

## ENVIRONMENTAL LITIGATION & TOXIC TORTS

Moore & Van Allen attorneys have a long history with all types of environmental litigation including public nuisance claims, litigation regarding air emissions, CERCLA (Superfund) litigation, Clean Water Act litigation, actions relating to facility siting, mold cases, asbestos litigation, criminal actions, administrative litigation (including permit disputes and enforcement actions) and claims alleging releases of petroleum or other hazardous substances into soil and groundwater. Many of our attorneys have engineering or scientific backgrounds, as well as experience, that make it easier for them to understand and communicate complex environmental issues. We frequently are able to resolve environmental disputes without litigation. Notable pieces of litigation are listed below (in reverse chronological order):

- *ATC Partnership v. Coats North America Consolidated, Inc.* (Connecticut Superior Court 2005-present). Since the early 1980s, Moore & Van Allen has represented the former owner of one of the earliest textile mills in the United States in a series of administrative proceedings and litigation involving groundwater contamination and other environmental issues at a textile mill complex in Willamantic, Connecticut. In 1987, on behalf of our client, we obtained a release from further environmental liability from the Commonwealth of Connecticut. The current owner of the property is now seeking damages for the effect of the remaining contamination on the value of the property. We obtained summary judgment on behalf of our client from the trial court and the decision was appealed. The case was argued by Peter McGrath before the Connecticut Supreme Court on September 7, 2007.
- *USRP v. Langston* ( U.S. District Court, Eastern District of North Carolina 2004-2007). Represented the owner of property leased to a convenience store operator. We obtained summary judgment for our client for the cost of cleaning up the UST contamination and the judgment was upheld by the 4th Circuit Court of Appeals in an unpublished per curium decision (No. 06-1528).
- *U.S. v. Martin Marietta Materials, et al.* ( U. S. District Court, Eastern District of North Carolina, 2005-2006). Defended Martin Marietta Materials in CERCLA cost recovery action relating to the Reasor Chemical Site.

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- *South Carolina Department of Health and Environmental Control v. Western Atlas, Inc. et al.* (United States District Court for the District of South Carolina, Columbia Division, 2000-2005). Represented a supplier and recycler of industrial solvents and a transporter of hazardous wastes that has allegedly contributed to groundwater contamination. This is a CERCLA enforcement action that seeks to hold five defendants jointly and severally liable for past and future government-incurred response costs and natural resources damages.
- *Shalub, et al. v. Amoco, et al.* (Rebozo Trust case) ( United States District Court for the Southern District of Florida 2000-2001). Represented BP in a groundwater contamination case brought by the trustees of the Rebozo trust for cleanup costs and property damages resulting from releases from USTs at former Amoco service station on Key Biscayne.
- *Sherrill, et al. v. Amerada Hess, et al.* (N.C. Superior Court 1995-2005). Peter McGrath and others defended twelve oil company defendants in a putative class action litigation filed by residents located within two miles of the Paw Creek petroleum terminals. The plaintiffs alleged that they had incurred medical problems and property devaluation as a result of air emissions (primarily benzene), discharges to creeks, and groundwater contamination. Class certification was defeated and the case was ultimately resolved with approximately 450 local residents.
- *Maynard, et al. v. Amerada Hess, et al.* (N.C. Superior Court 1999-2002). David Fox and Peter McGrath represented several petroleum company defendants in putative MTBE class action litigation. The putative class consisted of approximately 900,000 well owners. Class certification was defeated and the case was settled.
- *United States and States of Alabama, Arkansas, Nebraska, South Carolina, Texas and Utah v. Nucor Corporation* (U. S. District Court, District of South Carolina, July 1, 2001). Represented Nucor Corporation in negotiating comprehensive consent decree to resolve alleged violations of Clean Air Act, RCRA, Clean Water Act and EPCRA at eight steel mills and six other operating facilities in eight states.

