

PRACTICE

Environmental Law

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OVERVIEW

ENVIRONMENTAL LAW

Developers, private businesses, and property owners rely on the Bowditch environmental law team as practical – and often inspired – problem solvers who cut through even the most complex legal and environmental issues quickly, efficiently and cost-effectively.

Lead by [Robert Cox](#), a Chambers & Partners ranked attorney with over 30 years of environmental law experience, the team assists clients with complex environmental issues before the U.S. Environmental Protection Agency, the Massachusetts Department of Environmental Protection and other state and local zoning, planning, health and conservation boards and commissions with jurisdiction over environmental matters.

Our team has rendered opinions on the full gamut of environmental issues involved in large real estate development projects, and have particular depth of experience in providing legal advice on projects that involve partnerships between government/public entities and private developers.

We can assist in all areas of environmental law, including the Clean Air Act, Clean Water Act, CERCLA (Superfund), RCRA, Safe Drinking Water Act, National Environmental Policy Act (NEPA), Massachusetts Environmental Policy Act (MEPA), Wetlands Protection and the cleanup of contaminated sites in Massachusetts under M.G.L. Chapter 21E.

How we can help

- Regulatory compliance/environmental audits
- Environmental permitting
- Site investigations and cleanups (21E)
- Environmental due diligence for business transactions
- Superfund defense and cost recovery
- Brownfields redevelopment

- Wetlands, riverfront/coastal development
- Lender liability
- Environmental management systems

EXPERIENCE

Successfully defended a national retailer against allegations of real estate fraud

A national retailer faced accusations of fraud and a multi-million dollar claim when it sold a commercial property in New England. Our client bought the property, a former gas station located at a prominent intersection, from a previous business and sold it to a native and long-time resident of the community. Despite knowing the property's past use, the buyer claimed that our client fraudulently said the site was environmentally clean. We tried the case in the plaintiff's home town and presented the jury with witnesses and other evidence that he knew the site was a former gas station and had seen it being remediated. After the other side presented its case, we argued that the plaintiff had not proven his case and moved for a directed verdict, which the judge granted.

Maintaining connection with a client during a difficult real estate transaction

Our client, an out-of-state general partnership, wanted to sell a commercial property in Massachusetts to a tenant. The transaction was complicated by environmental issues, which we researched, discussed with the client and negotiated related terms in the purchase and sale agreement with the buyer. We coordinated with the client on necessary documentation for the deal.

A stay in a general EPA permit

We represented a statewide non-profit group of Massachusetts municipalities regarding a general EPA permit issued under the Clean Water Act. We worked with municipalities and the non-profit to appeal the terms of the permit, on grounds that it impermissibly expanded the permit's authority under the Clean Water Act. When the Trump administration took office, EPA imposed a stay on the effective date of the permit, allowing the parties to sit down to talk about permit terms.

Complicated jurisdictional and environmental issues in a permitting process

When a global corporation was developing a new, MetroWest headquarters campus, it ran into a thorny jurisdictional issue. A key part of the project, a large parking garage containing offices and training center, straddled two town lines. This meant two, complex sets of hearings and applications. There was also an environment compliance component, because of the development's proximity to a wetlands. We, along with a team of engineers and environmental experts, successfully addressed state and federal regulatory factors, and the permits were issued.

Secured a favorable decision before the MA Department of Environmental Protection

Our client operates the Indian Princess lake cruise on Webster Lake. Fifteen residents living near Webster Lake appealed the validity of a Draft Waterways License issued to our client, alleging that the state should not have issued the license due to, among other issues, interference of the Indian Princess cruise with existing water vessel courses. Upon review of relevant law and facts, the state official presiding over the appeal affirmed the Indian Princess' Draft Waterways License, finding that the appellants failed to demonstrate that the state improperly issued the license.

OTHER EXPERIENCE

- Amicus brief for our client, Green Berkshires, Inc. in support of the EPA on the Housatonic PCB cleanup; the hearing, which lasted 6 hours, took place on June 8, 2017 in Washington D.C. before the EPA's Environmental Appeals Board.
- Major educational non-profit in development and permitting for three separate residential/affiliate housing projects in a riverfront protection area. Obtained MWRA, DEP c. 91 and DCR approvals for projects, including a determination that no DCR architectural review was required for one project fronting on a state registered historic parkway and DCR authorization to move prohibited construction vehicles on the same parkway (which could not otherwise be delivered to the site and were needed to complete the project).
- Regional developer of 40B project in environmental permitting matters including MEPA review, wetlands permitting, and resolution of Chapter 21E site conditions alleged to threaten public and private water supplies.
- Massachusetts Turnpike Authority in the defense of claims separately brought in Superior Court by about 30 property owners under Chapter 21E and common-law for alleged property damages and personal injuries associated with groundwater contamination from oil releases at service areas along the MassPike in Charlton. Reported as *Scavone v. Massachusetts Turnpike Authority*, Worcester Superior Court (No. 94-1098,) 1994 WL 902896; *Kempinski v. Massachusetts Turnpike Authority*, Worcester Superior Court (No. 99-1277B), 11 Mass. L. Rptr. 435; *Zagloba v. Massachusetts Turnpike Authority*, Worcester Superior Court, 11 Mass. L. Rept. 414.
- Declaratory judgment action contesting MassDEP's interpretation of the term "oil" as used in the Massachusetts Contingency Plan; reported as *Peterborough Oil Company, LLC v. Department of Environmental Protection*, 474 Mass. 443.
- Defense of claims brought against a municipality for damages and personal injury arising out of the release of gasoline from underground storage tanks. Reported as *Gleason v. Town of Bolton*, Worcester Superior Court (No. 99- 01194), 14 Mass L. Rptr. 678.