

Due Diligence

Attorney Counsels Clients on Environmental Compliance



Working on the frontlines of environmental regulation compliance, Mike Ford, JD/MS '95, counsels business clients not to let down their guard due to the down economy. Cost-cutting on environmental compliance and related legal counsel can be extremely costly to companies—and even fatal—as the new administration ramps up enforcement.

JASON WISE

“**A**STRONOMICAL...STRATOSPHERIC...Start adding zeroes...” That’s how law alumnus Mike Ford describes the potential liabilities for corporate noncompliance with extraordinarily complex environmental protection laws. “The government’s leverage is huge and can have a severe impact on the ability to stay in business,” says Ford. “A lot of people don’t understand that.”

But Ford is working to increase understanding of and compliance with multilayered federal, state, and local environmental laws among his corporate and pro bono clients at the Phoenix office of Bryan Cave LLP. He also strives to educate other businesses, attorneys, and officials about environmental issues via numerous publications in *Environmental Law Reporter*, *Journal of Environmental Management*, *Arizona*, and other journals, and through lectures to business, legal, and environmental groups.

“We have the most comprehensive and complicated environmental regulations in the world,” says Ford, “so the biggest challenge is first knowing what compliance means. Often this confounds even the regulators. With federal, state, and local compliance issues—and with overlapping laws—emissions and discharges could be subject to any number of regulations.”

Ford, a Bryan Cave partner, also helps clients with enforcement defense when environmental regulators bring actions, providing litigation support and, in most cases, negotiating a settlement without going to court.

THE ST. LOUIS NATIVE also provides environmental counsel in real estate transactions. “The potential liabilities are enormous and often unforeseen, so it’s prudent to do appropriate due diligence before acquiring commercial or industrial property,” says Ford. When properties with environmental issues change hands, he works to allocate the risks and liabilities between buyer and seller.

Such “brownfield developments” represent a complex portion of his practice—from project feasibility analysis to participating in voluntary cleanup programs to obtaining environmental insurance and regulatory approval. But brownfields often present a potential Pandora’s box for owners, says Ford: “There are large incentives not to deal with a contaminated site because you don’t know what you’re going to open up.”

Which is what happened to a group of Franciscan Friars in what Ford calls “the most fulfilling case in my short career.” The case was the subject of a 2007 front-page *Wall Street Journal* article, “Friars Who Owned Polluted Mine Get All Sorts of Help: Prayer and a Good Lawyer; They Risked Costly Fines Over Arizona Toxic Waste.”

The Friars inherited partial ownership of the Gibson Mine in Gila County, Arizona, 70 miles east of Phoenix, in 1970. Copper miners had leased the site sporadically since the 1900s, but the operations were halted by regulators in the 1990s. Then, in 2003, the state threatened to sue the Friars over acidic, metal-bearing runoff from the abandoned mine facilities into a nearby creek. The Friars, who take a vow of poverty and follow the teachings of

St. Francis of Assisi (who professed man’s kinship with the land), could not bear the millions of dollars needed for cleanup. Yet, says Ford, “They had a desire to do what they could for the environment, as St. Francis had.”

Ford stepped in to organize a solution for his pro bono client. He urged the Friars to take full responsibility to gain maximum leverage in negotiations with various state and federal regulatory agencies and persuaded the other owners to donate their shares to the Friars in exchange for being let off the environmental cleanup hook. He got other Bryan Cave clients, including another mining company and a metal recycler, to pitch in on the \$2.2 million project. Ultimately, the Friars hope to recoup their share of the cleanup expense by selling the decontaminated land for development.

Such copper mining issues are abundant in Arizona. “Copper mining is a cyclical business dependent on market prices,” Ford says, which historically has led to environmental problems in Arizona and other Western states. The EPA says some 100,000 abandoned mines of various sorts there pollute 40 percent of streams.

FORD’S RAPID RISE in the ranks of environmental law got a jumpstart thanks to his dual Washington University degrees—a JD combined with an MS that focused on environmental issues from the School of Engineering & Applied Science. That enabled him to focus immediately on environmental law when he first joined Bryan Cave at its St. Louis headquarters.

“It gave me a leg up. I hit the ground running when most associates are searching about for their niche,” he recalls. “I went to work right away in the firm’s environmental group.”

In the ensuing years, Ford has written and lectured on renewable energy incentives, water quality, real estate due diligence, brownfields liability, redevelopment of contaminated property, and the impact of climate change initiatives on business. He recently was elected 2009 vice president of the Phoenix chapter of the Academy of Certified Hazardous Materials Managers (ACHMM), having previously served as president.

Ford says he first became interested in environmental law when taking a survey course during his second year of law school, and got involved in the Environmental Law Society, where he learned of the joint-degree program.

“It’s a great program, and I highly recommend it,” says Ford. “I have no shortage of good things to say about Washington University. The quality of teaching was, in my estimation, far superior.”

He also gives ample credit for his preparation to Maxine Lipeles, senior lecturer in law and co-director of the law school’s Interdisciplinary Environmental Clinic, and Michael Cannon, adjunct professor of law and the University’s executive vice chancellor and general counsel, with whom he studied environmental insurance coverage.

He calls Lipeles “a great mentor who really encouraged me to pursue environmental law,” and says Cannon “manifested a true concern for students and the subject matter.” IIII

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