

## Environmental Group Of The Year: Mayer Brown

By **Michael Phillis**

*Law360 (January 21, 2020, 3:30 PM EST)* -- Mayer Brown LLP last year secured litigation wins against the Obama administration's rule expanding the reach of the Clean Water Act and helped a gas company defeat accusations that it polluted a Chicago suburb through abandoned gas pipelines, landing itself a spot as one of Law360's 2019 Environmental Groups of the Year.

Mayer Brown focuses on hiring effective litigators who are also true environmental lawyers who can help clients navigate complex cases and influence policy, according to partners at the firm. Twenty-five environmental attorneys are spread across offices domestically and in South America, Europe and Asia. Those attorneys are in addition to roughly 60 others who concentrate in practice areas like general litigation and sometimes assist on environmental matters as required, the firm said.



Mark R. Ter Molen, the co-chair of the firm's environmental litigation group, said that business has increased recently because of the firm's reputation and companies' concerns over environmental issues.

"Our success record is increasingly making Mayer Brown's group the first choice for companies facing major cases," Ter Molen said.

For example, Ter Molen was lead trial counsel for Northern Illinois Gas Corp., a subsidiary of Southern Company Gas, which operates as Nicor. The city of Evanston, Illinois, had claimed that now-abandoned natural gas pipelines connected to the utilities' shuttered Skokie plant were leaking hazardous waste. This "waste oil" pollution allegedly coated and damaged the city's water mains.

The city asked a federal judge to order the utilities to establish a three-member safety panel and fund an assessment of the area's potential damage. An Evanston victory would have allowed the panel to link the waste oil pollution with the water main issues using an allegedly simplistic analysis. The utility argued a better analysis refuted a link between the condition of the mains and the waste oil, according to Ter Molen.

The judge denied the city's request, finding, in part, that the city was unlikely to succeed on the merits. The parties agreed to dismiss the case in June.

"This was a great win for the client," Ter Molen said.

Ter Molen said the case had larger implications for the industry, as there are manufactured gas plants like the one that produced the byproduct at issue all over the country. He said that because so much of the country's water infrastructure is aging, municipalities are facing budget pressure to replace them and might look toward utilities for help funding that effort.

"If this case had gone the other way, we would have expected to see copycat cases brought by other municipalities within Illinois, and I would have expected throughout the country, where municipalities thought that they could effectively pressure utilities into contributing to replace aging water infrastructure," Ter Molen said.

The firm also defended 3M from lawsuits targeting the chemical group known as per- and polyfluoroalkyl substances, or PFAS, which are used in products like firefighting foam, cookware, stain protectant and outdoor gear and have been linked to environmental harms. And Mayer Brown is defending U.S. Sugar Corp. against a suit claiming environmental harm from sugarcane burning that was launched in June.

Mayer Brown also represented industry groups as they continued to fight the Obama administration's rule that defined waters of the United States in a way that expanded the reach of the Clean Water Act.

The firm won twice in 2019 on those arguments. In May, a Texas federal court said the rule was procedurally improper. In August, a Georgia federal court found that the rule was both procedurally and substantially improper in the latest development in the long-running fight.

"We have been trying very hard, briefing all around the country, and to get those two courts to agree with us that that's an unlawful rule is very important," Timothy S. Bishop, a partner at the firm, told Law360. "The substantial analysis of the Georgia court makes a pretty big appearance in the new rules that EPA has come up with. EPA has come around to the point of view that the Georgia court got it right."

The EPA has pushed to repeal the Obama-era rule — a move that is being challenged — and the firm is involved with representing industry groups in support of the EPA's efforts, Bishop said. And the agency is likely to soon finalize a more limited definition of waters of the United States. Bishop said the firm will likely represent clients who intervene in challenges to the new definition in order to defend the Trump administration's actions.

In November 2018, the firm's client Weyerhaeuser Co. received a unanimous U.S. Supreme Court win in its challenge to the U.S. Fish and Wildlife Service's move to protect a stretch of the company's land in

Louisiana as “critical habitat” despite the fact that the endangered frogs at issue didn’t live on the land.

Rich Bulger, co-leader of the firm’s environmental litigation group, said the firm is effective in part because of how its attorneys work together.

“The cohesive and seamless staffing that we have between our environmental lawyers, our litigators and our appellate specialists adds a layer of comprehensiveness and sophistication in analysis and strategy that I think gives us an advantage compared to many firms in the market,” Bulger told Law360.

--Additional reporting by Lauraann Wood. Editing by Jack Karp.