tax incentives and other benefits under the Brownfields Law and other federal and state programs.

We also help clients obtain permits to develop in or near environmentally sensitive areas, including freshwater and coastal wetlands, waterfront or coastal areas, streams, flood plains, the Hackensack Meadowlands, the Pinelands and areas subject to riparian claims by the state.

### **Environmental Litigation**

Our Environmental Litigation attorneys represent clients involved in disputes over cleanup of environmental contamination. With our command of the key regulatory, geological and other issues, we are able to settle many cases without the need for litigation. For those times where litigation cannot be avoided, we have considerable experience applying effective strategies to prosecute and defend against environmental claims, including defending clients against penalties assessed by

## ENVIRONMENTAL LAW (Continued)

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governmental agencies.

### **Environmentally Sensitive Businesses**

In addition to representing companies in regard to their commercial and industrial property, we also work with clients whose business activities directly impact the environment, including gasoline service stations, automotive dealerships, dry cleaners, composting and recycling facilities and transfer stations.

We assist in a variety of areas, including the acquisition of water and air pollution control permits, the management of solid and hazardous waste, compliance with worker and community right-to-know laws and Occupational Safety and Health Act (OSHA) matters.

## ENVIRONMENTAL LAW (Continued)

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### REPRESENTATIVE MATTERS

Shortly after Home Depot signed a contract to buy land for its Paterson, NJ store in 2000, the seller discovered that it had underestimated the property's environmental problems, which led to financial hardship and an effort by its lender to foreclose. The Cole Schotz team ended up restructuring the deal from a purchase to a ground lease, which the seller/landlord financed to pay off its creditors. We put environmental insurance in place to protect Home Depot against environmental risk and the city awarded grants to Home Depot to assist in remediation efforts. Cole Schotz's multidisciplinary team helped to resolve the environmental issues and the deal proceeded. Groundbreaking occurred in June 2007, and the store opened in June 2008.

The firm successfully negotiated a contract for a client to purchase a former manufacturing facility that had known contamination. Under the contract, the client was obligated to accept the property "as is" and to protect the seller from future cleanup costs. In order to cap the client's total exposure, we negotiated a Guaranteed Cleanup Cost Contract with an environmental consultant, under which the consultant agreed to complete the cleanup for under \$549,640, and if necessary, cover any cleanup costs above that amount. Since the contract only covered known contamination, we negotiated an environmental insurance policy to protect the client against any costs associated with unknown contamination that might be discovered later and third-party claims for property damage or bodily injury.

Cole Schotz was instrumental in overcoming significant environmental liability obstacles associated with our client's \$8.5 million acquisition of a mechanical components manufacturer. These obstacles included complex compliance issues and a multi-million dollar cleanup of the company's main operating facility. We succeeded in obtaining the protection of environmental indemnities and cleanup obligations from the seller, enabling our client to acquire the company's assets within its strategic time frame. In addition, we represented the client as local corporate and real estate counsel and assisted with the negotiation of complex acquisition and financing transaction documents.

The firm represented a client who owned a property with groundwater contamination. In order to convince a major automotive dealer to lease the premises before the cleanup was completed, we negotiated a Guaranteed Cleanup Cost Contract with an environmental consultant, under which the consultant agreed to complete the remediation for a fixed sum. We then negotiated an environmental insurance policy that provided coverage for cleanup cost overruns in the amount of twice the guaranteed cleanup cost. On this basis, the automotive dealer tenant agreed to take possession of the property and start paying substantial rent even though the cleanup had not been completed.

## ENVIRONMENTAL LAW (Continued)

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Our client, a national television network's local affiliate, had applied for municipal approvals to locate antennas on the roof of the building that housed its studios and offices. The application faced organized community opposition and required extensive expert testimony supporting the fact that the antennas were critical to the station's operations and security. Following numerous hearings, the municipal zoning board preliminarily denied the application. We filed an appeal and entered into negotiations with the opponents, the zoning board and the building owner. On the basis of the record created in the application and subsequent negotiations, we were successful in achieving a settlement that allowed the antennas to be located on the roof.

Cole Schotz submitted an exemption application to the New Jersey Department of Environmental Protection on behalf of a client, and was granted one of the first exemptions under the newly enacted Highlands Water Protection and Planning Act. Signed into law a month before the exemption was granted, the Act strictly limits development in the New Jersey Highlands, including all or part of Bergen, Passaic, Morris, Hunterdon, Warren, Somerset and Sussex counties. Had the Act applied, it would have completely blocked the client's proposed development.

One of the firm's clients had expended considerable cleanup costs for the remediation of a contaminated property in New Jersey. Without resorting to litigation, we notified the client's past business liability insurance carriers of the claim and negotiated a settlement for a substantial portion of the client's costs.

The State of Ohio had obtained a Default Judgment against our client in excess of \$5 million for the improper maintenance of oil and gas wells and for various violations of state environmental laws. The State of Ohio then proceeded to enter a judgment against our client in the New Jersey court system. In lieu of the \$5 million civil penalty, we successfully negotiated a settlement with the Ohio Attorney General's Office and the Ohio Department of Natural Resources that levied an administrative penalty of only \$10,000 and issued Release and Satisfaction of Judgment Liens in both states.

On behalf of a large retail client, we successfully negotiated, with the New Jersey Department of Commerce and the New Jersey Department of Environmental Protection, an Agreement to Reimburse for Remediation Costs under the Brownfields and Contaminated Site Remediation Act. The agreement directed the state to reimburse our client for up to 75% of the remediation costs necessary for a site redevelopment in an Urban Enterprise Zone in Newark. The project involved Newark's condemnation of a large parcel consisting of residential, commercial and industrial properties to allow for the proposed retail development.