

SITE INVESTIGATION AND CLEANUP REPRESENTATION

State Cleanup Programs

Hessian & McKasy works extensively with clients to navigate the legal, technical, and practical aspects of contaminated site remediation projects under state cleanup programs. These projects include brownfield redevelopments through voluntary cleanup programs, as well as cleanups at active commercial and industrial facilities pursuant to state Superfund and corrective action enforcement authorities.

The presence or potential presence of contaminated soil, groundwater, soil vapor, indoor air or other environmental media – whether due to recent spills or historic site activities – can complicate the use and redevelopment of real property, interfere with project financing, and result in the imposition of cleanup liability on site owners, occupants and other parties. Hessian & McKasy’s attorneys, and the Firm’s technical consultant partners, possess decades of combined experience counseling clients on all aspects of site remediation issues. We help clients find innovative, practical and cost-effective cleanup solutions, resulting in state approvals consistent with business objectives and that are protective of human health and the environment. When appropriate, we undertake cost recovery claims seeking reimbursement from responsible parties.

Our familiarity with state cleanup programs is wide-ranging, including completion of numerous projects under Minnesota’s Voluntary Investigation and Cleanup (“VIC”) and Petroleum Brownfields Programs. Hessian & McKasy’s knowledge arises from working with clients and Minnesota Pollution Control Agency (“MPCA”) staff that manage these programs through the development and modification of these programs over the years. We have helped clients with cleanups in states across the country.

Attorney and Environmental Practice Group Chair Joseph Maternowski was recently appointed to the MPCA’s Stakeholder Group for the PFAS Remediation Program element of the MPCA’s PFAS Monitoring Plan. The PFAS Stakeholder Group will develop cleanup standards for PFAS in soil, groundwater and other media that will be applicable to voluntary cleanups and at sites where the MPCA is using its enforcement authority to compel responsible parties to undertake cleanups.

Elements of our State Cleanup and Remediation Program Practice include the following:

Consultant and Contractor Retention: Hessian & McKasy has worked with numerous environmental consulting firms and remediation contractors on state cleanup programs projects. We advise clients on selecting environmental consulting firms and related professionals, using our experience to suggest the right “fit” between a particular consultant or contractor and each site’s contamination issues and intended use. The firm drafts requests for proposals, evaluates statements of qualifications and bids, and counsels clients on the final selection process. Hessian & McKasy also routinely reviews and negotiates consultant and contractor contracts and agreements on our clients’ behalf.

Site Investigation Review: Based on our experience with contamination scenarios at a variety of sites – ranging from former service stations and dry cleaners, to agricultural properties and to major industrial facilities such as platers, refineries and manufactured gas plants – Hessian & McKasy works with the clients consultants to design appropriate, cost-effective, and comprehensive strategies to investigate and remediate contamination at each property. Our legal experience and our work on a variety of impacted sites helps to ensure that the number, location, and type of soil borings, soil vapor monitoring points and groundwater monitoring wells installed, laboratory analyses that are run, and other aspects of site investigations will accurately characterize contamination and comply with all relevant state cleanup program statutes, regulations and, where applicable, guidance documents.

Data Evaluation and Remedial Strategy: Upon receipt of data, Hessian & McKasy helps clients understand the magnitude of any regulated substances detected in the context of state cleanup standards relevant to the intended use of the property, differentiating material contamination issues from insignificant concerns. Our attorneys and our partner technical consultants then work with the client’s Environmental Health & Safety staff, business owners and managers, land planners and architects, and other team members to devise an overall remediation strategy to achieve closure under the state cleanup program efficiently and consistent with business objectives. We regularly counsel clients on remediation projects involving diverse issues such as soil excavation and disposal, groundwater treatment, pathway elimination through capping and other engineering controls, and mitigation of vapor intrusion risks from soil or groundwater impacted by volatile organic compounds.

Agency Interaction: Over the years Hessian & McKasy has worked closely with regulatory agency officials on state cleanup program projects. In many cases, our attorneys and our partner technical consultants discuss site investigation results and remedial strategy directly with agency technical and legal staff, both through informal consultations and scheduled project meetings. These interactions help obtain up-front agency concurrence on the investigation and remediation of site conditions and the reuse/redevelopment approach, moving cleanup projects ahead with a measure of predictability.

Report Review: We routinely review draft reports prepared by our clients’ consultants before submission to state cleanup program staff and the public. These reviews focus on compliance with relevant state requirements and sensitivity to confidentiality and liability issues, while maintaining the integrity of the consultants’ technical opinions and recommendations. We also help to prepare any required forms and notices to accompany agency submissions.

Public Involvement: In some instances, state cleanup programs require public involvement in site remediation and property reuse plans. Even when not required, public involvement may be important to the success of a remediation and/or redevelopment project. Hessian & McKasy helps clients evaluate whether public involvement may be required or prudent and strategize how best to design and implement an effective public involvement process. Typical services include drafting informational correspondence and fact sheets, planning and overseeing public meetings, responding to media inquiries and preparing formal public comment-and-response documents.

Institutional Control Preparation: Remediation projects often involve exposure pathway elimination, such as through placement of a cap over remaining areas of contamination and other engineering controls or prohibitions on residential land uses or groundwater ingestion. State cleanup programs and companion laws like the increasingly widespread Uniform Environmental Covenants Act (“UECA”) require that such remedies be embodied in legal documents – which may include deed notices and restrictions, environmental covenants, and even planned community or condominium public offering statements and declarations – to ensure proper notice and enforceability with respect to current and future site occupants. Where appropriate our attorneys draft institutional controls carefully to comply with legal requirements and minimize potential reopening of a completed cleanup, while putting the contamination and remediation information into appropriate context for site users, future purchasers, and the general public.