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November 4, 2010

**VIA E-MAIL: HMCLAUGHLIN@CI.Benicia.CA.US**

Heather McLaughlin  
Benicia City Attorney  
250 East L Street  
Benicia, CA 94510

**Re: REQUEST FOR QUALIFICATIONS; BENICIA ARSENAL  
INVESTIGATION AND CLEANUP PROJECT,  
PROJECT MANAGEMENT AND LEGAL SERVICES**

Dear Ms. McLaughlin:

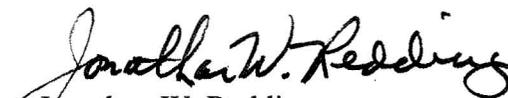
Thank you for briefly discussing the case with Chris Noma and me on November 1, 2010.

Enclosed please find Wendel, Rosen, Black & Dean LLP's response to Request for Statement of Qualifications/Legal Services. We look forward to the opportunity to discuss our experience, billing rates, and how we would approach meeting the City of Benicia's legal needs in a cost-effective manner

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP

  
Jonathan W. Redding

JWR/jjl  
Attachment

# City of Benicia

**Request for Qualifications:**  
*Project Management and Legal Services for the  
Benicia Arsenal Investigation and Cleanup Project*

November 4, 2010

Submitted by:



**Contact: Jonathan W. Redding**  
*jredding@wendel.com*

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## APPROACH

### A. BACKGROUND AND PRELIMINARY STATEMENT OF FACTS

The Benicia Arsenal was acquired by the Federal Government in 1849 and was established as one of five nation-wide arsenals in 1852. During World Wars I and II and the Korean War, the Arsenal provided ordnance support to forces in Siberia, the Pacific, and other Western United States. In addition, the Arsenal provided housing and support facilities to the military mission and personnel. Maintenance of facilities, equipment, and ordnance depot has resulted in soil and groundwater contamination; contaminants include chlorinated solvents, petroleum hydrocarbons, metals, and unexploded ordnance. In 1965, the Defense Department transferred the Arsenal to the City of Benicia (the "City"). The City subsequently leased and ultimately transferred title to Benicia Industries of a large portion of the Arsenal for development of an industrial park and operation of the Port. The Arsenal also contains parcels still owned by the City as well as parcels owned by others.

Since the late 1990s, the U.S. Army Corps of Engineers ("COE") has investigated and cleaned up some areas of the Arsenal under the Formerly Used Defense Sites ("FUDS") Program. However, a determination by the FUDS Program that non-military land uses following military use of the Arsenal (that could have contributed to the known contamination), has halted active involvement by the FUDS Program.

In our experience, this is a typical response from the COE to this type of situation, i.e., once the COE determines that there are other potentially responsible parties ("PRPs"), it halts investigations and cleanup activities and retains attorneys and technical representatives to determine its proportionate share of the CERCLA liability. The COE contends that it has no authority to spend money cleaning up other parties' problems, and so its focus shifts to identifying other PRPs that it believes are required to contribute to the investigation and cleanup through its "PRP Program." See Chapter 5 of the FUD Manual on the PRP Program (link: <http://140.194.76.129/publications/eng-regs/er200-3-1/entire.pdf>).

On September 10, 2010, the Department of Toxic Substances Control ("DTSC") requested a meeting with major property owners, the City and COE. We also understand from a discussion with the Benicia City Attorney, Heather Mc Laughlin, that a further DTSC meeting with other PRPs and stakeholders is scheduled for November 18, 2010.

Based on our recent discussion with DTSC staff, there is an apparent deadline of December 9, 2010, for the Department of Justice ("DOJ") to propose a plan for investigation and cleanup. Potential options for a plan, according to DTSC staff, may be that: 1) DOJ implements investigation and cleanup; 2) DOJ and a major property owner implement investigation and cleanup, assuming some agreed-upon financial cost-sharing; or 3) DTSC issues an Imminent and Substantial Endangerment Order to all property owners.

## B. GENERAL APPROACH TO DEVELOPING SCOPE OF WORK AND BUDGET

Given the short timeframe of this RFQ, we have not developed a detailed budget and scope. We believe that the essence of a successful attorney-client relationship is good communication between attorney and client regarding client objectives, budget limitations and legal, political and practical realities. From these discussions, which might include key council members and litigation consultants and that would be protected by attorney-client privilege, we can develop a scope of work and determine the most cost-effective method of achieving the City's objectives and explain what impacts budget limitations may have on handling the case.

While we have not developed a detailed scope and budget, it is clear to us that the very first task that must occur is for us to meet with the City. The purpose of this initial meeting would be to obtain sufficient information to develop a scope of work and preliminary budget for document review and client discussions as will be necessary to appropriately represent the City in meetings with the PRPs and regulators in November and December of 2010.

It is equally clear to us that the City desires a negotiated solution to this problem with the Federal Government, with the objective that the other PRPs take the lion share of any future investigation and cleanup, while attempting to make possible the redevelopment of the impacted properties to increase the tax base for the City. Of course, it wants to do so in a safe and cost-effective manner. However, it is also clear to us, based on dozens of years of experience, that there are tradeoffs between the level of cleanup, the cost of cleanup, and the limitations on future uses that can arise from an incomplete cleanup; however, such risk-based cleanup may be the basis of compromises that will benefit the City.

Based on the foregoing and our limited knowledge of the impacted properties that are subject of the threatened Order from DTSC, we developed the following preliminary tasks which we propose to discuss further with you during an interview:

- Task 1: Meet with the client and consultants to discuss the case, get key background documents, agree on preliminary objectives and discuss desired and possible outcomes, timeframes, and expenses.
- Task 2: Carefully review documents and schedule follow-up meetings with the City based on our review of the documents. In this connection, we would intend to rely extensively on BASELINE Environmental Consulting ("BASELINE"), our proposed consultant partner, to do the bulk of the technical review with respect to site history and contamination issues, as their rates for review, summary and analysis (for technical, as well as legal issues) will be less than half the rate of any Wendel Rosen attorneys. We have worked with BASELINE for more than 20 years on similar matters and know that they are thorough and efficient. Wendel Rosen will focus on the related legal issues and documents during this task, as well as coordinating the technical review to meet the legal/client needs.
- Task 3: Discuss and consider the availability of insurance coverage for the City, if it is named by DTSC or the DOJ in an Order, or if litigation is filed. (Sometimes it is better for a

party to be actually named in a lawsuit or an Order because it might trigger insurance coverage.) However, here, we would want to know that coverage is potentially available and that the City would be able to withstand the political pressures of being named in a lawsuit or Order prior to recommending any course of action.

- Task 4: Participate in the PRP meetings and regulatory process with the objective of reaching an agreement on the scope of further environmental investigations and cost sharing arrangements. Again, we would rely extensively on BASELINE for assisting us in evaluating all prior technical work and determining the appropriate scope of additional testing for negotiation purposes with DTSC and/or DOJ.
- Task 5: Monitor consultant work, review results and discuss the implications of findings with the City and/or insurance carriers.
- Task 6: Meet with the City and continue any negotiations with regulatory agencies and PRPs.
- Task 7: Discuss initial sharing of further response costs and mechanisms or procedures for possible reallocation of response costs and/or other cost recovery options.
- Task 8: Consider what further environmental investigations might be needed based on the City's future intended reuse of parcels or specific plans, focusing particularly on its own property, but considering overall the intended development pattern for adjacent non-City owned parcels.

All of this work would be performed on a time and material basis, and it is difficult to determine at this point what the budget could or should be. But given the number of acres involved and the complexity of the tasks in what appears to be lack of prior legal work and no current consultant on the City team, it is anticipated that performing the entire scope of these tasks 1-8 will be in the range of a couple of hundred thousand dollars at a minimum over the next couple of years. We can discuss budgeting for the entire scope of work and specific tasks once we meet in person in a confidential attorney-client meeting.

We look forward to fine-tuning the scope of work, reaching some preliminary consensus on specific tasks and related budgets. We can begin meeting with you as soon as possible. The specific schedules are dictated by where the City is in various discussions with regulators and PRPs at this time, which we can discuss in more detail when we meet.

## **ORGANIZATION, MANAGEMENT, AND TEAM MEMBERS**

### **Firm Overview**

Founded in 1909, Wendel, Rosen, Black & Dean LLP (a limited liability partnership) serves a diverse clientele of business, public and individual clients located throughout California. Based in Oakland, the firm also maintains an office in Modesto, California.

The firm currently has 52 attorneys, who collectively advise clients on transactional and civil litigation matters in several related fields, including business; construction; corporate; employment; environmental; estate planning, trusts and probate; green business; insolvency and bankruptcy; insurance; intellectual property; eminent domain; land use; litigation; public entities; real estate; taxation; and technology.

In 2003, Wendel Rosen became the first law firm in the country to be certified as a green business.

In 2007 and 2010, the firm renewed its green certification through the Bay Area Green Business Program.

In addition, Wendel Rosen supports a diverse workplace, and supports many organizations committed to creating a more diverse legal industry.

Wendel Rosen's attorneys are fully supported by a team of professional staff, including paralegals, law clerks, a librarian, IT personnel, word processors, calendar clerks and others who allow the attorneys to concentrate on providing top quality legal services for our clients. The firm maintains many tools and systems that aid in the management and execution of research, document management, recordkeeping, calendaring and billing practices. These include subscriptions to online research tools, litigation support software, time and billing software, and others.

### **Project Management**

Wendel Rosen's approach to working with the City will follow the general guidelines governing all aspects of the firm's practice: delivery of the highest quality legal services to the client in the most cost-effective manner possible. Our experience demonstrates that when matters are analyzed and discussed with the client as early in the process as possible, the time and cost to the public agency in the overall process can be substantially reduced. Effective communication throughout the engagement is also critical, and Wendel Rosen's lawyers keep in constant and ongoing communication with client representatives, providing updates, getting input, and discussing strategy and tactics.

Mr. Redding will be the team lead and has created a team of sufficient size, depth, and breadth of experience to make sure necessary resources will always be available. As discussed previously in this proposal, the firm has a full complement of technology solutions to ensure the smooth delivery of legal services, including calendaring systems, research software and subscriptions, time and billing software, and other practice management tools.

### **Attorney Project Team**

All services provided to the City would be coordinated through Jonathan W. Redding as the team leader. Stephen McKae will serve as alternate lead counsel in the event that Mr. Redding is unavailable. This will ensure continuity in the provision of services and allow a prompt response by the firm to any request for legal services. In addition, our approach to this project assumes ongoing and frequent coordination with the City's general legal counsel and policy administrators.

Please see attachments of this proposal for expanded resumes for attorneys and consultants proposed for this team. A brief overview of each team member and their respective role follows.

**Jonathan W. Redding** is a partner in Wendel Rosen's Environmental and Land Use practices with more than 20 years of negotiating settlements with insurance carriers, regulators and responsible parties, litigating with the same when necessary, and managing investigation and clean up of contaminated properties. Mr. Redding will serve as team leader and it is anticipated that he will do most of the required work to serve the City's legal needs. He will be responsible for work flow and assignments within the team, emphasizing appropriate delegation to assure that the City gets the most cost effective, efficient, quality and timely service possible. He will be ultimately responsible for review and drafting of all comment to the City, ensuring high quality and timely responses to the City's requests. He will serve as the primary interface between Wendel Rosen, BASELINE and the City's staff and counsel.

**Stephen McKae**, an Environmental partner at Wendel Rosen, will serve as backup in the event that Mr. Redding is unavailable. In addition, he has extensive experience with environmental litigation, settlement negotiations and alternative dispute resolution. He may be called upon from time to time for consultation and research on apportionment and allocation issues and CERCLA law. He is also knowledgeable about PRP agreements with lead government agencies and has experience with several suits and settlements in this area, as shown in his biographical information. This year, he was recognized for "Best Paper" by the ABA Section of Environment, Energy and Natural Resources in its 39th Annual Conference on Environmental Law, March 18-21, 2010. The paper addressed the issues related to the U.S. Supreme Courts recent decision in *Burlington Northern & Santa Fe Railway Co. V. United States*, which addressed cost recovery and pre-liability apportionment by degree in CERCLA matters. To read the paper, please visit [www.wendel.com/CERCLADivisibility](http://www.wendel.com/CERCLADivisibility).

