



Edward B. Witte

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Milwaukee

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Practice Areas

Environmental Strategies

Energy Strategies

Admissions

Wisconsin

Oregon

Education

Masters of Studies of
Environmental Law, Vermont
Law & Graduate School,
magna cum laude (1989)

Juris Doctor, Vermont Law &
Graduate School, *cum laude*
(1989)

Bachelor of Arts, University
of Vermont (Latin and
Political Science) (1983)



Ned Witte is a shareholder in the Environmental Strategies Practice Group. He represents clients in the service and manufacturing industries as well as individuals and government bodies in a wide range of environmental matters in Wisconsin and across the U.S.

Since 2011, Ned has been Peer Review Rated as AV® Preeminent™, the highest performance rating in Martindale-Hubbell's peer review rating system. Since 2010, Ned has been included in Chambers USA: America's leading Lawyers for Business. He is listed in Best Lawyers (since 2006). In addition, Ned has been selected for inclusion in the Wisconsin Super Lawyers lists. Ned was honored by the Wisconsin Law Journal as Leader in the Law 2015. Best Lawyers® named Ned the 2016 Environmental Law "Lawyer of the Year" in Milwaukee.

Ned has broad, nationally recognized experience in counseling clients concerning emerging contaminants including, specifically, Per- and Polyfluoroalkyl substances, or PFAS (including PFOA and PFOS). Ned and Godfrey & Kahn represent clients with interests in numerous PFAS sites in Wisconsin including at disposal sites, manufacturing sites and locations where PFAS-containing aqueous film forming foam (AFFF) has been discharged. In late 2020, Ned was selected by the Biden-Harris Agency Review Team for the United States Environmental Protection Agency to consult on PFAS issues.

The Secretary of the Wisconsin Department of Natural Resources appointed Ned to serve as a member of the newly formed Wisconsin Department of Natural Resources (WDNR) PFAS Policy Advisory Group. Ned is also a member of the WDNR Remediation and Redevelopment External Advisory Committee and presently acts as Chair of the State Bar of Wisconsin Environmental Law Section. Previously, Ned served as Co-Chair of Citizens and Public Interest Committee for the State of Wisconsin PFAS Action Council (WisPAC), which generated the 2020 Wisconsin PFAS Action Plan. Ned was a member of the ASTM Collaboration Area AC417 – PFAS Real Estate, Legal, Due Diligence Focus Group supporting the Committee E50 on Environmental Assessment and Risk Management. Ned has extensively written and presented on PFAS issues at national seminars, and state and federal bar association continuing legal education seminars.

Ned has extensive experience in the development and redevelopment of environmentally sensitive and contaminated properties, including Brownfields, coordinating Superfund site response activities, including as chair of steering committees, and siting and permitting of manufacturing facilities and renewable and traditional energy projects. Ned also has structured and served as lead counsel in environmental due diligence and liability allocation in real estate, financing and corporate transactions, defense of government- and private party-lead enforcement actions and, conversely, enforcement of environmental contractual rights against third parties.

In addition, Ned's diverse practice also includes:

- Effective use of the State of Wisconsin's Local Government Unit Negotiation and Cost Recovery statute (Wis. Stats. §292.35) to recover costs of response at municipally owned disposal sites (Ned served as lead counsel in the only two recorded proceedings, recovering over \$3 million in clean-up costs)
- Defense of government and private party actions related to alleged non-compliance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), stormwater and wastewater discharge, state and federal Clean Air Act violations, and wetland fill and waterfront matters, including after the fact permitting
- Regulation of surface waters, wetlands, riparian rights, floodplains, LOMR/CLOMR issues, sediment remediation stormwater and surface water drainage rights, and bluff stabilization and restoration matters, including as caused by climate change and elevated levels of Lake Michigan
- Representation of parties in the developing markets for industrial hemp, cannabis, vapor intrusion and cannabidiol (CBD), including authorities related to licensed hemp growing, processing and "fit for commerce" determinations
- Use of the State of Wisconsin Voluntary Party Liability Exemption (VPLE) program
- Permitting composting facilities under solid waste regulations
- Use of federal and state "audit policy" tools to voluntarily disclose self-identified environmental noncompliance
- Regulation of phosphorous and nutrient credit trading
- Water quality and water supply matters

Ned also has pro bono experience through Legal Action of Wisconsin's "Center for Driver's License Recovery and Employability."

In 2017, at the recommendation of the acting Assistant Attorney General for Wisconsin Department of Justice Environmental Enforcement Division, Ned served as neutral mediator for a dispute concerning wetlands fill violations. Ned successfully resolved the financial restitution for damages and penalty dispute between the state and the individual defendant.

Ned has built trust with his clients by providing practical business advice. Ned establishes and maintains positive relationships with his clients' technical environmental experts, government regulators and opposing counsel. Ned's philosophy of teamwork and communication serves his clients' interests by attaining their objectives on budget and in a timely manner.

