Overview

With ever increasing pressure for environmental sustainability and continually rising oil prices, the automotive industry has, and will continue to face many tough challenges. Dykema automotive and environmental lawyers understand how these challenges impact the automotive sector and have fundamentally transformed the industry’s way of life. We have worked alongside our automotive clients to help them respond to these and other environmental issues—such as increased emissions and waste management regulations, changing consumer preferences and vigorous demand for innovation—so that our automotive industry clients repeatedly achieve successful outcomes in environmental regulatory, enforcement and litigation matters.

Our lawyers assist clients with matters relating to compliance and permitting, characterization, storage, treatment, shipment and disposal of waste materials, plant decommissioning and redevelopment, and site remediation. We also defend our automotive clients against claims for property damage, restoration, and hazardous substance exposure associated with off-site migration and contamination.

Dykema’s experienced team delivers comprehensive counseling in regard to:

Permitting, Enforcement and Compliance Counseling

Whether a matter involves emissions testing, treatment of waste materials or end-of-life-cycle compliance, Dykema lawyers regularly represent our automotive clients’ interests in an efficient, and cost reductive (operational and penalties) manner. We are experienced in the full range of environmental regulatory, compliance and enforcement issues—including handling applications, permits and consent orders for air, water, waste management or underground storage tank matters. Years of practice in this area have garnered strong relationships and credibility with state and federal regulatory agencies, including many divisions of the U.S. Environmental Protection Agency (EPA) and its state counterparts. These relationships translate into streamlined and effective solutions to our automotive industry clients’ issues. Dykema lawyers also stay abreast of changes in the volatile environmental regulatory landscape, helping clients seek proactive compliance to new standards without any lag time.

Plant Dispositions and Decommissioning

Improper plant decommissioning can result in steep criminal penalties and restitution costs. At Dykema, we help our clients weigh the vastly different considerations involved in “mothballing” a plant as compared to undertaking total demolition. When needed, we make sure clients are provided a thorough hazardous materials survey, and guide them through the process of obtaining all of the necessary disposal permits at the local, state and federal levels. Where there are regulated disposal units, storage tanks, process tanks or wastewater treatment facilities on the property, we have the legal and scientific know-how to ensure these special circumstances are properly dealt with, and done so with finality. In short,
we are experienced in all aspects surrounding the proper disposition and decommissioning of automotive industry plants, from planning to negotiation, and from documentation to compliance with decommissioning regulations.

Plant Redevelopment and Brownfield Funding

When it comes to redevelopment projects, our automotive industry team partners with our environmental, real estate, tax and governmental policy professionals to take a Brownfield project from conceptualization to successful completion. Our environmental lawyers help clients negotiate and ultimately receive economic incentives and tax abatements from federal, state and local sources—including Brownfield funding programs—and garner vital cooperative support for rational clean up and redevelopment plans from environmental consultants, land use planners, engineers and developers alike.

Plant Audits and Sustainability

We assist members of the automotive and vehicle service industries in conducting facility audits in ways that promote privilege and confidentiality, waste minimization, penalty avoidance, sustainability goals, and net environmental and cost benefits. We have handled several successful defenses of EPCRA Section 313 enforcement actions for manufacturing clients. We have also developed special expertise on electronic waste, REACH and vehicle end-of-life-cycle requirements in connection with the domestic and foreign production and distribution of materials, parts, components and products, including certification, reporting, product planning, contracting and supply chain issues.

Site Remediation and Corrective Action

We deliver constructive guidance and customized, compliant solutions to clients confronting the challenges of site remediation or on-site corrective actions. Our lawyers serve as individual company and common counsel at a number of federal and state Superfund sites for vehicle manufacturers and equipment suppliers, among others. We have substantial experience negotiating settlements with agencies and private parties under both federal and state laws, as well as within the context of CERCLA and state law equivalents covering hazardous substance releases. Our longstanding and extensive work for major industry OEM and Tier 1 supplier clients has provided our team with industry-leading knowledge of remedial options and strategies for both cost and result effective outcomes.

Environmental Agency Litigation

Environmental disputes can be among the most contentious and potentially debilitating a business can face. Whether the amounts at stake are astronomical, or the permit conditions imposed are gravely onerous—when the battle gets tough, clients rely on Dykema’s wealth of environmental experience, courtroom strength, and extensive case management skills to help them achieve timely and favorable resolutions.

We help our automotive industry clients respond to agency enforcement claims and defend them in actions brought by the Department of Justice, the EPA, and its state counterparts. Similarly, we represent our automotive industry clients in their challenges to agency actions, fighting for our clients against unfeasible or unreasonable permit conditions, which can seriously handicap a business’ ability to proceed with important development or cleanup plans.