**Christine K. Noma** is a partner in the firm's Environmental practice. She has previously worked with Mr. Redding and Mr. McKae on numerous matters representing clients in complex litigation. She will be available to assist or serve as backup if needed. She represents clients in environmental litigation involving cost recovery claims, CERCLA, Clean Water Act, strict liability, negligence and nuisance causes of action and real estate toxic tort cases. She also advises on compliance issues, representing clients before various government regulatory agencies, including the EPA, DTSC, and the RWQCB.

**Greggory C. Brandt**, a partner in Wendel Rosen's Environmental practice, has worked with the above three attorneys for the past 15 years and is available to assist with research, drafting and negotiation, if necessary. Gregg has assisted clients in the coordination of environmental consultants, handled negotiations with environmental agencies and in all stages of litigation through the appellate level. His litigation experience includes CERCLA cost recovery, nuisance and toxic tort.

**Peter J. Laufenberg** is a partner in the firm's Litigation practice group. Peter is an experienced litigator who works aggressively, creatively and efficiently to obtain the best overall financial outcome for his clients. His primary expertise is in insurance law, where his past work on both sides of the table gives him an advantage. He advises his clients on risk management strategies

in real estate development and business transactions, and litigates against insurers to recover policy benefits.

### **Additional Support**

In addition to the attorneys mentioned above, the team may be supplemented with consultants (mentioned below) or firm staff, when research or other work can more efficiently be completed by those individuals. Wendel Rosen employs qualified paralegals, case clerks, litigation specialists and a librarian, who will be available to assist in this matter, as necessary. In addition, the firm maintains a library of resources, including online research tools,

### **BASELINE ENVIRONMENTAL CONSULTING**

We have added BASELINE Environmental Consulting (“BASELINE”), a local woman-owned environmental consulting firm located in Emeryville, to our team for technical support. We have worked with BASELINE for the last 20 years on environmental matters, where they have provided technical litigation support and/or expert services. Based on this longstanding working relationships, Wendel Rosen and BASELINE have worked together seamlessly to provide cost-effective compliance counseling, project management, legal and litigation services to our clients. BASELINE also has 25 years of experience working with regulatory agencies, including DTSC, Regional Water Quality Control Boards, and local oversight programs throughout the Bay Area. Ms. Yane Nordhav, P.G. and principal of BASELINE would be the main technical lead for the team, but would be assisted by, as-needed by Lydia Huang, P.E., Bruce Abelli-Amen, CHG., and Jim McCarty, P.E. Their resumes are attached.

BASELINE was established in 1985 as a multi-disciplinary environmental consulting firm. The company has a staff of 16 professionals covering the disciplines of geology, hydrology, engineering geology, engineering, and risk assessment. All staff members are registered or certified in their respective disciplines. The company’s practice includes hazardous materials management, preparation of documents in accordance with the requirements of CEQA and NEPA, and stormwater management.

Much of the company’s practice involves providing technical and expert litigation support. As part of that practice, they work with legal firms in assessing contamination caused by past land uses and allocating costs for investigation and cleanup to potential responsible parties. Some of the sites they work on have had sites occupied by numerous lessees, each of whom could have contributed incrementally to known contamination. They have developed numerous tools to allocate costs based on chemical use, years of occupancy, and/or land areas. These cost allocation tools are also used in mediations with insurance companies to determine insurance coverage for clients.

BASELINE has also for the past nine years acted as the technical program manager for the former Oakland Army Base on behalf of the Port of Oakland. As such, they are responsible for maintaining all environmental data and participate in negotiations with DTSC, the Regional Water Quality Control Board, the U.S. EPA, the Army, and the City of Oakland regarding cleanup of individual sites at the former Oakland Army Base and cost allocations.

## ORGANIZATION QUALIFICATIONS

### **Environmental Practice Group**

Wendel Rosen is home to a talented team of environmental lawyers. With one of the larger environmental practices in the East Bay, the firm has 9 attorneys who primarily practice within this group. The firm's environmental attorneys work closely with attorneys from other practices within the firm when special needs arise, including those who practice in areas related to public entity representation, real estate, land use, climate change, bankruptcy and insurance. The attorneys in this group handle matters for both public and private sector clients on a variety of complex regulatory, permitting, due diligence, remediation, negotiation and litigation matters. Frequently dealing with local, state and federal regulatory bodies, the team helps clients to navigate projects through this highly technical landscape.

Clients of this practice include commercial and residential real estate developers, public entities and redevelopment agencies, construction companies, and real property buyers and sellers, as well as companies from industrial, agricultural, chemical, pharmaceutical, high-technology, retail and manufacturing industries.

The attorneys are also experienced in dealing with unusual circumstance matters, such as special interests regarding environmental concerns during bankruptcy proceedings.

Along the Oakland estuary and waterfront, we have assisted parties with the remediation of contaminated areas and the recovery of associated costs, as well as with lawsuits and administrative actions. One of the largest basic chemical and agricultural chemical manufacturers in the world has used Wendel Rosen attorneys with respect to CERCLA claims on numerous sites in California and Hawaii, including the successful recovery of response costs against the United States Government.

Other clients include one of the largest agricultural cooperatives in the country, several publicly traded real estate investment trusts, an asphalt roof shingle manufacturer, a permitted recycling facility for dry-cleaning waste solvents, the second largest car dealership in the United States, several scrap metal facilities, and a nonprofit farmlands and open space foundation. The firm also represents several individuals and small partnerships, primarily those who own or purchase real property and seek advice about the liabilities they have inherited or would like to avoid.

Please refer to the "Related Experience" section, beginning on page 10 below, and team member resumes, attached at the end of this proposal, to view more specific examples of experience related to this project.

### **Wendel Rosen Current Project Resources**

Due to attorney-client privilege and as a matter of practice management, it is not the policy of the firm to discuss specific ongoing client engagements. We are confident that the proposed team and supporting personnel will be fully available to respond to all matter needs in this engagement. The depth of the proposed team devoted to this matter, supported by the firm's full complement of resources, will ensure that this project will receive prompt, focused attention throughout the engagement. The Wendel Rosen offices are located approximately one half hour

drive away from Benicia (without traffic), so the firm’s attorneys will be able to easily attend in-person meetings and negotiations, as necessary.

**BASELINE Current Project Resources**

Current project for the next two years and staff resources include:

Former Oakland Army Base	Lydia Huang, P.E. (30%) Yane Nordhav, P.G. (10%)
Port of San Francisco, As-Needed Environmental Service	Yane Nordhav, P.G. (5%) Bruce Abelli-Amen, CHg (20%)
San Francisco Department of Public Works As-Needed Environmental Services	Yane Nordhav, P.G. (5%) Jim McCarty, P.E. (15%)
Port of Oakland, various as-needed technical support for litigation and insurance matters	Yane Nordhav, P.G. (10%) Lydia Huang, P.E. (10%)

**SCOPE OF WORK (Please see Section B under “Approach” above)**

**PROPOSED PROJECT SCHEDULE**

Wendel Rosen will work closely with the City to meet the demands of the project and to develop a comprehensive plan. The full scope of work, with project schedule, will be among the first tasks to work on. We can start immediately and bring in resources as necessary to meet the City’s schedule. See also Section B under “Approach” above.

**PROPOSED BUDGET**

Until more information becomes available regarding the specifics of this engagement, including developments from the November 18, 2010 meeting with the jurisdictional agencies and additional due diligence with the City, it will be difficult to determine a precise project budget. As discussed previously in the Task section, it is anticipated that the matter will likely be in the range of a couple of hundred thousand dollars at a minimum.

Below is a list of hourly rates that the team’s attorneys customarily charge to our public agency clients. As additional information regarding the engagement becomes available, we would be willing to discuss alternative fee arrangements and billing structures based on the type, amount and scope of work.

Wendel Rosen Rates:

<b>Professional</b>	<b>Hourly Rate</b>
Jonathan Redding	\$450
Stephen McKae	\$450
Christine Noma	\$450
Peter Laufenberg	\$450
Greggory Brandt	\$350
Paralegals	\$140 – 160
Case Clerk/Litigation Specialist	\$110 – 120
Librarian	\$160
Graphics Specialist	\$130 - 150

BASELINE Rates:

<b>Professional</b>	<b>Hourly Rate</b>
Yane Nordhav, Principal/Technical Director	\$175
Lydia Huang, Project Manager, Senior Engineer	\$160
James McCarty, Civil Engineer	\$150
Bruce Abelli-Amen, Principal, Certified Hydrogeologist	\$160
Word Processing	\$90
Clerical	\$85

## REFERENCES, RELATED EXPERIENCE, AND EXAMPLES OF WORK

### Related Experience with References

Wendel Rosen has worked with many clients, both public entities and private parties, over the years in the specific areas contemplated by this RFQ. Following are several references who can attest to our work in this area.

#### 1. Client: Port of Oakland, Oakland, California

**Port of Oakland v. ExxonMobil.** After trying to negotiate a settlement with ExxonMobil, we filed suit against ExxonMobil and negotiated insurance coverage for the Port of Oakland (the "Port") from its primary insurance carrier to cover the cost of prosecution as well as defense of government cleanup demands (from the SF Regional Water Quality Control Board). As a result, the Port recovered millions of dollars in investigation and past costs and also caused ExxonMobil to clean up a 25-acre site impacted by fuel hydrocarbons and potentially explosive methane gases at an estimated cost well in excess of \$10,000,000.

**Team:** Jonathan Redding and Steve McKae, co-lead counsel. Gregory Brandt, attorney.

**Lot 12-Port of Oakland.** Entered into first DTSC voluntary consent decree under DTSC's Brownfields Program to redevelop former manufactured coal gasification site into 6 theatre multiplex. Negotiated multimillion dollar settlement for cost recovery and economic damages for the Port of Oakland that paid for entire cleanup program. BASELINE was the technical lead for this project.

**Team:** Jonathan Redding, lead attorney; Gregory Brandt, attorney.

**Ninth Avenue Terminal/Oak to Ninth.** Recovered millions of dollars in cost recovery from PRPs and insurance companies to fund site characterization and groundwater monitoring expenses. Assisted the Port in negotiating for the redevelopment of the property as part of 32-acre multiuse site. As part of the transactional phase, Wendel Rosen represented the Port in all aspects of an \$18 million sale of 32 acres of property to Oakland Harbor Partners ("OHP"). In the environmental context, the DTSC and OHP entered into a Voluntary Cleanup Agreement and a Standard Agreement under California's Land Reuse and Revitalization Act Program ("CLRRA Agreement") under AB 389 and SB 143. Wendel Rosen represented the Port's interests in commenting and negotiating the terms of the CLRRA Agreement with the DTSC and OHP. Wendel Rosen also negotiated on behalf of the Port the terms and conditions of the allocation of environmental liabilities between the Port and OHP in the Option Agreement and the Purchase and Sale Agreement. Wendel Rosen also represented the Port in enacting legislation with the State Lands Commission for the conversion of portions of the property from public use to private development.

**Team:** Jonathan Redding, team lead for litigation and preliminary negotiation. Chris Noma, team lead for subsequent phases.

**California Department of Toxic Substances Control v. Port of Oakland (Howard Terminal).** The California Department of Toxic Substances Control (“DTSC”) issued an address environmental contamination at the Charles P. Howard Terminal Site. The Port filed a lawsuit pursuant to CERCLA against Pacific Gas & Electric (“PG&E”) as a responsible party. The consultant retained to respond to the Order and to serve as a consultant in the lawsuit against PG&E was BASELINE. A settlement was reached with PG&E for contribution to fund the remedial action. Thereafter, agreements were reached with several of the Port’s insurers for funding of environmental investigation and legal costs. With legal oversight, BASELINE completed the environmental investigation and a remedial action plan was completed as required by the DTSC. BASELINE was the technical lead on this project.

