



# B&D Litigation

## 2022 B&D Litigation Practice Highlights

### March 2023

2022 marked another year where Beveridge & Diamond's litigators achieved tangible wins for clients by combining rigorous and innovative use of the litigation process with core subject matter competence, adept understanding of regulatory regimes and client businesses, and focused attention to client goals. B&D has experience with toxic torts, class actions, Superfund and site remediation, enforcement defense, regulatory challenges, and business and contract disputes. No matter the subject, B&D's [litigation practice](#) stands ready to deploy our full resources to achieve the best results and meet our clients' objectives. We highlight below a selection of representative cases from last year.

### Tort Claims & Class Actions

Clients rely on B&D's experience defending against toxic tort, product liability, and class action claims. Notable examples include:

- ◆ **Dismissal of putative nuisance class actions upheld in NY State's Court of Appeals** - In 2022, New York's highest court affirmed dismissals of putative class actions in two cases where the proposed classes encompassed thousands of residents and asserted claims for nuisance and negligence from alleged odors emanating from two landfills owned by a client. This case affirmed to two major published decisions in the New York Appellate Division—also litigated by B&D—that narrowed the scope of negligence and public nuisance claims in the state. *Davies v. S.A. Dunn & Co.*, 200 A.D. 3d 8 (2021); *Duncan v. Capital Region Landfills, Inc.*, 198 A.D. 3d 1150 (2021). *American Lawyer's Litigation Daily* selected the B&D team of Principals [Megan Brillault](#), [Michael Murphy](#), [John Paul](#), and [Jimmy Slaughter](#), as a runner-up for "Litigator of the Week" for the wins in *Duncan* and *Davies*.

- ◆ **Denial of odor nuisance class certification** - Following early motion practice that resulted in the dismissal of one claim and confirmed our client's right to conduct informal putative class member interviews, B&D successfully defeated the plaintiff's motion for certification of a class of thousands of residents. *Lloyd v. Covanta Plymouth Renewable Energy, LLC*, 585 F.Supp.3d 646 (E.D. Pa. 2022). The federal judge's opinion underscored a theme advocated by B&D that environmental torts are not appropriate for class treatment. B&D Principals [Jimmy Slaughter](#), [Michael Murphy](#), and [Collin Gannon](#) defended the client in this lawsuit.
- ◆ **Ethylene oxide class/mass tort actions** - B&D is defending toxic tort actions against two manufacturers of ethylene oxide (EO) in Louisiana. B&D litigators and regulatory attorneys are key strategists and players in this potentially multi-million dollar set of cases that could have long-range implications for the EO and broader chemical manufacturing sectors. Principals [Maddie Boyer](#), [Rob Brager](#), [Nessa Horewitch Coppinger](#), [Collin Gannon](#), [Megan Morgan](#), [Evynn Overton](#), and [Roy Prather](#) handle these cases.
- ◆ **Favorable settlements in MTBE groundwater contamination MDL** - We serve as national counsel for all of our client's litigation related to the presence of the gasoline component MTBE in water supplies. To date, our work has included over 100 lawsuits brought by states, municipalities, public water systems, and private well owners, including putative class action claims, the majority of which B&D helped its client and the industry settle. There are currently three active cases brought by sovereign plaintiffs. The damages claimed by the various plaintiffs total in the billions of dollars. B&D Principals [Nessa Horewitch Coppinger](#), [Dan Eisenberg](#), [John Guttmann](#), [Paula Schauwecker](#), and [Graham Zorn](#) lead this effort.

## Superfund and Site Remediation

B&D represents clients dealing with contaminated sites across federal, state, and local jurisdictions from inception to completion, giving our litigators an unparalleled foundation to handle complex claims. Notable examples include:

- ◆ **Prevailing at trial in California on question of causation** - We secured a major victory in a bench trial for Clarios, the world's largest producer of lead-acid batteries for automobiles in a case brought by the California Department of Toxic Substances Control to recover environmental cleanup costs. The B&D team deployed their mastery of litigation procedure and technical and expert subject matter knowledge to prevail in a trial focused on the question of causation. In a published opinion, the trial court ruled that the geographic area in which the facility caused response costs did not extend to the residential areas that were the trial's focus. *California Dep't of Toxic Substances Control v. NL Indus., Inc.*, No. 220CV11293SVWJPR, 2022 WL 14769903 (C.D. Cal. Oct. 20, 2022). *American Lawyer* again named Beveridge & Diamond a Runner-Up Litigator of the Week for the win. The case underscores the firm's deep technical and legal expertise in

environmental contamination matters. Principals [Bina Reddy](#), [Eric Klein](#), and [Gary Smith](#) argued the case.