Environmental Damage Claim Litigation

We have an impressive track record defending automotive industry clients in actions brought by private parties alleging environmental liability for property damage, cleanup costs, personal injury or legacy liability. We are known for our understanding of the science behind the contaminants and their alleged effects. Importantly, our lawyers are skilled in translating highly technical scientific jargon into language easily understood and appreciated by judges and juries. In addition, we are one of a very few firms with a long history counseling companies in disputes with their insurance carriers over coverage of their environmental liabilities. One of our landmark cases spanned decades and involved hundreds of millions of dollars in liabilities from an old landfill.
Experience Matters

- We obtained a significant victory for our clients Eaton Corporation and AvrinMeritor Automotive when the U.S. Sixth Circuit Court of Appeals affirmed an allocation to Eaton, of only a small portion of past investigation costs and a zero allocation of future cleanup costs for the Kalamazoo River Superfund Site—a project estimated to exceed $1 billion. The Sixth Circuit also affirmed the trial court’s decision that the plaintiff group would not be allowed to reopen an earlier attained zero allocation of response costs to ArvinMeritor. This double victory punctuated an eight-year battle fought in four trials and three Sixth Circuit appeals.

- We served as lead counsel for a major automotive supplier on a significant enforcement matter that culminated in the first successful and cost effective application of air injection control technology to address emissions from engine testing, leading to substantial savings to the client on penalties and operating costs.

- We defended an automotive supplier in a multidefendant benzene exposure case in California—one of the most highly regulated environmental regions in the country. We employed a cost saving streamlined defense strategy, taking only limited and strategic discovery, but succeeded in persuading plaintiff to dismiss the case against our client before trial for a nominal portion of the damages alleged.

- We played a precedent setting role in helping a major automotive supplier obtain the first hazardous waste management unit closure permit from the Indiana Department of Environmental Management based on an “alternate concentration limit.” This project involved closing a sludge lagoon at an operating facility that had received hazardous materials for an extensive period of time. Our ability to secure site specific closure criteria in the permit—as opposed to statewide default criteria—resulted in over $1 million dollars in savings for the client. The path to that successful result included our handling of permit negotiations, the filing of a permit provision appeal and coordination of expert and community support for our proposal.

- We have used creative solutions to help our clients achieve significant savings when implementing remedial measures by: (a) getting U.S. EPA approval for the disposal of spoils from a highway construction project as part of landfill cap work instead of purchasing grading and cover materials; (b) working with the State of Michigan and local communities to enact groundwater prohibition ordinances and extending the municipal water supply, as opposed to pursuing individual property restrictions; (c) developing buyout structures through which our clients resolve all their liability at both federal and state cleanup sites, including the first ever total buyout settlements in Illinois; (d) facilitating U.S. EPA Region 5’s novel issuance of unilateral administrative orders to non-settling parties, which required those parties to pursue good faith resolution of their remediation liability with our client group of settling companies; (e) incorporating cost-saving incentives in contracts for site remedial design, construction and operation/maintenance efforts; and (f) working with municipalities on site redevelopment and assisting with long term operation and maintenance responsibility, which allows our clients to reduce their site obligations once the remedial construction is complete.

- Our multidisciplinary Economic Incentives for Development team—with environmental, real estate, tax and governmental policy personnel—has worked extensively with industrial clients, developers, and municipalities on a wide range of Brownfield redevelopment projects involving the reuse and redevelopment of contaminated industrial and commercial properties. We have obtained in excess of $10 million in state and local Brownfield funding for our clients. In addition, we have developed a keen knowledge of the various strategies and approaches that make the difference between success and failure of Brownfield projects. Those strategies focus on such issues as: (a) identifying likely buyers and redevelopment opportunities; (b) working effectively with and gaining the support of local units of governments; (c) cooperating with—and facilitating cooperation among—environmental consultants, land use planners, engineers and developers to create rational site cleanup and redevelopment plans; (d) negotiating property transactions to maximize redevelopment success; and (e) coordinating Brownfield funding with a variety of other federal, state and local tax-based incentives.

Publications

“Successful Manufacturing Contracting—It’s More than Standard Terms and Conditions”
February 2018
Manufacturing Today

“State of the Automotive Industry”
October 17, 2012
Dykema Publication
"The Buzz On Electric Vehicle Safety"
February 14, 2012
Law360

"The Legal Implications of the Disaster in Japan"
July 3, 2011
Autobeat Insider Perspectives

"Speed Bumps Ahead"
May 20, 2011
The Deal Magazine

"Regulation of the 'Connected Vehicle'—Issues and Models"
March 14, 2011
Product Safety & Liability Reporter, BNA

**Speaking Engagements**

*New PVC Regulations and the Implications on Customer/Supplier Pricing*, Motor Vehicle Metals and Resins Conference
Automotive Industry Outlook 2013
December 12, 2012

Autobeat Insider Conference: Getting it Right
September 20, 2012

Automotive Institute: Retail Auto Distribution Today
May 17, 2012

Automotive Institute: Legislative and Regulatory Issues Currently Impacting the Automotive Industry
April 18, 2012

*Blockbuster Developments in Class Action Litigation*, Co-Panelist, 22nd ABA Conference on Automotive Product Liability Litigation, Phoenix, Arizona
March 28-30, 2012

*Bridging the Divide: Plaintiff and Defense Counsel Mediation Summit*, Panel Co-Moderator and Co-Chair of Conference, 22nd ABA Conference on Automotive Product Liability Litigation, Phoenix, Arizona
March 28-30, 2012

March 28-30, 2012

*Privacy Concerns and Data Ownership in Intelligent Vehicles*, SAE 2011 Intelligent Vehicle Systems Symposium
November 8, 2011

Automotive Institute: Opportunity, Risk and Liability Social Channels
October 19, 2011

Autobeat Insider Conference
June 23, 2011