**Team:** Chris Noma, lead attorney; Gregory Brandt, attorney.

**California Department of Toxic Substances Control v. Port of Oakland (Former McGuire Terminal).** The DTSC issued an Imminent and/or Substantial Endangerment Determination and Remedial Action Order (“Order) against the Port. The Order required the Port to investigate and address environmental contamination at the Former McGuire Terminal site. BASELINE was retained to respond to the Order. The Port filed a lawsuit against Kinder Morgan Energy Partners, LLP (“Kinder Morgan”) and GATX Industries (“GATX”) for contribution under CERCLA. A settlement was reached with Kinder Morgan and GATX for contribution to fund the remedial action. Thereafter, agreements were reached with several of the Port’s insurers for funding of environmental investigation and legal costs. With legal oversight, BASELINE completed the environmental investigation and a remedial action plan was completed as required by the DTSC. BASELINE was the technical lead on this project.

**Team:** Chris Noma, team lead; Jonathan Redding and Gregory Brandt, attorneys.

**California Department of Toxic Substances Control (Former Oakland Army Base).** The DTSC and the City of Oakland, the Oakland Redevelopment Agency and the Oakland Base Reuse Authority (collectively “City”) entered into a Consent Agreement for environmental clean up of the Former Oakland Army Base (“OAB”). The Port and City reached a Memorandum of Agreement (“MOA”), which, inter alia, agreed upon the Port’s responsibilities for environmental clean up related to the OAB. Under the terms of the MOA, the Port and the City agreed to respond to the DTSC directives. Wendel Rosen provided legal assistance in establishing the Army’s liability for environmental costs, which led to a significant contribution by the Army of the Port’s and City’s clean up costs. BASELINE was the technical lead for this project.

**Team:** Chris Noma, lead attorney; Jonathan Redding, attorney.

References:

David L. Alexander, Esq., Port Attorney

Michele Heffes, Esq., Office of Counsel

Port of Oakland

530 Water St., 4th Fl.

Oakland, CA 94607

Ms. Heffes: (510) 627-1348; mheffes@portoakland.com

Mr. Alexander: (510) 627-1340; dalexander@portoakland.com

**2. Client:** Dermody Properties, Reno, Nevada

**Dermody Properties-Nevada case against U.S. Army/U.S. Air Force at Stead Army Base.** Negotiated settlement, recovered millions of dollars in cost recovery for client. Negotiated Consent decree between State of Nevada Environmental Protection Agency and U.S. Army and U.S. DOJ and multiple responsible parties.

**Team:** Jonathan Redding, lead environmental counsel. Kent Robison of Robison, Belaustegui, Sharp & Low, Reno Co-Counsel.

References:

David Loring, CEO [previously, primary client contact at Dermody Properties]

Equiterra Properties

140 W. Huffaker Lane, Ste. 509

Reno, NV 89511

(775) 842-0520

dloring@equiterraproperties.com

Bruce D. Storey

Director, Investment Committee & CFO Emeritus

Dermody Properties

5500 Equity Avenue

Reno, NV 89502

(775) 335-8080

bstorey@dermody-properties.com

**3. Client:** County of Napa, Napa, California

**Napa County and Napa Flood Control District v. City of Napa, Texaco, Chevron and Union Oil Company.** Represented the plaintiff and filed litigation against the parties who caused or contributed to the pollution in a site adjacent to the Napa River at Third and Main in downtown Napa. The modern courthouse now sits on this site. As plaintiff, we recovered all the costs of investigation, prosecution of the case and the cleanup from the defendant oil companies.

**Team:** Jonathan Redding, lead attorney.

References:

Robert Westmeyer, Esq., County Counsel

County of Napa

1195 Third St., Room 301

Napa, CA 94559-3001

(707) 253-4521

**4. Client:** Pat Stull; San Pablo and Richmond, California

**Stull v. American Standard.** Represented the owners of the property adjacent to the American Standard Superfund Site in San Pablo, California. Property located across the street from historic manufacturing facility and initially was not subject to DTSC jurisdiction. Convinced DTSC, through persuasive evidence and negotiations, to add this property to state Superfund list based on our investigation and to name American Standard as the responsible party for the cleanup. Litigation for cost recovery against American Standard led to settlement where our plaintiff client recovered its past costs and attorney fees. Site contamination cleaned and landfilled on an approximately 7-acre parcel, and then had the property purchased from our client at then fair market value (as if it were clean) by American Standard.

**Team:** Jonathan Redding, lead attorney.

Reference:

Pat Stull  
714 Los Palos Drive  
Lafayette, CA 94549-5327  
(925) 284-4707

**5. Client:** The Dow Chemical Company, Los Angeles, California

**Del Amo Site,** Los Angeles, California, EPA ID# CAD029544731

This 300-acre former government-owned World War II synthetic rubber plant has been redeveloped as an office and industrial park. After process wastes and benzene contamination was discovered in soils and groundwater, we pursued cost recovery claims against the United States and former developers and operators on behalf of The Dow Chemical Company. We established the liability of the United States for 100% of Dow Chemical's cleanup costs in litigation. To gain approval of a \$9 million cap and vent remedy in lieu of an alternative \$97 million excavation, we entered negotiations with the United States, another operator and local residents to relocate the residents and purchase their homes. A total of 57 residences were purchased and razed at the expense of the other operator and the United States. We have participated with USEPA and others in assessment and development of options for institutional controls to prevent inadvertent chemical exposure by occupants and construction workers.

**Team:** Stephen McKae, lead attorney.

Reference:

Mike Kay  
Legal Department  
THE DOW CHEMICAL COMPANY  
2030 Willard H. Dow Center  
Midland, MI 48674  
Ph: (989) 636-1934  
[mtkay@dow.com](mailto:mtkay@dow.com)

Scott. R. Pennock  
Law Department  
THE DOW CHEMICAL COMPANY  
2030 Dow Center Fl 7  
Midland, MI, 48674  
Ph: (989) 636-0452  
spennock@dow.com

**6. Client:** Redico Property. Berkeley, California

**Redico Property.** Entered into voluntary consent agreement with DTSC for client, in lieu of imminent and substantial endangerment order to characterize and develop remediation plans for abatement of solvent plume and vapor intrusion problem at solvent site in Berkeley.

**Team:** Jonathan Redding, lead attorney.

Reference:

Craig Willian, Redico  
One Towne Square, Suite 1600  
Southfield, MI 48076  
(248) 827-1700  
cwillian@redico.com

## **ADDITIONAL RELATED WENDEL ROSEN EXPERIENCE**

**Hexcel Manufacturing Site.** Livermore, California.

Negotiated rescission of cleanup and abatement order at former NPL site and final SCR and analysis to enable residential project to be located on site in Livermore.

**Team Lead:** Jonathan Redding.

**Pinedale Groundwater Site,** Fresno, California

The term "Pinedale Groundwater Site" describes a groundwater plume containing chlorinated solvents emanating from the area of the former Camp Pinedale Army Air Force assembly and training center as well as a number of industrial facilities. We engaged in investigation of the contribution of various potential sources and related litigation, resulting in a settlement of claims.

**Team Lead:** Stephen McKae

## **BASELINE REFERENCES, RELATED EXPERIENCE AND EXAMPLES OF WORK**

BASELINE has worked along the Oakland waterfront for 25 years for the Port of Oakland and other land owners to assess soil, groundwater, and sediment contamination and develop cost-effective options for remediation while ensuring limiting our client's long-term environmental liability. We have successfully negotiated beneficial settlements with regulatory agencies and worked with numerous potential responsible parties on individual sites. Our close

working relationship with Wendel Rosen for the past 20 years provides our clients with a seamless team of legal and technical experts.

**FORMER OAKLAND ARMY BASE**

The Port of Oakland awarded BASELINE a contract for assistance on the former Oakland Army Base in 2001. The former Army Base is regulated by both the Department of Toxic Substances Control (“DTSC”) as specified in the final Remedial Action Plan and Risk Management Plan (“RAP/RMP”) and the Regional Water Quality Control Board (“RWQCB”) under Site Cleanup Requirements. The Port-owned portion of the former Oakland Army Base contains a wide variety of subsurface contamination concerns. For example, the RAP identified five RAP Sites that have to undergo investigation and remediation processes consistent with the National Contingency Plan, including preparation of a Remedial Design and Implementation Plan and Remedial Action Completion Report.



In addition to the RAP sites and RMP locations, other environmental concerns at the Army Base include contaminated sediments in the Bay impacted by historical discharges from storm drain outfalls, potentially contaminated ballast and soil along railroad tracks, potential impacts on soil and groundwater due to leakage from and transport along defective storm drain and sanitary sewer pipes, and potential impacts to near-surface soils outside buildings from lead-based paint.

BASELINE is the Technical Program Manager on behalf of the Port of Oakland on all environmental issues related to the Army Base. Some of our specific responsibilities include:

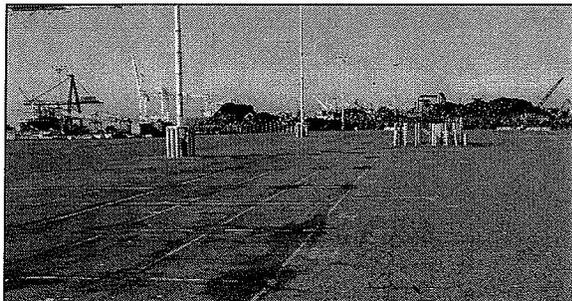
- Interface with DTSC and RWQCB on a regular basis to provide updates on the status of compliance activities and to discuss issues associated with RAP/RMP implementation;
- Strategize with City of Oakland on practical and expeditious approaches to comply with RAP/RMP.
- Implement investigation and remedial actions at five RAP Sites for metals, petroleum, volatile organic compounds, and/or pesticide contamination;
- Oversee other consultants retained by the Port of Oakland assigned specific tasks for RAP/RMP implementation;
- Manage extensive sampling and chemical data using Access database and ArcView.
- Provide training to Port of Oakland staff on constraints imposed by the RAP/RMP, and develop health and safety protocols for utility maintenance staff when working within the Army Base.
- Support the Port of Oakland’s effort to solicit a private entity to redevelop the port-owned portion of the Army Base and to negotiate subsequent agreements.

<b>BASELINE Key Staff</b>	
Yane Nordhav, Principal-in-Charge; Lydia Huang, Program Manager	
<b>Project Reference</b>	<b>Total Budget to Date</b>
Jeffrey Rubin, Associate Environmental Scientist Port of Oakland 530 Water Street, 2nd Floor	\$1,400,000
	<b>Status</b>
	2001 to present

Oakland, CA 94607 (510) 627-1134; fax: (510) 451-5916 Email: jrubin@portoakland.com	Estimated completion: 2013
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**HOWARD TERMINAL, PORT OF OAKLAND**

In 1989, BASELINE was retained by the Port of Oakland to perform a site characterization to determine the extent and magnitude of contaminants underlying Howard Terminal at the Port of Oakland. Howard Terminal is located adjacent to the Oakland Inner Harbor channel and, between 1903 and 1961, the site was occupied by a manufactured gas plant. The operation of the manufactured gas plant generated waste containing contaminants that affected the underlying soil and migrated into the groundwater. The Department of Toxic Substances Control (“DTSC”) provided oversight of the field investigations and remedy implementation for the site.



BASELINE designed an extensive field investigation to characterize the site and provided support to the Port’s Legal Department and outside counsel for its litigation efforts. The investigation indicated that the primary contaminants of concern at the site were polycyclic aromatic hydrocarbons (“PAHs”) and cyanide.

Because the groundwater at the site ultimately discharges into the Oakland Inner Harbor, BASELINE compared the analysis results of sediment samples collected as part of the Inner Harbor dredging project to the investigation results to evaluate whether the contamination at Howard Terminal was a contributing source of PAHs in the sediments. Upon completion of the field investigation, BASELINE developed cost estimates for remediation of the site based on risk-based human health and ecological cleanup goals. The human health risk-based cleanup goals were developed using the ASTM Risk-Based Corrective Actions (“RBCA”) approach for commercial land use and two future utility site worker scenarios. Cleanup goals were developed for soil and groundwater to be protective of human health and aquatic receptors. The remedial approach chosen for the site, with DTSC approval, was monitored natural attenuation with institutional and engineering controls.