Representative Experience

Superfund

In addition to representation of lead parties and serving in chair positions for steering committees at Superfund sites in states including Wisconsin, Illinois, Indiana, Michigan, Pennsylvania, New York, New Jersey, Vermont, Delaware, Alabama, Georgia, Florida, Texas, and California, three CERCLA sites that are reflective of Ned's work in this area are:

Ned represented the lead Potentially Responsible Party (PRP) at the NL Industries/Taracorp smelter superfund site in Granite City, Illinois. Part of this work included negotiating the terms of institutional controls on residential properties over 100 square blocks affected by smelter-generated lead deposition, including use of the Uniform Environmental Covenants Act.

Ned represented a manufacturer in the negotiation of a consent decree to favorably resolve his client's liability under the Comprehensive Environmental Compensation and Liability Act (CERCLA) at a site in South Central Wisconsin where the U.S.EPA had completed certain response activities and thereafter commenced cost recovery and contribution civil claims against the company under 42 U.S.C. 9607 and 9613(g)(2) based on the presence of hazardous substances in a community drinking water system. The Consent Decree did not require the client to perform any further response actions at the site and afforded full protections from contribution actions by other PRPs.

Representative Experience

Superfund

Ned has represented a co-PRP in the El Monte Operable Unit of the greater San Gabriel Valley Superfund site. Work on this matter has included coordinating with the co-PRP and jointly retained environmental consultant for design and construction of a plume containment and groundwater remediation system to include extraction, treatment and reinjection of contaminated groundwater in the shallow zone and treatment and conveyance of deep groundwater to the municipal drinking water system pursuant to the provisions of California Drinking Water Program Policy 97-005 (Guidance for Direct Domestic Use of Extremely Impaired Sources). Challenges to implementation of the objectives of the system have included the detection of "Emerging Contaminants" potentially resulting from failure of capture by adjacent remediation systems and unprecedented drought conditions in Southern California.

Transactional

Representing a seller in an asset purchase transaction, Ned coordinated the sale of multiple manufacturing facilities and a national network of service centers for a leading United States manufacturer of elevators and escalators, including pre-sale environmental site assessments and compliance audits, "triage" of conditions identified by these reviews, and the negotiation and allocation of known and potential environmental liabilities in the deal documents.

Ned represented a Michigan based purchaser of an auto parts manufacturer in Grant County, Wisconsin. Ned counseled the purchaser regarding naturally occurring elevated concentrations of lead identified during the phase II investigation, including interpretation of state of Wisconsin guidance.

Ned served as lead environmental counsel to a California investor owned utility in structuring the environmental due diligence and transfer in ownership of hydroelectric watershed properties collectively comprising 140,000 acres of land.

Enforcement/Compliance

Ned represented a school district in northeast Wisconsin where a high school was constructed on property that was the prior site of a sand and gravel pit utilized for landfilling of PCB-containing paper sludge. Ned successfully self-directed a cost recovery action against the corporate successor-in-interest to the paper company that disposed the sludge and to recover \$1.9 million towards the remediation costs utilizing the Wisconsin Local Government Negotiation and Cost Recovery Procedure (Wis. Stat. §292.35). Ned is currently overseeing another matter utilizing this statute.

Ned acted as lead counsel in advising a Fortune 100 company in the identification and disclosure of conditions of noncompliance with federal Clean Air Act (CAA) standards at five of the client's facilities, including the absence of any permits where CAA Title V and Prevention of Significant Deterioration permits were necessary. Utilizing the voluntary disclosure protocols under the United States Environmental Protection (U.S.EPA) "Audit Policy", Ned negotiated a Consent Agreement and Final Order (CAFO) with U.S.EPA's Office of Enforcement and Compliance Assurance (OECA) that provided for a penalty of \$0 based upon cost-effective compliance alternatives proposed to U.S.EPA. In the CAFO, U.S.EPA acknowledged an otherwise potentially assessable penalty of \$1.5 million in the CAFO. (U.S.EPA Docket No. HQ-CAA-2008-6001).

Enforcement/Compliance

Representing the parent company of a multi-state, publicly traded company with internationally known racetracks, casinos and an online wagering company, Ned structured the environmental compliance audits of four racetrack properties and operations in multiple states and the subsequent implementation of an environmental compliance program.

Representative Experience

Brownfields

Ned served as lead environmental counsel in advising a passenger train service corporation in regard to the proposed reuse of a Superfund site that included a closed railroad yard with industrial levels of polychlorinated biphenyls (PCBs) as a mixed residential/ retail/transportation development.

