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Brownfields – 2009 Coordination of Permits for Redevelopment with Remediation

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BIO



A.B.
Environmental
Engineering Sciences,
Harvard University, 1978
J.D.
University of Virginia, 1984
Editor, *Virginia Journal of
Natural Resources Law*

WILLIAM H. CHAPMAN, *Partner*

AREAS OF PRACTICE

Bill Chapman has been selected by his peers for inclusion in 2010 The Best Lawyers in America, is listed in the International Who's Who of Environmental Lawyers, by Chambers USA in "America's Leading Lawyers for Business," and is voted annually as a Washington Law & Politics Super Lawyer (2000-09). He was selected in 2006 by Washington CEO for "lawyers held in the highest regard."

Mr. Chapman represents clients performing cleanup or redevelopment of properties requiring hazardous waste investigation and cleanup. He advises corporations and municipalities in permitting and environmental compliance matters in the energy, high technology, waste management and real estate development industries; his experience includes penalty actions and citizens' suits under water, air and RCRA.

Mr. Chapman's practice ranges from cleanup work for GE and Kimberly-Clark and significant capital projects for International Speedway Corporation and Microsoft to long-standing work with smaller companies such as The Oeser Company and Spokane Rock Products. He has lectured regarding siting of energy and telecommunications facilities, development of sensitive lands and shorelines, and the implications of hazardous substance liability for real estate development.

PROFESSIONAL BACKGROUND

Mr. Chapman has chaired or keynoted conferences on water quality and water rights, land use, and environmental law and health. He has numerous publications and articles, including a number of chapters in books on environmental law and policy, addressing cleanup law and brownfield redevelopment. He is active in the community.

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Boards and Commissions

- Chairman, Governor's Recreation & Conservation Funding Board, 2009- (Member 2004-)
- Founding board member and President, Mountains to Sound Greenway Trust, 1991-
- Founding board member, past President, Washington Wildlife & Recreation Coalition, 1988-
- Chairman, Mercer Island Planning Commission, 2004- 2009 (Member, 2001-09)
- Board of Directors, Environmental Coalition of South Seattle, 1995-2008
- Founding board member, past President, Mercer Island Boys Basketball Booster Club, 2000-2005
- Board of Directors, Northwest Environmental Business Council, WA chapter, 1993-2002
- Member, Governor's Advisory Committee, Pollution Liability Insurance Agency, 1989-1993