During the life of this project, BASELINE prepared a Remedial Investigation Report, a Removal Action Workplan, and a Remedial Design and Implementation Plan. BASELINE also conducted public participation activities and prepared the CEQA documentation for the preferred removal alternative. The site has been certified by DTSC as having been remediated. BASELINE continues to perform groundwater monitoring and assist the Port in implementing the Risk Management Plan required by a Land Use Covenant to Restrict Use of Property and Operations and Maintenance Agreement with DTSC.

<b>BASELINE Key Staff</b>	
Yane Nordhav, Principal-in-Charge; James McCarty, Project Engineer	
<b>Project Reference</b>	<b>Total Budget to Date</b>
John Prall, Project Manager Port of Oakland Env. Planning and Programs 530 Water Street Oakland, CA 94607 (510) 627-1373; fax: (510) 451-5916 Email: jprall@portoakland.com	\$ 1,250,000
	<b>Status</b>
	1989 to present Estimated completion: On-going

## **Standard Agreement**

The City's Standard Consultant Agreement is generally agreeable, but will need to be fine tuned for an attorney services contract.

## **Permits & Licenses**

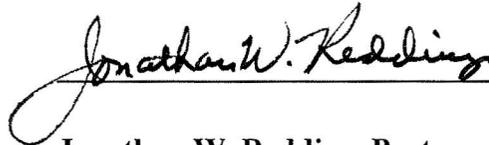
Wendel Rosen warrants that the firm and the individual professionals assigned to this matter currently have and will maintain all appropriate permits, certificates and licenses associated with running our law practice.

## **Insurance**

Wendel Rosen maintains the required and appropriate minimum levels of insurance for general liability, automobile, professional liability, and workers' compensation insurance as set forth by the City.

## **Authority to Bind/Offer Term**

On behalf of Wendel, Rosen, Black & Dean LLP, I am pleased to submit this response to your Request for Qualifications for Legal Services Related to the Benicia Arsenal Investigation and Cleanup Project. I am authorized to bind the firm in this matter and this proposal is a firm offer for a ninety (90) day period.



**Jonathan W. Redding, Partner**

**Wendel, Rosen, Black & Dean LLP**  
1111 Broadway, 24<sup>th</sup> Floor  
Oakland, CA 94607  
(510) 834-6600  
[jredding@wendel.com](mailto:jredding@wendel.com)



## Practice Areas

- Environmental
- Land Use
- Green Business

## Education

- University of California, San Francisco, Hastings College of the Law; J.D., cum laude, member of Thurston Society (1987)
- Golden Gate University; M.P.A. (1979)
- University of California, Santa Cruz; B.A., Politics (1976)

## Experience

Jonathan represents a diverse client base that includes developers, property owners, public entities, auto dealerships, retail and manufacturing businesses. His practice emphasizes land use planning, hazardous waste litigation and environmental issues related to the cleanup, reuse or development of contaminated properties and major development projects.

A former assistant city planner and special consultant to the City of Berkeley's Hazardous Materials Program, Jonathan brings both public administration and technical environmental experience to bear when helping clients to meet the challenges of governmental compliance and permitting for large scale development projects.

Jonathan is very active in lecturing and organizing panels to discuss the implementation of the Global Warming Solutions Act of 2006, a California law that seeks to reduce greenhouse gas (GHG) emissions; SB97, which created a process to address GHG emissions through CEQA standards; and SB375, which requires Metropolitan Planning Organizations to develop Sustainable Community Strategies in their Regional Transportation Plans for the purpose of reducing GHG and creating sustainable livable communities.

As a result of these presentations and articles he authored concerning the nexus of CEQA, SB 375 and GHG reduction policies, Jonathan became a source to legal newspapers and publications on climate change issues, was invited to participate in the UCLA Conference Center at Lake Arrowhead "The Transportation—Land Use—Environment Connection," Annual Symposia in the fall of 2009 and 2010. Similarly, he was invited to join the Board of Directors of the Air Waste Management Association, Golden Gate Chapter.

Jonathan was the Chair of Wendel Rosen's environmental practice group from 2000 – 2007.

## Representative Matters

### CLEANUP COST RECOVERY AND DEFENSE

Jonathan represents plaintiffs and defendants in prosecuting or defending actions to recover costs and damages related to cleanup of contaminated properties. He also represents property owners to obtain insurance to investigate and remediate contaminated sites. He represents owners of underground storage tanks in obtaining reimbursement of cleanup costs from State of California Underground Storage Tank (UST) Cleanup Fund. Recent experience includes:

- **Plaintiff Cost and Insurance Recovery:**
  - Litigated and obtained a settlement agreement from ExxonMobil under which Exxon assumed responsibility for cleanup of extensive petroleum contamination and methane gases from the subsurface of approximately 25 acres of land at no cost to client. Also obtained reimbursement of litigation expenses from client's insurance carrier.
  - Served as outside environmental counsel for the Port of Oakland on numerous cost recovery cases related to redevelopment of Port properties during the past 17 years.
- **Prosecution and Defense of Real Property Fraud Claims:**
  - Defended client alleged with fraud in real property transaction and obtained insurance funding to defend case, investigate site and perform the necessary remediation to obtain site closure at the cost of insurance company.
  - Currently prosecuting fraud and cost recovery case against former owners and operators of auto dealer/service facility on four acre site in Palo Alto.
- **Plaintiff Cost Recovery:**
  - Litigated case against U.S. government at a Formerly Utilized Defense Site (FUDS) and obtained judgment and consent order under which the U.S. government and other responsible parties paid damages to client and assumed all responsibilities for further cleanup.
- **Polanco Act:**
  - Assist property owners in defense against unreasonable government conduct related to contamination cleanups in condemnation proceedings.
- **UST Cleanup Fund:**
  - Represent numerous property owners to obtain reimbursements from the State of California UST Cleanup Fund.

### DUE DILIGENCE, ENVIRONMENTAL COMPLIANCE AND REAL PROPERTY TRANSACTIONS

Jonathan provides legal advice, review, and oversight for the leasing, sale and purchase, and redevelopment of contaminated real property, including coordination with environmental consultants, negotiation with environmental regulators and permitting agencies, drafting of environmental indemnity provisions, and assisting clients in the performance of due diligence for real estate transactions. Recent experience includes:

- **Regulatory and PRP Negotiations/Management of Consultants:**
  - Lead outside environmental counsel for Port of Oakland on potential responsible parties (PRP) negotiations and compliance with Regional Water Quality Control Board (RWQCB) order involving multiple PRPs at the fuel farms supplying Oakland International Airport. This has also involved regulatory negotiations concerning a multi-year phased cleanup due to the decommissioning of the old tank farm facilities and constructing new state of the art fueling facilities. No litigation filed to resolve this case.
  - Successfully negotiated settlements for investigation, cleanup costs, and indemnity from prior owners and operators, such as major oil companies, at numerous locations for property owners without resorting to litigation.

- Successfully negotiated numerous settlements and agreements regarding scope of investigation and cleanup, including DTSC, U.S. EPA, U.S. DOJ several regional RWQCBs, and numerous county health/environmental departments. In most of these cases, Jonathan retained and/or directed and managed the conduct of the investigations, regulatory reports, and negotiations.
- **Brownsfields:**
  - Negotiated and worked on team to sell a Brownsfield site (former contaminated auto dealership with full service garage) utilizing both private environmental insurance and State of California UST Cleanup Fund to facilitate sale and redevelopment of site into mixed-use commercial and residential site in Oakland, California.
  - Assisted client with negotiations of first voluntary cleanup agreement under DTSC's Brownsfield's program for the redevelopment of a former coal-gas manufacturing site into a multiplex cinema in Oakland. Successfully pursued cost recovery against utility company for cleanup costs and economic damages attributable to delayed development losses.
- **Environmental Due Diligence:**
  - Advise clients, including several national corporations, in environmental due diligence for purchase and lease and refinance transactions.

#### **LAND USE, PERMITTING, AND ENDANGERED SPECIES**

Jonathan advises clients on development permits for major projects, including CEQA and NEPA compliance and drafting of EIRs (including air and water quality issues); risk assessment; contaminated site closures and cost-effective reuse strategies; negotiation of mitigation plans for endangered species; wetlands delineation and exemption claims, mitigation and restoration policies; and selection and management of consultants to reduce costs and ensure achievement of client objectives. Recent experience includes:

- **CEQA/NEPA:**
  - Advised developer for reuse of Mare Island Navy Dredge Disposal Ponds in connection with preparation of EIS/EIR and response to comments for proposed commercial reuse and wetlands restoration.
  - Defended client and City of Berkeley in litigation related to project approval pursuant to a CEQA exemption, which was successfully resolved in favor of the City.
  - Assisted Port of Oakland on CEQA compliance related to cleanup actions and site reuse.
  - Wrote White Paper for Alameda County Congestion Management Agency (ACCMA) explaining AB32, SB375 and the challenges and available opportunities to ACCMA.
  - Defended CEQA and legal challenge brought by a citizen group related to Napa County's approval of 360-acre vineyard development.
  - Advised major Napa Valley vintner on CEQA, wetlands and vineyard development permits.
- **Clean Water Act Permits:**
  - Defended developer client from Corps enforcement proceedings and obtained after-the-fact permits for filling of more than five acres of wetlands in connection with a housing and marina development project adjacent to the Sacramento delta, without litigation and without payment of any civil penalties.
  - Defended developer client from potential RWQCB fines and penalties related to failure to control stormwater discharges during major storm events.
  - Defended and successfully settled (for several thousand dollars) RWQCB threatened enforcement action with potential fines of several million dollars.

- **Endangered Species Act:**
  - Represent national housing developer in Central Valley project in connection with strategies and mitigation measures in connection with areas impacted by wetlands, Vernal Pool Habitat Critical Designation, and possible presence of the California Tiger Salamander.
  - Represented owner of proposed 360-acre Napa Valley vineyard project in connection with existence of the endangered red legged frog on the property.
  - Assisted developer on issues related to an endangered Salt Marsh Harvest Mouse.

## Admissions

**State Bar of California**

**United States District Court, Northern District of California**

**United States Court of Appeals, Ninth District**

## Affiliations

**ASTM Vapor Intrusion Task Group**

- Developed E 2600-08 for the assessment of vapor intrusion into structures involved in real estate transactions

**Bay Area Air Quality Management District Indirect Source Review (ISR) Technical Advisory Group**

**Air Waste Management Association, Golden Gate Chapter**

- Board of Directors

**State Bar of California**

- Real Property Section, Environmental Law Section

**Alameda County Bar Association**

## Publications

- “Climate Change Corner: Proposition 23 - Senate Bill 375 Update - Civil War Over Climate Change,” co-author, *The Wendel Report*, November 2010
- “Climate Change Corner: National Climate Change Legislation Struggling & BAAQMD Update on CEQA Thresholds,” co-author, *Wendel Rosen Client Update*, January 8, 2010
- “Climate Change Corner: Legislative and Regulatory Updates, Analysis and Comment,” co-author, *The Wendel E-Report*, Environmental and Real Estate, November 11, 2009
- “BAAQMD GHG Thresholds of Significance Will Have Wide Impact,” *Wendel Rosen Client Update*, September 17, 2009
- “Getting Your Project Approved: The Importance of Programmatic Approaches to Greenhouse Gas Emissions Analysis Under the California Environmental Quality Act,” co-author with Robert D. Shantz, *Wendel Rosen Client Update*, June 9, 2009
- “California Court Upholds \$2.5 Million Fine Against Corporate Officers for Violation of Underground Storage Tank Laws,” co-author with Gregory C. Brandt, *Wendel Rosen Client Update*, January 22, 2009
- “Finally, a Practical Approach to Evaluating Potential Vapor-Intrusion Problems in Real Estate Transactions,” co-author with Gregory C. Brandt, *California Real Estate Journal*, March 24, 2008
- “New Vapor Intrusion Legislation and Industry Standards Will Increase Costs and Time for Real Estate Transactions,” *Wendel Rosen Client Update*, December 14, 2007
- “Vapor Intrusion: New Focus for Due Diligence,” co-author with Gregory C. Brandt, *Brownfield News*, June 2007

