



EXCALIBUR GROUP, LLC

ENVIRONMENTAL CONSULTANTS, ENGINEERS & LIABILITY MANAGEMENT EXPERTS

LEGAL & LITIGATION SUPPORT

Case 1: Technical Litigation Support, International Cosmetics Manufacturer, NJ

EXCALIBUR was retained by counsel on behalf of one of the world's largest perfume and cosmetics manufacturers, to identify technical evidence vindicating client from environmental allegations and potentially significant environmental liabilities. **EXCALIBUR** was brought on board as the legal team's technical expert after the company was identified by the NJDEP as a potentially responsible party (PRP) at a third party site contaminated with a variety of chemicals. The basis of the allegation was the disposal of non-hazardous wastewater from the client's plant at the contaminated site. Unbeknownst to the client, the hauler they had retained to appropriately dispose of the waste illegally dumped the waste at an unpermitted facility. The client learned about this deception from the County Prosecutor's office who followed and filmed the hauler and sampled the residues in the pump truck. The primary project goal was to find evidence in the State files to demonstrate the client did not contribute to the site contamination, thus avoiding the need to sign a State Consent Order requiring PRPs to assess and clean up the property.

To complete the assignment within the accelerated time schedule, a core technical team was assembled and supervised to develop specific objectives and a protocol to review key State documents and file entries. Each member was assigned to review and summarize a portion of the reams of information comprising the State case files for subsequent evaluation by the team leader. Summary tables showing all soil, water and groundwater sample analytical results collected by the State were developed and



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compared to regulatory threshold concentrations for the chemicals of concern. A detailed list of all chemicals identified in all of the samples by the State was compiled and compared to all potential industrial uses by the client.

The multi-pronged technical review also included a detailed evaluation of the Prosecutor's video tape of the waste hauler pumping out the client's tank. Comparing the time elapsed on the video tape to flow rate estimates derived from the vacuum truck equipment and the length of hose used to drain the client's tank, the team leader showed only a fraction of the tank's contents could have been removed. Even though the hauler had invoiced and manifested the client for the entire tank's contents, this discovery left open the possibility that the septic hauler had other liquid waste in his truck when he dumped it on the contaminated property. This, in turn, cast serious doubt over whether the chemical constituents found in site soil and groundwater samples originated from the client's plant.

On a parallel front, a top-notch data validator was secured to evaluate the quality of the laboratory analytical data in the State file. After several days of careful data base validation work, it became apparent that much of the laboratory analytical data upon which the State was basing its case was suspect.

To reduce the perceived complexity of the technical case and to separate the client as the source of contamination from the contaminated property, the team leader devised a simplified flow chart. The chart illustrated how the chemical constituents detected on the contaminated site at levels above regulatory thresholds could not have come from the wastewater tank. Each step of the flow chart pared away a subset of the potential chemical contaminants using various "filtering" criteria such as: the absence of a such chemicals in samples from the client's; data validation results showing the existence of laboratory contaminants or reporting inaccuracies.



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The detailed analysis was completed on schedule and presented first to client's legal council followed by a formal presentation to the State Prosecutor who was attempting to force the client to accept partial responsibility for the costly site assessment and remediation through signing a Consent Order. At the conclusion of the presentation to the State, the Prosecutor acknowledged the thoroughness and technical merit of the compelling arguments and the client was not required to sign the Consent Order or fund any of the ensuing site characterization/cleanup efforts. Subsequently, the Prosecutor solicited the team leader as an Expert Witness to work for the State on unrelated environmental projects.

Case 2: Conoco-Phillips, Santa Monica Water Supply MTBE Litigation Support.

EXCALIBUR was retained by counsel for Conoco-Phillips, listed by the USEPA as a potentially responsible party (PRP) in a high-profile litigation case in California where metropolitan municipal drinking water at the Charnock well field were closed due to MTBE contamination in groundwater. Conoco-Phillips was one of 13 companies ordered by California to provide an alternate source of drinking water for Santa Monica. **EXCALIBUR** supported its client's defense by providing expertise in technology evaluations for treatment of residual soil impacts at the alleged Conoco-Phillips contributing source of the groundwater impacts. **EXCALIBUR** provided the legal team expert opinions on feasibility, effectiveness and design of soil vapor extraction, six-phase heating and patterned drilling / excavation design alternatives.



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Case 3: Litigation Support for Environmental Issues Arising From Real Estate Transfer

EXCALIBUR prepared and defended expert opinion on whether the environmental due diligence reports prepared by the plaintiff's consultant were or were not reasonably consistent with the requirements of and in accordance with the U.S. Environmental Protection Agency's "all appropriate inquiry" rule as embodied in the ASTM International *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*. **EXCALIBUR** also provided expert opinion on whether the historical uses of and potential contamination liability associated with the subject parcels had been reasonably, prudently, and fully evaluated before the land leases had been negotiated and executed by the plaintiff. **EXCALIBUR** determined that none of pre-conditions to qualify for the limited liability protections under CERCLA had been satisfied because: (a) the reports did not meet or satisfy the requirements of "all appropriate inquiry;" (b) none of the reports were described or characterized as a Phase I ESA nor met the defined requirements of ASTM E 1527; and (c) the activities discussed in the reports took place after lease negotiations had begun for at least some of the land parcels in question.