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- *B.F. Goodrich, et al. v. PMC, Inc., et al.* (United States District Court for the District of South Carolina 1999-2001). Private party groundwater litigation to recover cleanup costs at a chemical manufacturing site in South Carolina. Represented one of the former operators of the business and our client settled on the eve of trial for less than the cost of taking the case through trial.
- *Lord Corporation v. Brown & Williamson Tobacco Company, Marathon Oil Company and Ashland Oil Company* (U.S. District Court, District of Kentucky, Bowling Green Division, 1998). Represented plaintiff in CERCLA contribution action against prior owners of real estate.
- *Castles Auto & Truck Service, Inc. v. Exxon* (U.S. District Court, Western District of North Carolina 1990-1998). Represented Exxon in litigation relating to alleged groundwater contamination at its Paw Creek terminal. The case was tried before a jury, a defense judgment was entered by the court, the case was appealed to the 4th Circuit Court of Appeals, and ultimately the case was settled.
- *Ashcraft, et al v. Conoco* (United States District Court, Eastern District of North Carolina 1994-1997). The case involved the claims of about 177 plaintiffs for damages (including health injuries, medical monitoring and property devaluation) relating to alleged contamination from a former service station. The case was tried for five weeks to a jury in August of 1997, but was settled before the jury reached a verdict.
- *Diane Lofgren, et al. v. Motorola, et al.* (Arizona Superior Court 1993-1997), and *Melody L. Baker, et al. v. Motorola, et al.* (Arizona Superior Court 1992-1997). David Fox represented an industrial defendant that was alleged to have contributed to air emissions and groundwater contamination that impacted the water quality of municipal drinking water supply wells and the water distribution system. This was a mass action personal injury case involving exposure to hazardous substances from industrial air emissions, off-gassing from groundwater contamination and the distribution of hazardous substances in the municipal water distribution system giving rise to household exposures. Damages sought were in the \$100's of millions. The matter was resolved in five-week arbitration.

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- *Little v. Petroleum World* (N.C. Superior Court 1994-1995). Represented a petroleum jobber that was the owner of underground storage tanks at a convenience store near Hickory, North Carolina. The plaintiff sought to recover property devaluation damages and cleanup costs. The court granted summary judgment in favor of our client.
- *Culbertson v. Coats American* (United States District Court, Northern District of Georgia, 1994-1995). Peter McGrath successfully defended a citizen suit against our client.
- *Strum v. Exxon* (United States District Court for the Middle District of North Carolina 1992-1994). Represented Exxon against claims of groundwater contamination from a former service station site. We obtained summary judgment on a novel theory of law, and the decision was ultimately upheld by the Fourth Circuit Court of Appeals. *Strum v. Exxon*, 15 F.3d 327 (4th Cir. 1994).
- *Palant v. Exxon* (United States District Court for the Southern District of Florida 1991-1994). Represented Exxon in an action for alleged property devaluation and cleanup costs for a former gas station in Broward County, Florida. The case was resolved after entry of partial summary judgment.
- *U.S. v. Abbott Laboratories* (Aquatech Environmental Superfund Site) (United States District Court, Western Division of South Carolina 1989-1995). In this CERCLA cost recovery action, we represented several of the major PRPs and served on the PRP Steering Committee for the site. The case was ultimately settled.
- *Southern Bell v. City of Charlotte* (N.C. Superior Court, 1986-1987). We filed an action against the City of Charlotte of contamination of an underground fiber optic conduit by a former landfill operated by the City. The City ultimately paid all of Southern Bell's costs after discovery produced information that would have allowed Southern Bell to defeat claims of sovereign immunity and possibly recover punitive damages.

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- *Pipkin, et al. v. Union Oil Company, et al.* (N.C. Superior Court 1984-1988). Represented Union Oil Company in one of the first (if not the first) UST mass tort actions in North Carolina. The case was brought as a putative class action relating to alleged contamination of a minority community located near a former truck stop in eastern North Carolina. The case involved what would later be referred to as environmental justice claims. Class certification was defeated, and the case was settled.