Ned has represented a Wisconsin municipality in the Fox River Valley in establishing an action against a party associated with an abandoned manufacturing facility that was deemed to present a fire hazard and was therefore the subject of a raze order. With Ned's assistance, the municipality was able to assert the claim that the adverse party had created, exacerbated and continued nuisance conditions on the property by the party's actions, including by allowing "scrappers" to damage and remove fire suppression infrastructure from the property. After structuring a settlement agreement to address costs of demolition, asbestos abatement and environmental repair, the site was selected by the National Basketball Associations for a development league (D-League) franchise affiliated with the NBA's Milwaukee Bucks.

Siting

Ned lead a team of environmental lawyers in assembling and preparing the narrative for the successful applications for two, approximately 50-mile 345-kilovolt transmission lines in North Central Wisconsin designed to relieve congestion and add transfer capability in the area. The applications were the first prepared pursuant to Wisconsin Law providing for joint applications to the Wisconsin Public Service Commission and the Wisconsin Department of Natural Resources. (PSC Dockets 137-CE-122 and 137-CE-123).

In late 2014, the Board of Health of a county in East Central Wisconsin passed a motion that a wind energy system consisting of eight, 2.5 MW wind turbines constituted a "human health hazard" pursuant to state law, as implemented at the county level. Ned represented the owner of the wind farm in developing and presenting a response challenging the legitimacy of and ultimately nullifying the county body's actions based on applicable Wisconsin law.

Professional Association Memberships

Milwaukee Bar Association
State Bar of Wisconsin (Environmental Law Section)

Activities

Member, State of Wisconsin Department of Natural Resources Remediation and Redevelopment External Advisory Group (2022-present)

Member, State of Wisconsin Department of Natural Resources PFAS Policy Advisory Group (2021-present)

State of Wisconsin PFAS Action Council (WisPAC), Co-Chair of Citizens and Public Interest Committee, developing the 2020 Wisconsin PFAS Action Plan (2020-2021)

Member, ASTM Collaboration Area AC417 – PFAS Real Estate, Legal, Due Diligence Focus Group supporting the Committee E50 on Environmental Assessment and Risk Management (2020-2021)

American Bar Association (ABA) Section of Environment, Energy & Natural Resources (SEER) Marketing and Communications Committee (Special Committee on Media Relations Task Force, 2017-2019)

State Bar of Wisconsin Environmental Law Section (Board of Directors, 2016-present; Secretary, 2017-2018; Chair Elect, 2019-2021; Chair, 2021-present)

Teens Grow Greens (Member, Board of Directors, 2018-present, President, 2019-2021)

Milwaukee LGBT Community Center (Member, Board of Directors 2017-2021; Secretary 2018-2021)

Working in Tandem Non-Profit, related to the Tandem Restaurant, Member, Board of Directors, Treasurer, 2019

Vermont Law School Environmental Advisory Committee (Member, 2012-present)

SEER Climate Change, Sustainable Development and Ecosystems Committee (Vice Chair – Communications, 2015-2016)

Activities

Vermont Law School, Co-Chair and Gift Chair, Class of 1989 25th and 30th Reunion
American Bar Association, Section of Environment (Vice Chair-Technology)
Energy and Natural Resources In-House Counsel Committee (2012-2014)
Vermont Law School Dean's Development Council (Co-Chair, 2008-2011)
Village of Bayside, Wisconsin (Member, Board of Zoning Appeals, 2003 2005)
Village of Bayside, Wisconsin (Village Trustee, 1997-2003)
Milwaukee Bar Association Environmental Law Section (Co-Chair, 1998 1999)
Vermont Law School Alumni Association Board of Directors (Member, 1995 1998)
Milwaukee Pollution Prevention Partnership (Chairman, 1997 1998)
Greater Milwaukee Toxics Minimization Task Force (Chairman, 1994-1997)
Schlitz Audubon Nature Center, Milwaukee, Wisconsin (Past Member, Board of Directors)
Riveredge Nature Center, Newberg, Wisconsin (Past Member, Board of Directors)
Appelwild School, Fitchburg, Massachusetts (Teacher, 8th and 9th Grade Latin, 7th Grade English, 1983-1986)

Honors

Consulting Expert to Biden-Harris U.S. EPA Agency Review Team on PFAS issues (2020-2021)
Johnson Controls, Inc. 2008 Merit Award for Customer Satisfaction and Employee Ingenuity, *Volatile Organic Compound Emission Reduction Team*
2015 Recipient of *Wisconsin Law Journal's* "Leaders in the Law" Award
Recognized by *Chambers USA* (Natural Resources & Environmental, 2010 present)
Listed in *Best Lawyers in America* (Environmental Law 2006 – present; 2016 Environmental Law "Lawyer of the Year" in Milwaukee)
Recognized as a *Wisconsin Super Lawyer* (2009 – 2012, 2019 - present)
AV Preeminent Peer Review Rating (2011 – present)
Wisconsin Top Rated Lawyer in Environmental Law & General Practice (based on Martindale-Hubbell AV Preeminent Rating)
Recipient, Vermont Law School American Jurisprudence Award in Law of Water Resources, Fall 1987