## Publications (continued)

- “Environmental Liability Protection for Tenants,” co-author with Gregory C. Brandt, *Area Development*, February/ March 2007
- “California UST Fund Facilitates Brownfield Cleanup,” co-author with Gregory C. Brandt, *Brownfield News*, February 2007
- “Exposure to Mold Alone Not Sufficient to Establish Damages,” co-author with William C. Acevedo, *Bay Area Home Builder*, October/ November 2006
- “Prepare or Perish -- How apartment owners protect against catastrophic mold loss,” co-author with Peter J. Laufenberg, *California Real Estate Journal*, October 23, 2006
- “Strategies for Cost Recovery and Development after *Cooper v. Aviall*,” co-author with Gregory C. Brandt, *Brownfield News*, October 2006
- “New Rules For Environmental Due Diligence,” *The Wendel Report*, Fall 2006
- “Clear As Mud, Supreme Court Provides Scant Guidance for Determining Federal Jurisdiction Over Wetlands,” co-author with Thiele R. Dunaway, *The Recorder*, August 2, 2006

## Speaking and Teaching (Recent List)

- “Climate Change: Agencies Give Guidance,” panelist, Wendel Rosen Educational Seminars, December 9, 2009
- “GHG & CEQA: Straight from the Source,” moderator, Wendel Rosen Educational Seminars, June 10, 2009
- “Cap and Trade Program,” moderator, Wendel Rosen Educational Seminars, May 20, 2009
- “Finally! A Practical Approach to Vapor Intrusion,” co-presenter with Gregory C. Brandt, Wendel Rosen Educational Seminars, April 2008
- Lecturer for the California Redevelopment Association on Brownfields redevelopment and institutional controls
- “CERCLA Clean Up and Cost Recovery,” Northwestern Environmental Training Center, February 8, 2006
- “Remediation of Contaminated Property,” Northwestern Environmental Training Center, February 8, 2006

### REPRESENTATIVE LITIGATION CASES:

*City of Emeryville v. C&S Enterprises, Inc.*

Polanco Act and Condemnation case  
(Successfully settled without litigation)

*City of Richmond v. Campbell, et al.*

Contra Costa County Superior Court  
Case No. C95-03569  
(Contamination cost recovery case)

*Dermody v. U.S.A., et al.*

U.S. District Court  
Case No. C 92 0380MHP  
(Property case, transfer of liability to US Army Corps of Engineers and other responsible parties)

*Donovan v. Chevron, et al.*

San Francisco Superior Court  
Case No. 917089  
(Property damage, loss of use and transfer cleanup liability to Chevron)

*Elmwood Neighborhood Association v. City of Berkeley et al.*

Alameda Superior Court  
Case No. BG0734-2925  
(Defended city and client in writ of mandate proceedings challenging City's determination of CEQA exemption)

*Estate of Edward M. Mannon v. Unocal*

Superior Court of Contra Costa County  
Case No. C89-01271  
(Fraud and property damage – gas station)

*F&P Properties v. Smith, Hexcel et al.*

Alameda County Superior Court  
Case No. V-001959-2  
(NPL site, contamination cost recovery case)

*General Motors Corporation v. County of Alameda, Surplus Property Authority*

(Government Tort Claim – Contamination cost recovery case)

*H2C2 v. Kolo*

U.S. District Court for the Northern District  
Case No. C 02-4555  
(Fraud and contamination property damage)

*Kaiser Marquardt v. The Marquardt Company*

U.S. District Court for the Central District  
Case No. CV03-6109 DT (SHSx)  
(Lease dispute and contamination property damage claims)

*Kinder Morgan Energy Partners v. Port of Oakland*

(Assisted Port in emergency response activities and defended Port from Government Tort Act claim filed by Kinder Morgan)

*Miller v. Unocal, et al.*

Los Angeles County Superior Court  
Case No. VC008290  
(Oil and gas lease, property contamination)

*Napa County Food Control District v. The City of Napa, Texaco, Chevron, Unocal, et al.*

Napa County Superior Court  
Case No. 63600  
(Gas station cleanup cases)

*Oaks Club v. City of Emeryville, et al.*

Alameda County Superior Court  
Case No. 733888-1  
(Cleanup case, valuation of contaminated property)

<i>Peterson v. Dana Corporation, et al.</i>	Alameda County Superior Court Case No. H-170038-5 (State superfund site, cost recovery and liability transfer case)
<i>Port of Oakland v. ExxonMobil Oil Corporation</i>	U.S. District Court for the Northern District Case No. 02-029568 JSW (Contamination cost recovery case, and cleanup and liability transfer to ExxonMobil)
<i>Port of Oakland v. Keep on Trucking, et al.</i>	U.S. District Court Case No. C-95-03721-RB (Contamination cost recovery case)
<i>Port of Oakland v. Pacific Gas &amp; Electric Company, et al.</i>	Alameda County Superior Court Case No. 8001317 (Contamination cost recovery case)
<i>Port of Oakland v. Seabreeze, et al.</i>	U.S. District Court Case No. C-92 0380MHP (Contamination cost recovery case)
<i>Rancho San Benito v. Monterey Air Pollution Control District</i>	Case citation not available (Developer suit under CEQA for confiscatory indirect source rule)
<i>Ravizza v. Lowery &amp; Little, et al.</i>	Santa Clara County Case No. 720166 (Contamination cost recovery case)
<i>Stull v. American Standard, et al.</i>	Contra Costa Superior Court Case No. C91-04959 (Contamination cost recovery case, diminution of property value)
<i>Thomsen v. Powerine, et al.</i>	Alameda County Superior Court Case No. H-169600-4 (Loss of use and property damage case)
<i>Williamson v. Vann's Autobody</i>	(Several cases – contamination cost recovery and property damage)

**Stephen McKae**  
Attorney

Phone: 510.834.6600  
Fax: 510.808.4675  
Email: smckae@wendel.com



## Practice Areas

- Environmental Regulation and Litigation
- Complex Litigation
- Employment and Employee Benefits Litigation

## Education

- University of California, San Francisco, Hastings College of the Law; J.D. (1975)
- Stanford University; B.A., with distinction (1969)
- United States Navy Submarine School, Groton, CT; graduate (1969)

## Experience

Stephen practices with the firm's environmental and employment groups. He has more than 30 years of experience in complex and multiparty litigation and has handled class action matters as both defense and class counsel.

## Environmental Experience

- Cost recovery and enforcement litigation respecting industrial plants, agricultural chemical distributors and formulators, bulk storage facilities, and transmission pipeline releases under CERCLA, RCRA and HSAA, including cost recovery against the United States government for wartime chemical plants
- Toxic tort and stigma damage litigation based on exposures to contaminated sites
- Contaminated site investigation, cleanup, closure and health risk management
- Community relations for contaminated sites and community relocation
- Public agency review of environmental permitting
- Underground Storage Tank Fund claims and other claims related to chemical handling and manufacturing, petroleum refining and abandoned tank sites.
- Contract and permit matters related to landfill operation, expansion, long-term closure costs and transfer of ownership
- County solid waste management planning and waste importation agreements
- Development of waste recycling programs and household hazardous waste programs
- Operating agreements, agency approvals and waste stream guarantees in connection with a proposed waste-to-energy project
- Brownfields redevelopment and public funding
- Occupational safety regulation and enforcement in the construction, demolition, waste disposal, dry cleaning and manufacturing industries

The contaminated sites where Stephen has served as litigation or environmental counsel, or both, include among others:

- Lead counsel, Brown & Bryant (Arvin Plant), Arvin, California, EPA ID# CAD052384021 (*Atchison, Topeka & Santa Fe Railway, etc. v. Brown & Bryant, Inc.*), representing The Dow Chemical Company. Client dismissed on summary judgment.
- Lead counsel, Brown & Bryant (Shafter Site), Shafter, California, EPA ID# CAD009531823 (*Atchison, Topeka & Santa Fe Railway, etc. v. Brown & Bryant, Inc.*), representing The Dow Chemical Company. Pending.

## Environmental Experience (continued)

- Lead counsel, Del Amo Site, Torrance, California, EPA ID# CAD029544731 (*Cadillac Fairview, California, Inc. v. The Dow Chemical Company, et al.*, C.D.Cal. No. CV-83-07996-MRP(Bx)(consolidated with CV-83-8034-MRP(Bx) (Pit Site); *Shell Oil Company v. United States*, C.D. Cal. No. CV-07996-MRP(Bx)) (Plant Site); *Amcena Properties v. Shell Oil Company, et al. (Coca-Cola Bottling Company)*, C.D.Cal.; and related cases), representing The Dow Chemical Company. On appeal, *Cadillac Fairview v. The Dow Chemical Company, et al.*, 41 F.3d 562 (9th Cir. 1994) (determined the Ninth Circuit standard for "arranger for treatment" liability for government-owned contractor-operated (GOCO) war plants under CERCLA). *Cadillac Fairview* was tried to judgment, with an award in favor of Dow Chemical and against the United States for all remedial costs incurred by Dow Chemical. Upheld on appeal, *Cadillac Fairview/Cal., Inc. v. The Dow Chemical Co.*, 299 F.3d 1019 (9th Cir. 2002) (on the brief). One case pending.
- Lead counsel, Del Monte/Oahu Plantation (Kunia Plantation), Hawaii, EPA ID # HID980637631, representing The Dow Chemical Company.
- Lead counsel, Industrial Waste Processing, Fresno, California, EPA ID# CAD980736284 (*Calcot, Ltd. v. Vendo, et al.*, E.D.Cal. Case No. CV-F92-5772 REC) and Pinedale Groundwater Site, Fresno, California. Settled.
- Lead counsel, La Mirada Products, La Mirada, California (*La Mirada Products v. The Dow Chemical Company*, C.D.Cal.), representing The Dow Chemical Company. Settled.
- Lead counsel, Santa Fe Springs Oilfield, Santa Fe Springs, California (*Beaumont Trust, et al. v. The Dow Chemical Company, et al.*), representing The Dow Chemical Company. Settled.
- Lead counsel, United Heckathorn Company, Richmond, California, EPA ID # CAD981436363 (*Levin Metals Corp. v. Parr-Richmond Terminal Company, et al.*, N.D.Cal.), representing The Dow Chemical Company. Client dismissed on summary judgment.
- Lead counsel, Napa Bulk Terminal (*Bay Cities Oil Marketers v. Commercial, Electrical, and Mechanical Maintenance Company, et al.*, Napa County Superior Court), representing Chevron Products Company. Settled.
- Co-counsel, lead litigation counsel, Port of Oakland, Berths 23 and 24 (*Port of Oakland v. ExxonMobil Oil Corporation*, N.D.Cal. 02-02968 JSW), representing the Port of Oakland. Settled.
- Lead counsel, Kinder Morgan Energy Partners aviation fuel pipeline spill, February 2005, representing the Port of Oakland. Settled before litigation.
- Co-counsel, lead litigation counsel, former Kaiser Marquardt aerospace plant, 56 acres at Van Nuys Airport (*Kaiser Marquardt, Inc. v. The Marquardt Company*, C.D.Cal, No. CV03-6109 DT (SHSx)), representing Kaiser Marquardt, Inc. Settled.

## Employment Experience

Stephen's employment, civil rights and employee benefits law experience includes work with employers, public entities and labor unions in a variety of administrative and litigation matters. He handles matters under ERISA, Title VII, ADEA, Americans With Disabilities Act, Executive Order 11246, OSHA, the Family and Medical Leave Act, and corresponding state legislation, as well as proceedings before the National Labor Relations Board, the California Labor Commissioner, and in contract arbitrations and negotiations. He has extensive collective bargaining experience. From 1976 through 1980, Stephen was the Northern California Home Builders Conference member of the standing Board of Adjustment under the Carpenters 46 Northern California Counties master residential construction agreement. In addition, he has represented numerous construction industry pension, health

## Employment Experience (continued)

and apprenticeship trust funds with assets of \$500 million in matters arising under ERISA, including plan structure, benefit improvements, withdrawal liability, COBRA and HIPAA implementation, and fiduciary liability.

