



## Environmental & Natural Resources

In the complex, rapidly changing world of environmental law, experience is critical for our clients when selecting legal representation. Foster Pepper's environmental attorneys have devoted their careers to understanding and interpreting the nuances of this vast area, and advise clients on a wide range of federal and state regulatory, compliance, enforcement, permitting, siting and legislative matters.

Our attorneys have years of experience addressing environmental issues associated with the most complex projects in the region, which gives our attorneys a unique ability to solve our clients' problems in a practical and efficient manner. When necessary, all of our environmental attorneys have extensive litigation experience in various administrative forums and in trials and appeals in state and federal courts throughout the region.

### AREAS OF FOCUS

#### Air Quality

Our Environment & Natural Resources attorneys guide clients through the complexities of the Clean Air Act and other air quality requirements. We offer experience in air quality permitting processes, compliance issues, environmental audits, emission test methods, transportation and air conformity, and defending against enforcement actions.

#### Brownfields and Contaminated Property

Foster Pepper's Environment & Natural Resources attorneys have broad experience with environmental

cleanups, prospective purchaser agreements, permitting and real estate transactions provide our clients the premier platform for brownfields cleanup and redevelopment projects and have a successful track record finding cost-effective, practical solutions that have resulted in many successful cleanup and redevelopment projects. We have experience representing clients in matters regarding cleanup of state and federal Superfund sites and RCRA corrective actions.

#### Endangered Species Act

We advise clients on all aspects of the Endangered Species Act (ESA). We have represented cities and counties that seek advice on the "take" prohibition and the consultation requirements for development, water, sewer and storm water utilities, critical areas protection, and shoreline development. We advise major institutions and real estate developers on ESA risk avoidance, permitting and compliance. Our attorneys have advised clients on biological opinions, species inventories, status reviews, listing rules, critical habitat designations and conservation plans.

#### Environmental Due Diligence

Our attorneys know that early identification of environmental issues is critical when analyzing and valuing risk associated with real estate and business transactions. Through hundreds of successful transactions, we have developed a cost-effective, efficient approach to due diligence, which allows us to quickly identify issues and implement creative solutions that result in successful transactions. We regularly help clients with regulatory advice on all aspects of

## Environmental & Natural Resources

environmental due diligence, draft protective covenants, representations, warranties and indemnification, which can help minimize liabilities in transactions.

### Environmental Enforcement and Citizen-Suit Actions

We have successfully represented clients in more than 75 agency and citizen-suit actions. We have represented both private and public sector clients in some of the highest profile enforcement actions in the Pacific Northwest.

### Environmental Litigation

Foster Pepper's environmental litigators provide experienced counsel at any phase of the administrative and judicial process. Our vast experience includes a successful track record of agency and government challenges, clean up, citizen suits, white collar criminal defense work and more.

### SEPA/NEPA

SEPA and NEPA compliance are critical elements of the site-selection process because they harbor the greatest potential for project delay and legal challenge. We reduce the cost and delay of EIS preparation by working closely with technical consultants to determine the appropriate scope of impacts, alternatives, and mitigation measures to be included as well as the appropriate detail of the analysis.

Because SEPA and NEPA determinations are legal as well as technical, we work closely with technical consultants in the original design and specifications of an EIS. We have assisted public agencies in avoiding unnecessary SEPA/NEPA compliance expense while maximizing legal defensibility for numerous regional facilities.

We handle every type of project, including universities, school districts, hospitals, ports, and airports, as well as retail stores, shopping centers, residential subdivisions, wireless communication facilities and housing projects, many of which involve the defense of actions in superior court.

### Solid Waste

Foster Pepper has represented numerous local governments in a broad range of solid and hazardous waste matters and have extensive experience in solid waste disposal, the creation of local improvement districts for transportation facility financing and other municipal solid waste matters.

### Water Quality

Water quality issues are at the center of some of the most complex and pressing environmental issues in the Pacific Northwest. Foster Pepper attorneys have extensive experience in all aspects of surface and ground water quality, which allows us to provide our clients with strategic, cost-effective advice. We have a demonstrated track record of providing clients with water quality solutions that not only achieve our clients' objectives, but often minimize or eliminate the risk of future water quality issues. We have successfully represented clients in more than 75 agency or citizen-suit enforcement matters and have a solid track record in permit appeals. Our work has involved some of the most complex water quality permits in the country.