ID	Description	Start Date	End Date	Form	Relationship
11	Agilent Ocean 1000	12/01/01	06/30/02	0001	1
12	Agilent 8453A Infrared Spectrometer	01/01/02	06/30/02	0001	1
13	Agilent 8453B Infrared Spectrometer	01/01/02	06/30/02	0001	1
14	Agilent 8453C Infrared Spectrometer	01/01/02	06/30/02	0001	1
15	Agilent 8453D Infrared Spectrometer	01/01/02	06/30/02	0001	1
16	Agilent 8453E Infrared Spectrometer	01/01/02	06/30/02	0001	1
17	Agilent 8453F Infrared Spectrometer	01/01/02	06/30/02	0001	1
18	Agilent 8453G Infrared Spectrometer	01/01/02	06/30/02	0001	1
19	Agilent 8453H Infrared Spectrometer	01/01/02	06/30/02	0001	1
20	Agilent 8453I Infrared Spectrometer	01/01/02	06/30/02	0001	1
21	Agilent 8453J Infrared Spectrometer	01/01/02	06/30/02	0001	1
22	Agilent 8453K Infrared Spectrometer	01/01/02	06/30/02	0001	1
23	Agilent 8453L Infrared Spectrometer	01/01/02	06/30/02	0001	1
24	Agilent 8453M Infrared Spectrometer	01/01/02	06/30/02	0001	1
25	Agilent 8453N Infrared Spectrometer	01/01/02	06/30/02	0001	1
26	Agilent 8453O Infrared Spectrometer	01/01/02	06/30/02	0001	1
27	Agilent 8453P Infrared Spectrometer	01/01/02	06/30/02	0001	1
28	Agilent 8453Q Infrared Spectrometer	01/01/02	06/30/02	0001	1
29	Agilent 8453R Infrared Spectrometer	01/01/02	06/30/02	0001	1
30	Agilent 8453S Infrared Spectrometer	01/01/02	06/30/02	0001	1
31	Agilent 8453T Infrared Spectrometer	01/01/02	06/30/02	0001	1
32	Agilent 8453U Infrared Spectrometer	01/01/02	06/30/02	0001	1
33	Agilent 8453V Infrared Spectrometer	01/01/02	06/30/02	0001	1
34	Agilent 8453W Infrared Spectrometer	01/01/02	06/30/02	0001	1
35	Agilent 8453X Infrared Spectrometer	01/01/02	06/30/02	0001	1
36	Agilent 8453Y Infrared Spectrometer	01/01/02	06/30/02	0001	1
37	Agilent 8453Z Infrared Spectrometer	01/01/02	06/30/02	0001	1
38	Agilent 8453AA Infrared Spectrometer	01/01/02	06/30/02	0001	1
39	Agilent 8453AB Infrared Spectrometer	01/01/02	06/30/02	0001	1
40	Agilent 8453AC Infrared Spectrometer	01/01/02	06/30/02	0001	1
41	Agilent 8453AD Infrared Spectrometer	01/01/02	06/30/02	0001	1
42	Agilent 8453AE Infrared Spectrometer	01/01/02	06/30/02	0001	1
43	Agilent 8453AF Infrared Spectrometer	01/01/02	06/30/02	0001	1
44	Agilent 8453AG Infrared Spectrometer	01/01/02	06/30/02	0001	1
45	Agilent 8453AH Infrared Spectrometer	01/01/02	06/30/02	0001	1
46	Agilent 8453AI Infrared Spectrometer	01/01/02	06/30/02	0001	1
47	Agilent 8453AJ Infrared Spectrometer	01/01/02	06/30/02	0001	1
48	Agilent 8453AK Infrared Spectrometer	01/01/02	06/30/02	0001	1
49	Agilent 8453AL Infrared Spectrometer	01/01/02	06/30/02	0001	1
50	Agilent 8453AM Infrared Spectrometer	01/01/02	06/30/02	0001	1
51	Agilent 8453AN Infrared Spectrometer	01/01/02	06/30/02	0001	1
52	Agilent 8453AO Infrared Spectrometer	01/01/02	06/30/02	0001	1
53	Agilent 8453AP Infrared Spectrometer	01/01/02	06/30/02	0001	1
54	Agilent 8453AQ Infrared Spectrometer	01/01/02	06/30/02	0001	1
55	Agilent 8453AR Infrared Spectrometer	01/01/02	06/30/02	0001	1
56	Agilent 8453AS Infrared Spectrometer	01/01/02	06/30/02	0001	1
57	Agilent 8453AT Infrared Spectrometer	01/01/02	06/30/02	0001	1
58	Agilent 8453AU Infrared Spectrometer	01/01/02	06/30/02	0001	1
59	Agilent 8453AV Infrared Spectrometer	01/01/02	06/30/02	0001	1
60	Agilent 8453AW Infrared Spectrometer	01/01/02	06/30/02	0001	1
61	Agilent 8453AX Infrared Spectrometer	01/01/02	06/30/02	0001	1
62	Agilent 8453AY Infrared Spectrometer	01/01/02	06/30/02	0001	1
63	Agilent 8453AZ Infrared Spectrometer	01/01/02	06/30/02	0001	1
64	Agilent 8453BA Infrared Spectrometer	01/01/02	06/30/02	0001	1
65	Agilent 8453BB Infrared Spectrometer	01/01/02	06/30/02	0001	1
66	Agilent 8453BC Infrared Spectrometer	01/01/02	06/30/02	0001	1
67	Agilent 8453BD Infrared Spectrometer	01/01/02	06/30/02	0001	1
68	Agilent 8453BE Infrared Spectrometer	01/01/02	06/30/02	0001	1
69	Agilent 8453BF Infrared Spectrometer	01/01/02	06/30/02	0001	1
70	Agilent 8453BG Infrared Spectrometer	01/01/02	06/30/02	0001	1
71	Agilent 8453BH Infrared Spectrometer	01/01/02	06/30/02	0001	1
72	Agilent 8453BI Infrared Spectrometer	01/01/02	06/30/02	0001	1
73	Agilent 8453BJ Infrared Spectrometer	01/01/02	06/30/02	0001	1
74	Agilent 8453BK Infrared Spectrometer	01/01/02	06/30/02	0001	1
75	Agilent 8453BL Infrared Spectrometer	01/01/02	06/30/02	0001	1
76	Agilent 8453BM Infrared Spectrometer	01/01/02	06/30/02	0001	1
77	Agilent 8453BN Infrared Spectrometer	01/01/02	06/30/02	0001	1
78	Agilent 8453BO Infrared Spectrometer	01/01/02	06/30/02	0001	1
79	Agilent 8453BP Infrared Spectrometer	01/01/02	06/30/02	0001	1
80	Agilent 8453BQ Infrared Spectrometer	01/01/02	06/30/02	0001	1
81	Agilent 8453BR Infrared Spectrometer	01/01/02	06/30/02	0001	1
82	Agilent 8453BS Infrared Spectrometer	01/01/02	06/30/02	0001	1
83	Agilent 8453BT Infrared Spectrometer	01/01/02	06/30/02	0001	1
84	Agilent 8453BU Infrared Spectrometer	01/01/02	06/30/02	0001	1
85	Agilent 8453BV Infrared Spectrometer	01/01/02	06/30/02	0001	1
86	Agilent 8453BW Infrared Spectrometer	01/01/02	06/30/02	0001	1
87	Agilent 8453BX Infrared Spectrometer	01/01/02	06/30/02	0001	1
88	Agilent 8453BY Infrared Spectrometer	01/01/02	06/30/02	0001	1
89	Agilent 8453BZ Infrared Spectrometer	01/01/02	06/30/02	0001	1
90	Agilent 8453CA Infrared Spectrometer	01/01/02	06/30/02	0001	1
91	Agilent 8453CB Infrared Spectrometer	01/01/02	06/30/02	0001	1
92	Agilent 8453CC Infrared Spectrometer	01/01/02	06/30/02	0001	1
93	Agilent 8453CD Infrared Spectrometer	01/01/02	06/30/02	0001	1
94	Agilent 8453CE Infrared Spectrometer	01/01/02	06/30/02	0001	1
95	Agilent 8453CF Infrared Spectrometer	01/01/02	06/30/02	0001	1
96	Agilent 8453CG Infrared Spectrometer	01/01/02	06/30/02	0001	1
97	Agilent 8453CH Infrared Spectrometer	01/01/02	06/30/02	0001	1
98	Agilent 8453CI Infrared Spectrometer	01/01/02	06/30/02	0001	1
99	Agilent 8453CJ Infrared Spectrometer	01/01/02	06/30/02	0001	1
100	Agilent 8453CK Infrared Spectrometer	01/01/02	06/30/02	0001	1