## Significant Appellate Decisions

- *Torres v. Oakland Scavenger Company*, 487 U.S. 312, 108 S. Ct. 2405, 101 L.Ed.2d (1988) – Case specified that named plaintiffs in class action appeals must meet the same procedural standards as individual plaintiffs.
- *Music v. Western Conference of Teamsters Pension Trust Fund*, 712 F.2d 413 (9th Cir. 1983) – Determined the standard for fiduciary liability in cases involving retroactive pension plan modifications under ERISA and the LMRA, leading to the recovery of benefits exceeding \$10 million for a class of retired, disabled Teamsters.
- *Cadillac Fairview v. The Dow Chemical Company, et al.*, 41 F.3d 562 (9th Cir. 1994) – Determined the Ninth Circuit standard for “arranger for treatment” liability for government-owned contractor-operated (GOCO) war plants under CERCLA.

## Admissions

- State Bar of California
- United States District Court; Northern, Eastern and Central Districts of California
- United States Court of Appeals, Ninth Circuit
- United States Supreme Court
- United States Court of Federal Claims

## Affiliations

- International Foundation of Employee Benefit
- Defense Research Institute
- United States District Court
  - Early neutral evaluator
- State Bar of California
  - Employment Law Section, member
- American Bar Association
  - Labor and Employment Law Section, member
  - Natural Resources, Energy and Environmental Law Section, member
- Bar Association of San Francisco
  - Labor Law Section, member
- Alameda County Bar Association
- Danville-Sycamore Valley Rotary

## Speaking and Teaching

- Lecturer for the California Redevelopment Association, National Ground Water Association, American Petroleum Institute and others on brownfields redevelopment and institutional controls
- Lecturer for the Law and Science Institute on criminal enforcement of environmental laws
- “U.S. Supreme Court Decisions Affecting Business and Real Estate Transactions and the Superfund Practice,” panelist, Sustainable Property Transactions Conference, October 28, 2009

### Speaking and Teaching (continued)

- “Contaminated Property in Financial Distress - Who is Left Holding the Bag in a Down Economy?” panelist, Wendel, Rosen, Black & Dean LLP, May 7, 2009

### Awards/Recognition

- Recognized as Northern California "Super Lawyer" in Environmental law by Law & Politics (as seen in San Francisco Magazine) in 2005 and 2006
- Recognized as Northern California "Super Lawyer" in Employment law by Law & Politics (as seen in San Francisco Magazine) in 2004
- Awarded "Best Paper" by the ABA Section of Environment, Energy and Natural Resources in its 39th Annual Conference on Environmental Law, March 18-21, 2010

### Military Service

- United States Naval Reserve; engineering officer on active duty, 1969 through 1972.

**Christine K. Noma**  
Attorney

Phone: 510.834.6600  
Fax: 510.808.4679  
Email: cnoma@wendel.com



## Practice Area

- Environmental

## Education

- University of California, San Francisco, Hastings College of the Law; J.D. (1982)
- University of California, Berkeley; B.S., Business Administration (1979)

## Experience

Chris's practice is focused on all aspects of environmental law. She represents clients in environmental litigation involving cost recovery claims, CERCLA, Clean Water Act, strict liability, negligence and nuisance causes of action and real estate toxic tort cases. She also advises on compliance issues, representing clients before various government regulatory agencies, including the EPA, DTSC, and the RWQCB.

For clients selling, acquiring or developing contaminated real property, Chris provides legal advice and oversight of environmental issues, including evaluating and directing environmental site investigations and the implementation of remedial action plans, negotiating remediation standards with environmental regulators, and preparing environmental indemnity provisions. She also represents clients in brownfield real estate transactions under the Polanco Act and AB 389, the California Land Use and Revitalization Act. In addition, she represents parties in obtaining defense and insurance coverage for environmental claims under property and liability insurance policies.

## Representative Matters

- Represented buyers, sellers and lessors/lessees in negotiating environmental issues in multi-million dollar development projects for commercial, residential and undeveloped sites.
- Represented plaintiffs in multi-million dollar cost recovery actions.
- Represented defendants in several dry cleaning 'perc' cases in the Bay Area and Central Valley.
- *California Department of Toxic Substances Control v. Port of Oakland* (Howard Terminal). The California Department of Toxic Substances Control ("DTSC") issued an address environmental contamination at the Charles P. Howard Terminal Site. The Port filed a lawsuit pursuant to CERCLA against Pacific Gas & Electric ("PG&E") as a responsible party. The consultant retained to respond to the Order and to serve as a consultant in the lawsuit against PG&E was Baseline Consulting ("Baseline"). A consultant in the lawsuit against PG&E was Baseline Consulting ("Baseline"). A settlement was reached with PG&E for contribution to fund the remedial action. Thereafter, agreements were reached with several of the Port's insurers for funding of environmental investigation

## Representative Matters (continued)

and legal costs. With legal oversight, Baseline completed the environmental investigation and a remedial action plan was completed as required by the DTSC.

- *California Department of Toxic Substances Control v. Port of Oakland* (Former McGuire Terminal). The DTSC issued an Imminent and/or Substantial Endangerment Determination and Remedial Action Order (“Order”) against the Port. The Order required the Port to investigate and address environmental contamination at the Former McGuire Terminal site. Baseline was retained to respond to the Order. The Port filed a lawsuit against Kinder Morgan Energy Partners, LLP (“Kinder Morgan”) and GATX Industries (“GATX”) for contribution under CERCLA. A settlement was reached with Kinder Morgan and GATX for contribution to fund the remedial action. Thereafter, agreements were reached with several of the Port’s insurers for funding of environmental investigation and legal costs. With legal oversight, Baseline completed the environmental investigation and a remedial action plan was completed as required by the DTSC.
- California Department of Toxic Substances Control (Former Oakland Army Base). The DTSC and the City of Oakland, the Oakland Redevelopment Agency and the Oakland Base Reuse Authority (collectively “City”) entered into a Consent Agreement for environmental clean up of the Former Oakland Army Base (“OAB”). The Port and City reached a Memorandum of Agreement (“MOA”), which, inter alia, agreed upon the Port’s responsibilities for environmental clean up related to the OAB. Under the terms of the MOA, the Port and the City agreed to respond to the DTSC directives. Wendel Rosen provided legal assistance in establishing the Army’s liability for environmental costs which led to a significant contribution by the Army of the Port’s and City’s clean up costs.
- California Department of Toxic Substances Control (Oak-to-Ninth Development). Wendel Rosen represented the Port in all aspects of a \$18 million sale of 32 acres of property to Oakland Harbor Partners (“OHP”). In the environmental context, the DTSC and OHP entered into a Voluntary Clean up Agreement and a Standard Agreement under California’s Land Reuse and Revitalization Act Program (“CLRRRA Agreement”) under AB 389 and SB 143. Wendel Rosen represented the Port’s interests in commenting and negotiating the terms of the CLRRRA Agreement with the DTSC and OHP. Wendel Rosen also negotiated on behalf of the Port the terms and conditions of the allocation of environmental liabilities between the Port and OHP in the Option Agreement and the Purchase and Sale Agreement. Wendel Rosen also represented the Port in enacting legislation with the State Lands Commission for the conversion of portions of the property from public use to private development.
- California Department of Toxic Substances Control (Former Action Plating Site). The DTSC issued an Imminent and/or Substantial Endangerment Determination and Remedial Action Order (“Order”) against the current and former property owners of the former Action Plating Site in Oakland, California. Wendel Rosen represents the former property owner and is overseeing the response to the Order being conducted by the environmental consulting firm.
- Alameda County Public Works Department (Former 76 Service Station). Wendel Rosen is currently representing Alameda County Public Works Department in the sale of surplus railroad right of way property to the City of Pleasanton. In the environmental context, the Alameda County Environmental Health Services Agency issued a directive to Conoco Phillips to investigate and prepare a remediation plan to address the fuel related contamination which had migrated onto the property owned by Alameda County. Wendel Rosen is providing comments to a remedial action plan proposed by Conoco Phillips for the clean up of a former 76 Service Station.
- Drycleaner Cases. Wendel Rosen handled several drycleaner cases involving the remediation of perchlorethylene (“PCE”). The environmental oversight agency has been the Regional Water Quality Control Board (“RWQCB”). These cases involved retention of environmental consultants to provide an expert opinion regarding both the source of the PCE and remediation strategies. In these cases, Wendel Rosen also obtained insurance coverage on behalf of the client to pay for the legal costs, contribute to investigation costs and in most cases, settlement. Representative cases include:

## Representative Matters (continued)

- *City of Modesto v. Dow Chemical et al.* City of Modesto sued the chemical and equipment manufacturers of PCE, distributors of PCE, drycleaner operators and property owners for contamination of the City's drinking water supply. Wendel Rosen represented a distributor of PCE and obtained insurance coverage on behalf of the client. The case against the client was settled on the eve of trial. (Subsequently, judgment was issued against the chemical manufacturers.)
- *City of Merced v. Dow Chemical, et al.* The City of Merced sued the chemical and equipment manufacturers of PCE, distributors of PCE, drycleaner operators and property owners for contamination of the City's drinking water supply. Wendel Rosen represented a distributor of PCE and obtained insurance coverage on behalf of the client. The case against all parties except the manufacturers of the PCE was settled in mediation.
- RWQCB Site Clean up Order, Former Livermore Arcade Shopping Center and Millers Outpost Shopping Center: In 1993, the RWQCB issued a Site Clean up Order ("SCO") against the property owners of two shopping centers and drycleaner operators for contamination of the municipal drinking water wells in Livermore, California. The property owners filed suit against the operator of the drycleaners and against the equipment manufacturers of PCE. Wendel Rosen represented a drycleaner operator and obtained insurance coverage on behalf of the client. The case against all parties was settled in mediation. The 1994 settlement included a contract for guaranteed remediation by an environmental consultant. In 2008, the RWQCB re-opened the case, finding that the remediation was inadequate. Wendel Rosen secured additional insurance coverage for the client and the insurer agreed to fully indemnify the client without reservation of right.
- Development Experience. Wendel Rosen has represented property owners in negotiating the purchase and sale of contaminated real property. In addition to the Oak-to-Ninth Development and Alameda County Public Works project described above, representative cases include:
  - Jack London Square Partners Development: Wendel Rosen represented the Port in negotiating the environmental terms and conditions of the ground lease of property to a development group led by Ellis Partners for the revitalization and development of the Jack London Square area in Oakland.
  - W.R. Grace Sale: Wendel Rosen represented an industrial client in the purchase of contaminated property from W.R. Grace in San Leandro, California, and negotiated the terms of the seller's continued obligation to remediate the property.
  - Emeryville Sale: Wendel Rosen represented a developer client in negotiating the environmental indemnity terms related to the purchase of contaminated industrial property in Emeryville, California. The site was later developed into a commercial retail space.

## Admissions

**State Bar of California (1982)**

**Federal District Court (Northern, Central and Eastern Districts of California)**

**Ninth Circuit Court of Appeals**

## Affiliations

### **Alameda County Bar Association**

- Board of Directors, East Bay Diversity Bar Coalition
- Alameda County Bar Foundation; Board of Directors, 1991 to 1993

### **Asian American Bar Association of the Greater Bay Area**

- Board of Directors, 2005 to present
- Member, 1982 to present

### **Judicial Advisory Committee, Senator Barbara Boxer**

- Evaluated potential candidates for Federal Judiciary; 1996 to 1998

### **Laney College, Language Court Interpreter Advisory Committee**

### **Legal Assistance for Seniors**

- President, 1997; Board of Directors; member, 1994 to 2000

### **National Asian Pacific American Bar Association**

### **State Bar of California**

- Judicial Nominees Evaluation Commission, evaluated Governor's nominees for appointment to the State Judiciary; 1992 to 1994
- Conference of Delegates; Executive Committee, 1989 to 1991

### **University of California, Hastings Alumni Association**

- Board of Governors, 2008 –2011

## Publications

- “Kids Bite Back: The Consumer Products Safety Improvement Act Has Sharp Teeth,” co-author, *The Wendel E-Report*, Environmental and Real Estate, November 11, 2009
- “Unanimous California Supreme Court Clarifies the Meaning of the Sudden and Accidental Exception to the Pollution Exclusion: *State of California v. Allstate Insurance Company*,” Wendel Rosen Client Update, March 26, 2009

## Speaking and Teaching

- ‘Beauty and the Bench: The Judicial Perspective Plenary Session on Diversifying the Judiciary’ panelist, California Minority Counsel Program, 21<sup>st</sup> Annual Business Conference, September 30, 2010
- ‘WorkLife Law Panel Discussion’ panelist, University of California, Hastings College of the Law, June 7, 2007
- ‘Diversity: Career Paths – A Woman’s Perspective of a Career in Law Firm Practice,’ University of California, Hastings College of the Law, September 30, 2006
- Mentoring Relationships Panel, California Minority Counsel Program, 16th Annual Business Development Conference, October, 2005

## Awards/Recognition

- Northern California Super Lawyer 2004 - 2007, Environmental, Law & Politics and *San Francisco Magazine*.



