

Peter W. McGaw

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Of Counsel

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Areas of Practice & Industry Specialties

Energy & Natural Resources; Real Estate; Government, Regulatory & Administrative Law; Chemical Law & Prop 65



Peter McGaw brings to his clients decades of experience on a wide range of environmental issues. He is a member of Buchalter's Energy & Natural Resources, Real Estate, and Government, Regulatory & Administrative Practice Groups. He represents private businesses and public agencies from the Firm's San Francisco office.

Mr. McGaw has guided clients through permit proceedings and defended them against enforcement actions under the Clean Water Act, the Clean Air Act, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Emergency Planning and Community Right-to-Know Act (EPCRA), and their California analogs.

When compliance issues arise, Mr. McGaw addresses the applicable legal requirements and available defenses while simultaneously guiding his clients' effort to improve their performance when necessary with the knowledge and pragmatism that comes with years of hands-on experience. Whether the issues involve NPDES permits, storm water discharges, TMDL development, jurisdictional wetlands, unanticipated air emissions, certification of automotive parts, management of hazardous waste, or reverse logistics, Mr. McGaw has the experience to provide his clients with practical legal advice and help them develop workable solutions that can be implemented for years to come.

In addition, his expertise in California's unique warning scheme, "Proposition 65," is recognized nationally. He has participated in efforts to amend Proposition 65 to curb abuses by the private enforcement industry and he provides training to his clients' workforce and guides his clients through the maze that can trap even the most sophisticated out-of-state manufacturers and retailers. Mr. McGaw is a co-author of the Proposition 65 Guidebook for the Crop Protection Industry. He has a long history of giving pragmatic advice regarding compliance with Proposition 65 and mounting proactive defenses against the many private enforcement claims that Proposition 65 has spawned.

Mr. McGaw serves as Co-Chair of the Environmental Task Force for the East Bay Leadership Council and serves on its Board of Directors, advocating locally, state-wide, and nationally on issues affecting economic vitality and the quality of life. During his service, Mr. McGaw has acted as Chair of the Council's Board of Directors and as its Chief Legal Counsel. His leadership has resulted in him being named "Outstanding Task Force Chair" twice and receiving the Council's Distinguished Service Award. Mr. McGaw also serves as President of the Industrial Association of Contra Costa County and is active in the California Association of Sanitation Agencies' Attorneys Committee, where he is recognized as an authority on jurisdictional issues under the Clean Water Act. He has been recognized for his service on the Bay Area Air Quality Management District's Environmental Justice Working Group and has received commendations from elected officials both within California and nationally.

Representative Matters

Water Quality

- At a time when NPDES permits routinely triggered litigation from all sides, Mr. McGaw negotiated the first

NPDES permit in over two years to be issued by the San Francisco Bay Regional Water Quality Control Board without opposition, for which he received public commendation from the Chairman of the Board

- Mr. McGaw was counsel of record in the first appellate court decision to apply the fractured Supreme Court *Rapanos* decision regarding the extent of federal jurisdiction under the Clean Water Act. The case, *Northern California River Watch v. City of Healdsburg*, garnered national attention and amicus briefs from around the country on both sides of the issues it raised
- Mr. McGaw successfully defended his client against an inverse condemnation claim alleging his public-agency client's action had caused the creation of jurisdictional wetlands, inhibiting development
- Mr. McGaw assisted a small liberal arts college develop a stormwater management plan that could be implemented with a minimum of disruption and expense while remaining acceptable to local regulators
- Mr. McGaw defended a homeowners' association against allegations of illegal destruction of streambed habitat, resulting in a dismissal of all charges without assessment of penalties or costs

Air Quality

- Mr. McGaw represented the operator of a wastewater treatment plant following a sever upset of an anaerobic digester which resulted in the discharge of excessive levels of hydrogen sulfide, resulting in the granting of an emergency variance and no assessment of fines
- Mr. McGaw has represented multiple internet retailers of automotive parts in enforcement actions brought by the Air Resources Control Board addressing the conditions under which performance parts may be advertised and sold in California
- Mr. McGaw represented a chrome plating facility in an enforcement action by local air district for excessive emissions and invalid source testing
- Advised manufacturer of architectural coatings regarding enforcement of alleged violation of sell-through provisions for emissions-limited products
- Advised client regarding sale and return of DIY refrigerant canisters under California's deposit program
- Advised small engine manufacturer regarding emissions requirements and certification of engines used in emergency standby generators and fire protection systems

Hazardous Materials and Hazardous Waste

- Mr. McGaw has counseled and defended multiple national retailers regarding compliance with California's unique hazardous waste laws, including related reverse logistics issues, in response to coordinated state-wide "dumpster diving" investigations by District Attorneys and the Attorney General
- Mr. McGaw represented a TSDf following an unannounced inspection by USEPA, including translating descriptions of complex treatment process into simplified concepts that resulted in the withdrawal of multiple alleged violations
- Mr. McGaw has defended clients in enforcement actions regarding the storage and management of hazardous waste, including asbestos and hazardous chemicals

Proposition 65 counseling and litigation

- McGaw has represented a wide range of in-state and out-of-state manufacturers and distributors regarding compliance with California's unique warning law, "Proposition 65." Substances at issue have included:
 - Toluene in pool cue tip cement
 - Brass in darts
 - Paradichlorobenzene in toilet bowl sanitizers
 - Lead in decorated glassware and ceramic containers, restaurant supplies, PVC insulation and coatings, brass, foods, dietary supplements and computer components
 - Chlorine disinfection byproducts

- Toluene in construction adhesive
- Environmental exposures from power plant emissions
- Perchloroethylene exposure from dry cleaners
- Benzene exposure from leaking Underground Storage Tank
- Methylene chloride in photostencil film chemicals
- Exposure to jet aircraft fumes in airports

Publications

- CalEPA Draft Vapor Intrusion Guidance Released for Public Comment, *Buchalter Client Alert*, February 14, 2020
- Businesses Must Now Demonstrate Storm Water Permit Compliance to Get a Business Permit, *Buchalter Client Alert*, January 3, 2020
- The California Cleaning Product Right to Know Act – Are You Ready for January 1?, *Buchalter Client Alert*, November 11, 2019
- Amendments to Proposition 65’s “Downstream” Warning Procedures would include the full Distribution Chain, *Buchalter Client Alert*, April 30, 2019

Education

Mr. McGaw earned his J.D. from UC Berkeley School of Law (Boalt Hall), where he served on the Moot Court Board, and a B.A. *with distinction* from Stanford University, where he was selected for the *Phi Beta Kappa* academic honor society.

Bar Admissions

- California

Court Admissions

- Supreme Court of the United States
- United States Court of Appeals for the Ninth Circuit
- United States District Court for the Northern, Central and Eastern Districts of California