- ◆ **Alternative dispute resolution process for Superfund site** - The firm represents EVRAZ Inc. NA and other clients in the alternative dispute resolution (ADR) process for Portland Harbor, the largest Superfund site west of the Mississippi. Combined, our litigators have prepared approximately 75 advocacy briefs and worked with technical experts on over 100 expert reports to give our clients the best chance to limit exposure. The site involves more than 100 potentially responsible parties (PRPs), with complex issues involving 100+ years of historical operations across numerous and governmental entities along approximately 11 miles of river. B&D Contaminated Site Practice Group Chairs [Loren Dunn](#) and [Nicole Weinstein](#) lead the team for EVRAZ Inc. NA, and a number of other principals [Dan Krainin](#), [Marc Goldstein](#), [Heidi Knight](#), [Jeanine Grachuk](#), [Mackenzie Schoonmaker](#), [Josh Van Eaton](#), [Dave Weber](#), [Gus Winkes](#), [Graham Zorn](#), [Katelyn Ciolino](#), [Kaitlyn Shannon](#), and [Tim Sullivan](#) handled aspects of ADR work at Portland Harbor.

## Enforcement Action Defense

B&D continued its legacy of vigorously defending clients against the most consequential EPA and state environmental agency enforcement actions. Notable examples include:

- ◆ **High stakes flaring settlements** - B&D favorably settled three high-stakes enforcement actions brought by DOJ and EPA against major chemical manufacturers regarding alleged violations of Clean Air Act regulations governing the flaring of excess natural gas. Under EPA's national Flaring Initiative, the U.S. had sought nearly \$1 billion in injunctive relief and penalties from these companies. We resolved these matters for fractions of the amounts initially sought. Principals [Maddie Boyer](#), [Rob Brager](#), and [Aron Schnur](#) obtained these settlements.
- ◆ **Success in California air quality management district litigation** - In December 2020, our client entered into a Stipulated Order for Abatement with the South Coast Air Quality Management District (SCAQMD) in response to receiving multiple odor nuisance Notices of Violation in 2020. B&D successfully litigated numerous compliance and modification hearings before the SCAQMD Hearing Board to modify the Stipulated Order to mitigate impact on our client's operations. After an evidentiary presentation by B&D to the Hearing Board in October 2022, the Board unanimously agreed to let the order expire. As of November 15, 2022, our client's facility is no longer operating under a Stipulated Order, allowing the company to avoid expensive and difficult limits on its business. B&D litigators [Jake Duginski](#), [Megan Morgan](#), [Jimmy Slaughter](#), and [Gary Smith](#) handled this case.

- ◆ **Texas Attorney General air enforcement cases** - B&D favorably settled a multi-year air civil enforcement case the Texas Attorney General brought against a major manufacturer based on referral from the Texas Commission on Environmental Quality of a variety of alleged violations (including numerous emissions events). The OAG originally sought a multi-million dollar penalty and tens of millions of dollars in potential injunctive relief. B&D resolved this matter for nearly half the initially proposed penalty and injunctive relief costing magnitudes less than the original proposal. The Firm represents major manufacturers in four similar OAG air cases. Principals include [Maddie Boyer](#) and [Laura LaValle](#).

## Administrative Litigation and Regulatory Challenges

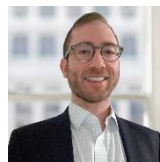
B&D's lawyers have decades of experience advising on state and federal regulations, giving them unparalleled understanding of the regulatory process and how to strategically challenge any new regulations.

- ◆ **Challenging EPA's Interim Health Advisories for PFOA and PFOS** - In 2022, B&D filed a petition on behalf of the American Chemistry Council (ACC) challenging EPA's Interim Health Advisory Levels for PFOA and PFOS. ACC issued a [press release](#) explaining its support of drinking water standards for PFAS based on the best available science, and hopes the firm's challenge "leads to science-based policies that are protective of human health and the environment." This closely watched case could have significant implications for industry and the EPA's power. Washington, DC Principals [Nessa Horewitch Coppinger](#) and [Tom Richichi](#) filed the petition.

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### About B&D's Litigation Practice

B&D's **more than 50 litigators** represent clients in civil, criminal, and appellate court cases and in administrative, arbitration, and mediation proceedings. In 2023 *U.S. News-Best Lawyers* named B&D its "Law Firm of the Year" for Environmental Litigation, and we regularly receive recognition by *AmLaw's Litigation Daily* as "Litigators of the Week."

In addition to our litigation practice, B&D is consistently recognized as a top-tier nationwide environmental practice by *Chambers USA*. We help clients around the world resolve critical environmental and sustainability issues relating to their products, facilities, and operations. Learn more at [bdlaw.com](http://bdlaw.com).

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