## Practice Areas

- Litigation
- Environmental
- Green Business

## Education

- Loyola Law School; J.D., cum laude (1996)
- Long Beach State University; B.S., Chemical Engineering (1991)

## Experience

Gregg provides clients with advice on environmental requirements and obligations and assistance with recovery of environmental costs. He has significant experience performing environmental due diligence for real estate purchase and leasing transactions and dealing with issues associated with the cleanup, purchase, sale and development of contaminated properties, such as the negotiation and drafting of contracts and contractual provisions to address responsibility for investigation, cleanup and indemnity. Gregg has assisted clients with the coordination of environmental consultants, negotiations with environmental agencies and efforts to obtain financing and insurance for contaminated property. Gregg is also experienced in all stages of litigation, up to and including trial, with emphasis in the areas of environmental and business lawsuits. He has worked on several cases at the appellate level.

Prior to practicing law, Gregg spent six years working for the Environment, Health and Safety Department of Texaco Refining and Marketing, Inc. as a chemical engineer. While there, he gained experience developing compliance programs for California and Federal OSHA Process Safety Management and Risk Management and Prevention Program regulations. He participated with compliance investigations and the subsequent actions, handled applications for air permits, Title V permitting, emission reporting, applications for emission reduction credits, CERCLA and EPCRA reporting requirements, as well as spill response and clean-up requirements. At that time, he was also active on several technical committees for the Western States Petroleum Association.

Gregg's litigation experience includes CERCLA cost recovery, nuisance and toxic tort, business disputes, employment discrimination and Americans with Disabilities Act matters. Gregg has handled government inspections, obtained permits and variances and settled notices of violations issued under of a wide variety of environmental, health and safety standards, including the California Accidental Release Prevention program, the federal Clean Air Act, state and federal Occupational Safety and Health Administration standards and rules and regulations adopted by the California Air Resources Board and various Air Quality Management Districts. He has lectured on risk management planning under the 1990 Clean Air Act amendments and on regulations for the permitting, use and reimbursement for remediation of contamination from petroleum underground storage tanks.

## Admissions

**State Bar of California**

**United States District Court, Northern and Central Districts of California**

**United States Court of Appeals, Ninth Circuit**

## Affiliations

**American Bar Association**

## Publications

- “Green Building Report: Getting Credit for What You Do,” *Wendel Rosen Client Update*, October 9, 2009
- “Finally, a Practical Approach to Evaluating Potential Vapor-Intrusion Problems in Real Estate Transactions,” co-author with Jonathan W. Redding, *California Real Estate Journal*, March 24, 2008
- “California Court Upholds \$2.5 Million Fine Against Corporate Officers for Violation of Underground Storage Tank Laws,” co-author with Jonathan W. Redding, *Wendel Rosen Client Alert*, January 22, 2009
- “AB 32 DOES WHAT? The Spillover from CA’s Global Warming Law to Landowners, Developers, Landlords and Tenants,” *The Wendel Report*, Winter 2008
- “New Vapor Intrusion Legislation and Industry Standards Will Increase Costs and Time for Real Estate Transactions,” *Wendel Rosen Client Alert*, December 14, 2007
- “Vapor Intrusion: New Focus for Due Diligence,” co-author with Jonathan W. Redding, *Brownfield News*, June 2007
- “Environmental Liability Protection for Tenants,” co-author with Jonathan W. Redding, *Area Development*, February/ March 2007
- “California UST Fund Facilitates Brownfield Cleanup,” co-author with Jonathan W. Redding, *Brownfield News*, October 2006
- “Strategies for Cost Recovery and Development after Cooper v. Aviall,” co-author with Jonathan W. Redding, *Brownfield News*, October 2006

## Speaking and Teaching

- “How Much Is Enough? Understanding Appropriate Environmental Due Diligence for Tenants’ Long-Term Site Selection,” presenter, National Ground Water Association Conference, November 2, 2009
- “The Importance of Due Diligence in Real Estate Matters,” co-presenter with Howard Lind, Wendel, Rosen Educational Seminars, November 19, 2008
- “Finally! A Practical Approach to Vapor Intrusion,” co-presenter, Wendel, Rosen Educational Seminars, April 2008
- “Land Use Law: Current Issues in Subdivision, Annexation and Zoning,” co-presenter with Bruce S. Flushman, National Business Institute, December 12, 2007
- “Underground Storage Tanks,” Northwestern Environmental Training Center, February 8, 2006
- “Emerging Issues in Environmental Law: Concerns and Remedies,” Advanced Commercial Real Estate Leases, Law Seminars International, November 5, 2007

**Peter J. Laufenberg**  
Attorney

Phone: 510.834.6600  
Fax: 510.808.4667  
Email: [plaufenberg@wendel.com](mailto:plaufenberg@wendel.com)



## Practice Areas

- Title Insurance Regulation and Litigation
- Insurance Recovery and Bad Faith Litigation
- Construction Defect Litigation
- Business and Development Risk Management Consultation

## Education

- University of California, Boalt Hall School of Law, Berkeley (J.D., 1994)
- University of California, Berkeley; B.A., Rhetoric (1988)

## Experience

Peter is an experienced litigator who works aggressively, creatively and efficiently to obtain the best overall financial outcome for his clients. His primary expertise is in insurance law, where his past work on both sides of the table gives him an advantage.

Peter represents insurance companies only in the area of title insurance. He is an advocate for title insurers and underwritten title companies, for which he handles regulatory compliance, corporate formation and acquisitions, and RESPA lawsuits and administrative actions.

In all other areas, Peter represents policyholders. He advises his clients on risk management strategies in real estate development and business transactions, and litigates against insurers to recover policy benefits. Peter also litigates business and construction defect suits for clients, and often monitors the representation being provided by insurer-retained counsel in litigation.

## Representative Matters

### Title Insurance Experience

Peter has a wide range of experience in litigation and transactions, as well as an in-depth understanding of the rules and regulations that affect title companies in today's competitive marketplace. He works closely with Sid Israels, a fellow Wendel Rosen attorney, who has over thirty years of experience representing major title insurers. Together they advance the interests of title insurers throughout the state.

Wendel Rosen operates under a philosophy of integrity and candor with regulatory authorities. Our clients benefit from our professional, long-term relationships and ability to communicate openly and honestly with regulators. Our experience, practice, and philosophy strive to minimize the length of time for regulatory approvals. We make efficient use of staff and cost-effective paralegals to deliver the highest quality legal services at a reasonable cost. In litigation we advocate vigorously for our clients with consideration and attention to the full range of our clients' interests.

## Representative Matters (continued)

**Peter has more than thirteen years experience litigating insurance coverage and bad faith disputes.**

### **Representative cases include:**

- Obtained insurance coverage for a lawsuit against an international Internet-based company after coverage was initially denied
- Obtained insurance coverage for a lawsuit against a quasi-governmental agency after the claim was initially denied, allowing the case to settle with the insurer paying nearly 100% of the settlement
- Forced multiple insurance carriers for a townhouse developer to settle a multi-million dollar construction defect lawsuit with no contribution from the policyholder/developer
- Forced carriers in another construction defect lawsuit to pay significantly larger share of the settlement for the plaintiff's claims
- Represented various parties in protracted insurance-coverage litigation relating to environmental contamination at industrial sites
- Obtained near 100% recovery for a major publicly held corporation after its insurer denied coverage for mold-related claims
- Negotiated resolutions of complex coverage issues involving claims-made and reported professional liability claims
- Obtained high-limit excess insurance coverage without litigation, after the carrier had initially denied the claim

### **Risk Management Related Experience**

- Provided contractual and insurance risk transfer advice and consultation on large condominium development projects
- Evaluated owner controlled insurance programs ('OCIPs') on large common interest developments
- Reviewed construction contract to transfer risk and ensure smooth operation of OCIP insurance programs
- Documented and implemented of comprehensive SB 800 ('Fix-It' law) programs
- Provided advice regarding integrated risk management strategies
- Provided insurance and risk management-related due diligence in corporate asset and stock acquisitions

### **Construction Defect Related Experience**

- Extensive experience defending regional and national residential home builders in construction defect litigation throughout the state

## Admissions

**State Bar of California**

**All State and Federal Courts in California**

## Affiliations

**California Insurance Law Reports**

**Insurance Litigation Reports**

- Advisory Board Member

**American Bar Association**

**Alameda County Bar Association**

**California Land Title Association**

## Publications

- “RESPA Update: Enforcement Delay a Call to Action,” co-author, *Wendel Rosen Client Update*, December 16, 2009
- “Prepare or Perish – How Apartment Owners Protect Against Catastrophic Mold Loss,” co-author with Jonathan W. Redding, *California Real Estate Journal*, October 23, 2006
- “When Is a ‘Client Claim’ an ‘Insurance Claim’?” *Oakland Business Review*, August 2006
- *Insurance Litigation Reports*
  - Editorial Board, 2006 – 2008
- “Real Estate Industry Should Brace for Probes and Fines,” *San Francisco Daily Journal*, September 28, 2005

## Speaking and Teaching

- “Proving Damages Caused by Mold Infestation,” panelist, National Business Institute, November 13, 2008

**Y**ane Nordhav is the principal of BASELINE. She is the principal-in-charge for BASELINE projects related to hazardous materials management, development of remedial actions, site characterizations, and CEQA/NEPA documentation. She performs QA/QC functions for all projects at BASELINE. As principal investigator, she has managed and conducted groundwater investigations and remediation on major Superfund sites and local brownfields sites in California.

Through her work, she has developed an extensive working knowledge of regulatory requirements and established working relationships with regulatory agency staff on the state and local levels. She routinely works with Regional Water Quality Control Board, Department of Toxic Substances Control, and local agency staff to arrive at appropriate goals for risk-based cleanup of soil and groundwater resources.

She has managed major environmental audits and developed environmental programs for cities, ports, and industrial clients; her work has included development of strategies for waste management and minimization, and UST compliance programs. She also routinely provides litigation support and expert witness services to clients on sites that have been affected by historic land uses and require cleanup prior to future productive uses. In addition, Ms. Nordhav has been the project manager for the preparation of major environmental documents in California, including EIRs for controversial projects, ranging from open pit mines, hazardous waste disposal facilities, and new towns.

### Recent Projects

- Sacramento Trapshoot Club, investigation, remediation, agency negotiations, Project Manager, 2004-2006
- Stockton Waterfront Brownfields Pilot Project, Project Manager, 2000-2006
- Bayview Transportation Improvements Project EIR/EIS, Hazardous Materials and Water Quality Technical Studies, Project Manager, 2004-2006

- Port of Oakland, Berths 25 and 26, investigation, remediation, agency negotiations, 2002-present

M.S., Geology, Cal State Hayward  
 B.A., Geology, U.C. Berkeley  
 40-hour OSHA training  
 PG No. 4009  
 26 years of experience



### Presentations and Publications

Nordhav, Yane, 1998, Are Geologic and Seismic Impacts Significant, Unavoidable, or Mitigatable, in AEP Environmental Monitor, Summer.