Goals

- A. Matching Property Use Goals with Remediation Alternative
- B. Assembling Good Team
- C. Time: Delivering on a Schedule (when agency review is key component)
- D. Risk Management Sufficient for \$ Invested

Endemic Problems

- A. Slowest Review affects Critical Path
- B. Agency Staff Turnover/Transfers
- C. Agencies outside their scope – Overlap
- D. ESA/SMA/GMA

Problem Statement (Specific)

- A. 3 Levels of government,
- B. 8-10 Agencies
- C. 12-20 programs
- D. Staff/Supervisor/Manger/Director
- E. Local Legislative/Executive

Coordination Communication Coordination

1. Negotiating a Review Schedule with Agencies
2. Actively Managing the Public Process--Outreach
3. Finding Flexibility—Early Identification of Issues and Opportunities
4. Negotiating Top-Down and Bottom-Up
5. Coordinating Agency Review to Avoid Delay
6. Delivering

Negotiating the Review Schedule with Agencies

- A. Meet before action is necessary
- B. Make – and meet – the first commitment
- C. Do your homework –
 - internal guidance
 - tech memoranda
 - prior permit apps
- D. Meet again when you can commit to a schedule

Finding Flexibility—Early Identification of Issues and Opportunities

- 1. Legal Issues
- 2. Technical Issues
- 3. Policy Issues

Legal Issues in the Siting Process

1. Notice and hearing procedures
 - Oversight
 - Consolidation
2. Definition of Proposal
 - Comprehensive
 - Options
 - Alternatives

Process Options for Ecology Sign Off

- Consent Decree – contribution protection
- Consent Order (AO) –
- Voluntary Cleanup Program – NFA goal
- “Independent” Cleanups – Going It Alone

Preparing for Private Rights of Action – Cost Recovery

- “Substantial Equivalent of Department...”
- ❖ Reporting, Public Notice, Documentation
- ❖ 173 – 340 – 350 – RI/FS
- ❖ 360 – Remedy Selection
- ❖ 360(3)(e) – Disproportionate Cost Analysis

If under order, consent order or consent decree, then EXEMPT FROM “PROCEDURAL REQUIREMENTS” OF

- 70.94 (AIR)
- 70.95 (SOLID WASTE)
- 70.105 (HWMA)
- 90.48 (WATER)
- 90.58 (SMA)

And local laws and approvals

“The Department shall ensure compliance” and “consult”...

70.105 (1).090

DYNAMIC Process Influences

1. SEPA/NEPA
2. Other public hearings
3. Elections
4. Comp Plan
5. Media Coverage
6. Appeals

Key Objectives

1. Defensible Process (once through)
2. Defined (AND AGREED!) Scope for each Technical Question
3. Consistent Project Priorities
4. Sometimes Insurance helps
(or substitutes)