### Water Rights

The firm's Water Rights team helps clients navigate the complex laws and regulations affecting water rights in Washington state. We offer a comprehensive understanding of state water law, Washington State Department of Ecology and Department of Health statutes and rules, and Native American treaty rights.

### REPRESENTATIVE WORK

#### Representative Projects

- Representation of a Coalition of more than 20 clients in challenging Municipal Stormwater NPDES General Permit
- Representation of Spokane County in connection with its Regional Reclamation Facility, conveyance and outfall
- Representation of Spokane County on the Spokane River Dissolved Oxygen TMDL

## Environmental & Natural Resources

- Representation of Spokane County on the Spokane River Toxics Reduction Task Force, as a straight-to-implementation approach to PCB reduction in the Spokane River
- Representation of multiple large agricultural businesses in negotiating Administrative Consent Order with EPA under Safe Drinking Water Act thereby avoiding unilateral enforcement action
- Representation of a confidential client in EPA DOJ enforcement action under the Clean Water Act
- Representation of Pierce County in an appeal of Phase I Municipal Stormwater General Permit
- Representation of confidential clients in EPA DOJ water quality enforcement actions
- Representation of the Northwest Dairy Association in a successful appeal of a state-wide NPDES general permit
- Representation of an agriculture client in penalty action, resulting in Ecology completely rescinding the penalty
- Representation of multiple agricultural clients in agency enforcement actions alleging violations of state and federal enforcement actions resulting in withdrawal of threatened penalties and successful settlement
- Representation of confidential clients in grand jury investigation alleging violations of the federal Clean Water Act
- Representation of CH2M Hill and Spokane County with respect to Use Attainability Analysis Petition to Washington State Department of Ecology for Spokane River dissolved oxygen
- Representation of a Coalition of 30 permittees in successfully challenging a state-wide general permit
- Rosemere Neighborhood v. City of Vancouver - Clean Water Act citizen-suit dismissed on summary judgment
- CARE v. DeRuyter Brothers Dairy - Plaintiff voluntarily dismissed Clean Water Act citizen-suit
- Community Association for Restoration of the Environment v. Washington State Department of Ecology - Successful representation of intervenor before the Pollution Control Hearings Board and the Court of Appeals in appeal of state-wide CAFO General Permit
- Coalition of Governmental Entities v. Washington State Department of Ecology - Successful representation of coalition of 30 local governments in multi-phase appeals of state-wide Municipal Stormwater Permits
- City of Normandy Park v. Ecology - Successful representation of the Port of Seattle resulting in dismissal of third-party appeal
- Ecology v. DeRuyter Brothers Dairy - Successful representation of a dairy resulting in Ecology voluntarily rescinding penalty
- Airport Communities Coalition v. Department of Ecology and the Port of Seattle - Co-lead trial counsel for the Port of Seattle in litigation over water quality impacts related to the Port Seattle's planned construction of a third runway at Seattle-Tacoma International Airport. The case involved not only potential soil and groundwater contamination but also technical areas as diverse as earthquake stability, fish toxicology, stormwater quality and wetlands impacts. Tried the case to the Pollution Control Hearings Board in 2002, which was the largest and most complicated appeal of a water quality permit ever decided by the Board. Argued the appeal to the Washington Supreme Court, which resulted in a 9-0 decision in the Port's favor. Port of Seattle v. The Pollution Control Hearings Board, 151 Wn.2d 568 (2004)
- Spokane County v. USF&G, et al. - Successfully represented the County in an action for indemnification of CERCLA clean-up costs from liability insurers

### Representative Cases

- Washington Trout v. McCain Foods, Inc. - Clean Water Act citizen-suit dismissed on summary judgment; affirmed by the Ninth Circuit Court of Appeals
- West v. Stephen L. Johnson, et al. - Clean Water Act citizen-suit dismissed for lack of subject matter jurisdiction