Nordhav, Yane, 1997, Identification of Geologic Impacts - UC Berkeley, guest lecturer for Conservation of Natural Resources Department.

Nordhav, Yane, 1997, Moderator - Panel on Changes in Hazardous Waste Management, Association of Environmental Professionals Annual Meeting, San Francisco.

Schoenholz, Dan and Yane Nordhav, 1995, Construction of a Movie Theater at Lot 12: A Case Study in Reuse of a Former Manufactured Gas Plant Site; in Land Contamination and Reclamation 3(4).

Nordhav, Yane, 1992, Phase I and II Investigations and Land Use Decisions, presented at the Annual Meeting of the National Association of Housing and Redevelopment Officials, San Francisco, September.

Nordhav, Yane, 1986, The Long Journey from Discovery to Clean-Up of Superfund Sites, presented at the Annual Meeting of Association of Engineering Geologists, Boston, MA, 1984; published in the Bulletin of the Association of Engineering Geologists, Vol. 12:2, May.

**B**rUCE Abelli-Amen is a Principal, Certified Hydrogeologist, and a CEQA project manager. He has experience in all phases of CEQA and NEPA projects, including managing large multi-disciplinary teams of specialists in the preparation of Expanded Initial Studies, Mitigated Negative Declarations, and Environmental Impact Reports and Statements. He has managed CEQA projects for landfill decommissioning, new wastewater treatment plants, mining projects, mixed-use developments, and major water transmission infrastructure projects.

Mr. Abelli-Amen not only manages CEQA projects, but also specializes in conducting technical analyses for particularly challenging projects. His expertise in geology, soils and seismicity, hydrology and water quality, NPDES permitting, and hazardous materials, has provided clients with thorough and legally defensible analyses for complex projects. He has conducted hydrology and water quality impact analyses for a variety of projects, including proposed commercial, industrial, residential, transportation, and agricultural uses.

He has designed and implemented groundwater aquifer tests and remediation systems for the cleanup of contaminated shallow groundwater aquifers. He has managed numerous UST investigations and is familiar with local, state, and federal regulatory requirements for such investigations. He has experience managing large-scale soil and groundwater remediation projects. He has supervised soil excavation, bioremediation, and backfill operations, as well as the installation of groundwater extraction systems for the removal of free product and dissolved compounds.

Mr. Abelli-Amen has acted as project manager and technical lead on pre-construction and construction-period groundwater monitoring projects. These projects have focused on characterization of water resources for both biotic resource sustainability and water supply for various domestic and commercial water users.

### Recent Projects

- New Irvington Tunnel EIR, Hetch Hetchy Water Conveyance System, SFPUC, CEQA Project Manager and Director of Pre-construction Groundwater Monitoring Program.
- Third Street Light Rail EIR, San Francisco, Technical Lead on Hydrology and Water Quality, Geology, Soils, and Seismicity
- Doyle Drive Replacement Project, San Francisco, Technical Lead on Hydrology and Water Quality and Pre-construction Groundwater Monitoring Program.

M.S., Environmental Systems, Applied Geology,  
Humboldt State University  
B.S., Geological Sciences, UC Santa Barbara  
40-hour OSHA training  
Certified Hydrogeologist No. 96  
Professional Geologist No. 5593  
21 years of experience



### Presentations and Publications

Abelli-Amen, B. and Potter, S., 2004, CEQA Projects and Cumulative Impacts to Stormwater Runoff Quality: What Are the Options for Effective Mitigation?, *AEP Environmental Monitor*, Summer issue.

Abelli-Amen, B. and Parfrey, E., 2002, Survey of Land Use Conflicts Associated with Vineyard and Pesticide Use, *AEP Environmental Monitor*, Fall issue.

James McCarty has participated in the preparation of EIRs, performing assessment of potential air quality and noise impacts from a variety of proposed projects or area plans. He has managed projects related to preliminary environmental site assessments, environmental field investigations, underground storage tank removal, and the design and implementation of a variety of remediation solutions. Mr. McCarty has worked with a variety of governmental agencies, including the California Air Resources Board, California Water Quality Control Board, Department of Toxic Substances Control, and various Northern California county and city environmental health agencies.

Mr. McCarty evaluates air quality and noise impacts from residential developments, commercial developments, and large public improvement projects from construction through operational phases. He is experienced in using Urbemis-2002 and various modeling tools for evaluation of impacts due to mobile sources; he also estimates direct and indirect greenhouse gas emission.

Mr. McCarty also has experience in modeling indoor air quality impacts based on soil or groundwater contaminant data using the Johnson and Ettinger (1991) Model for Subsurface Vapor Intrusion into Buildings. He has evaluated the results of both field sampling and modeling in terms of potential risk to human health using toxicity factors published by the Office of Environmental Health Hazard Assessment and Cal/EPA.

Mr. McCarty has prepared noise monitoring plans and collected field measurements for noise impact evaluations from a variety of sources, including construction, project operations, such as quarry operations, and transportation.

Mr. McCarty has extensive experience in environmental remediation. He is experienced in managing both groundwater monitoring and remediation projects and he has performed

feasibility studies, produced Remedial Design and Implementation Plans and Remedial Action Plans for submittal to the relevant regulatory agencies, and has performed the planning, design, and construction of soil and groundwater treatment systems.

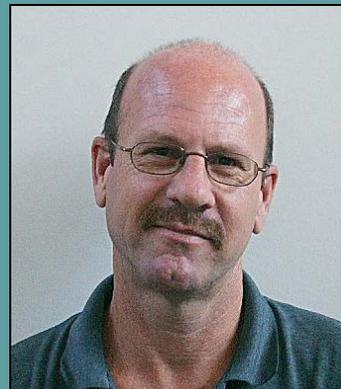
#### Recent Projects

- Former McGuire Chemical Site, Port of Oakland, Project manager for investigation and Remedial Action Workplan preparation and implementation
- Former Sacramento Trapshooting Range, Sacramento, Project manager for remedial investigation and remediation
- New Crystal Springs Bypass Tunnel EIR, San Mateo County, Technical lead for air quality and greenhouse gas analysis

B.S., Civil Engineering,  
California Polytechnic, 1993  
PE No. C62618

40-hour OSHA Hazardous Waste Operations and  
Emergency Response Training

16 years of experience



Lydia Huang manages projects related to subsurface contamination and waste management throughout the San Francisco Bay Area. While at BASELINE, she has directed investigations and remediation at complex sites, and negotiated cleanup requirements with regulatory agencies. Prior to joining BASELINE, she worked at the Regional Water Quality Control Board, San Francisco Bay Region, where she enforced a variety of state and federal regulations, including RCRA, NPDES, and the California Water Code.

Ms Huang has developed and directed projects for soil management as part of large infrastructure construction and redevelopment projects, including the reconstruction of the Embarcadero roadway, the Third Street light rail project, and the Islais Creek wastewater transport and storage projects in San Francisco, and new wharf construction at Berths 55 through 59 and the historical manufactured-gas plant at Howard Terminal in Oakland. Aspects of this work include developing a representative sampling and analysis plan for anticipated excavation, performing statistical evaluation of the data and waste classification, preparing waste reclassification applications, developing soil reuse plans, and developing a tracking system to document soil reuse from excavation to placement. These efforts have affected the reuse and disposal of millions of cubic yards of soil and have resulted in significant cost savings for the projects.

Ms. Huang is the technical program manager on behalf of the Port of Oakland for the former Oakland Army Base, where the Port is implementing investigations and remediation activities on more than 200 acres of land in accordance with an approved Remedial Action Plan (RAP) and Risk Management Plan (RMP). The Port Development Area includes five RAP sites, each of which requires detailed evaluation, and either remediation or in-depth evaluations to support the no action alternative. The property also contains over 100 identified RMP locations, such as underground storage tanks and historical shops, each one of which requires characterization and a demonstration of no significant impact. The overall goal of the Port is to minimize constraints

to future redevelopment of the land for maritime and rail transport uses.

Ms. Huang provides technical litigation support for attorneys in the Bay Area. Types of projects include cost recovery from past property owners for expenses incurred as a result of residual contamination, and determination of property value reflective of liability associated with anticipated remediation requirements.

Ms. Huang has been responsible for the development of a comprehensive ground and surface water management program for the City of Oakland shoreline area. She manages the chemical database on behalf of the Port of Oakland for the former Oakland Army Base property; the database contains chemical data associated with thousands of samples collected on the Army Base since the late 1980s. Ms. Huang also designed databases to manage chemical quality and water level monitoring data conducted to support the Doyle Drive reconstruction project for soil disposal and reuse assessments, and construction dewatering impact and disposal alternative evaluations. She uses a combination of AutoCAD, Arcview, and Access softwares to facilitate the evaluation and presentation of large and complex data sets.

M.S., Civil Engineering, UC Berkeley  
B.S., Chemical Engineering, UC Berkeley  
40-hour OSHA training  
PE No. C43995  
24 years of experience



**STANDARD SCHEDULE OF FEES  
JANUARY 2010**

**LABOR**

Principal/Technical Director .....	\$175.00/hour
Principal/Senior Hydrogeologist .....	\$160.00/hour
Senior Engineer .....	\$160.00/hour
Civil Engineer .....	\$150.00/hour
Senior Geologist.....	\$140.00/hour
Senior Field Geologist .....	\$130.00/hour
Senior Environmental Scientist.....	\$130.00/hour
Environmental Associate .....	\$110.00/hour
Environmental Analyst.....	\$110.00/hour
Project Engineer .....	\$110.00/hour
Environmental Scientist .....	\$110.00/hour
Editing/Project Administration .....	\$100.00/hour
Graphics .....	\$ 95.00/hour
Word Processing .....	\$ 90.00/hour
Clerical.....	\$ 85.00/hour

**DIRECT COSTS**

Mileage.....	\$ 0.50/mile
Subcontractors.....	Cost + 15%

**MATERIALS AND EQUIPMENT**

Field Vehicle .....	\$ 65.00/day
Soil Sample Containers .....	\$ 7.50 each
Well Development Tools .....	\$ 40.00/day
Industrial Hygiene/Site Safety Equipment.....	\$ 40.00/day
Locks.....	\$ 20.00 each
pH, Conductivity, DO, Turbidity, and Temperature Meters.....	\$ 35.00/day
Photoionization Detector (Hnu and PID).....	\$110.00/day
Noise Meter .....	\$120.00/day
Soil Sample Tools, Hand Auger, Slide Hammer.....	\$ 40.00/day
Glassware .....	\$ 4.00 each
Water Level Meter/Interface Probe.....	\$ 30.00/day
Bailer .....	\$ 15.00 each
Locking Well Plugs/Caps.....	\$ 40.00 each
Poly Tubing.....	\$ 0.75/foot
Double Diaphragm Pump/Compressed Air/Peristaltic Pump .....	\$ 50.00/day
EnCore Vials .....	\$ 12.50 each
EDF Format Lab Charge.....	\$ 50.00/report
EDF Download to GeoTracker .....	\$100.00/each
Water Level Pressure Transducer .....	\$900.00/year
Multi Parameter Meter .....	\$ 75.00/day

Note: Rates subject to change without notice.

**THE FOLLOWING IS FOR INFORMATION ONLY – NOT FOR DISTRIBUTION**

**LABOR**

Principal/Technical Director (YN).....	\$175.00/hour
Principal/Senior Hydrogeologist (BAA) .....	\$160.00/hour
Senior Engineer (LH).....	\$160.00/hour
Civil Engineer (JM) .....	\$150.00/hour
Senior Geologist (CP) .....	\$140.00/hour
Senior Field Geologist (WKS).....	\$130.00/hour
Senior Environmental Scientist (DB).....	\$130.00/hour
Environmental Associate (TT).....	\$110.00/hour
Environmental Analyst (RER).....	\$110.00/hour
Project Engineer (RR).....	\$110.00/hour
Environmental Scientist (PS) .....	\$110.00/hour
Project Administration (MB) .....	\$100.00/hour
Graphics (CC) .....	\$ 95.00/hour
Word Processing (CR/KM).....	\$ 90.00/hour
Clerical (MM) .....	\$ 85.00/hour