Case 4: Technical UST Closure Insurance Reimbursement Appeals, Multiple Sites

EXCALIBUR State of Pennsylvania attorneys with objective technical opinions on a full range of environmental engineering, consulting, forensics, cost estimating, remediation and site restoration issues within the environmental practice and expertise of **EXCALIBUR** staff. The expert opinions are given relevant to appeals to claims reimbursement decisions. When **EXCALIBUR** is asked to become involved disputes



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often involve hundreds of thousands of dollars in questionable reimbursement claims for work deemed to have been unnecessary or inappropriate, overly expensive, poorly documented, or otherwise potentially not justified by Claimants. Much of the work requires meticulous reconstruction of project events and rationale relative to standard industry practices and regulatory requirements. It also has included conducting comparative remedial alternatives analyses, independent environmental and other regulatory file reviews, detailed regulatory and third-party interviews, engineering calculations, forensic analyses, and other research. Careful attention is paid to understanding and justifying expenditures against standards, protocols, best engineering practices and other professional measures, approaches, site conditions and past site work. Similarly, incurred costs are compared to expected costs for comparable activities, labor, materials, and other expenses. To date, **EXCALIBUR** has been completely successful in helping legal appeals staff and Claims Investigators definitively establish the technical merits and justification for denial of payments totaling millions of dollars.

Case 5: Failed Flexible Connector Pollution Litigation Defense Support

EXCALIBUR was retained by corporate counsel for an international engineering and construction firm facing multi-million dollar claims alleging significant liabilities associated with removal/replacement of 140 flexible UST pipe connection systems and subsurface remediation at several fuel depots owned by a large Pennsylvania municipality. As part of the defense team, **EXCALIBUR's** timely, broad-based technical oversight contributed greatly to the case. With little time to spare, **EXCALIBUR's** contributions to the defense included providing a national corrosion expert to support the team's efforts and developing detailed spreadsheet databases and summary



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matrices described by the client later as a key litigation tool that greatly helped “to separate the wheat from the chaff” in support of the case.

Case 6: PRP Defense in Lawsuit Filed by Public Water Supply Purveyor in PA

In a case involving the sudden spillage of thousands of gallons of gasoline and subsequent impact to nearby surface water and the municipal water supply well field, **EXCALIBUR** was on the team mounting a strong technical defense and optimal settlement with the water purveyor who had brought forward a civil suit in US District Court. In the process, **EXCALIBUR** was retained in several capacities by various parties (the site owner, outside counsel, and an insurance entity) to serve as the environmental engineering/remediation contractor, technical expert and fact witness. The water purveyor claimed expenses and extensive damages in treatment and monitoring costs in providing over 400,000 gallons of clean water each day to the town. **EXCALIBUR** was been retained in several capacities by various parties (the site owner, outside counsel, and an insurance entity) to serve as the environmental engineering/remediation contractor, technical expert and fact witness. Taking the project over from another consultant, **EXCALIBUR** was initially tasked with developing an effective strategy to reduce the likelihood of regulatory repercussions through sound science and open communication with PADEP. This involved detailed evaluations of the extensive environmental file, conducting groundwater modeling and forecasts, and presenting the findings to the PADEP. Because the hydrocarbon release impacted the fractured bedrock aquifer and water supply, the efficiency in which the engineered system could be installed, permitted (both NPDES and air permit waivers), and up and operational were paramount. The multi-phase extraction system designed by **EXCALIBUR** proved effective in the challenging conditions. **EXCALIBUR** also designed and oversaw construction & operation of an on-site soil bioremediation cell to treat excavated source soils in order to reduce disposal costs for the client.



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EXCALIBUR served client as a fact witness in the litigation case successful brought to resolution and closure.

Case 7: Successful Defense Against Unsubstantiated Claims at Pending New England Superfund Site

This case involved helping a national law firm on behalf of a manufacturing client defend itself against unsubstantiated claims at a pending Superfund site in New England. **EXCALIBUR** was retained as an expert to review and comment on technical opinions rendered on the timing when certain hazardous materials and alleged hazardous wastes may have been disposed of at a historical landfill site in New England. Ultimately the judge granted our team's motion for summary judgment.

Case 8: Expert Opinion as Basis for Release of Escrow Funds at Northeastern US Chlorinated Solvent Contaminated Site

EXCALIBUR was retained to justify release of escrow funds previously set aside for an industrial property in northeastern United States impacted with chlorinated solvents. Using **EXCALIBUR** expertise in applicable environmental regulations, engineering and construction costs, and environmental site conditions at an industrial facility, **EXCALIBUR** developed defensible present value cost estimates for remediating the site used in subsequent negotiations.



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Case 9: Expert Opinion, High-Profile Litigation Involving Compliance with “All Appropriate Inquiry” Requirements

Excalibur was retained by a confidential client as a third-party expert to help defend against litigation seeking cost contributions to the cleanup of contaminated property already leased or acquired by the plaintiffs. Central to our task was to assess and opine whether the plaintiffs’ pre-acquisition site-specific environmental assessments of the property had constituted a Phase I environmental site assessment in conformance with the *ASTM Standard Practice for Environmental Site Assessments: Phase I ESA Process* in effect at the time (ASTM E1527-05), and were consistent with the requirements of “all appropriate inquiry.” In addition, Excalibur addressed whether the plaintiffs conducted their Phase I ESA or other form of environmental assessment before leasing or acquiring the real property assets. Of particular interest was whether the plaintiffs reasonably, prudently, and fully evaluated the historical uses of and potential contamination liability associated with the subject parcels before negotiating and executing leases for any of parcels in question.

Prior to settlement of the case, Excalibur made a clear and convincing demonstration that the plaintiffs’ assessment reports did not meet or satisfy the requirements of “*all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice*,” as defined at 42 U.S.C. §9601(35)(B) and ASTM E 1527-05. In addition, it appeared that the activities discussed in the assessment reports had taken place after the plaintiffs began negotiating leases for at least some of the land parcels. In fact, our findings demonstrated that the reports were likely prepared after the plaintiffs had, through other channels, become aware of the presence of contamination on its leased or acquired land parcels.