

# Katten

Katten Muchin Rosenman LLP



## ENVIRONMENTAL CRIMES AND INTERNAL INVESTIGATIONS

### Our Clients

Katten's nationally recognized Environmental and Workplace Safety team represents companies of all sizes, as well as individuals, in internal investigations and criminal enforcement proceedings involving alleged environmental and workplace safety crimes. When facing criminal investigations by regulators and enforcers, or in the aftermath of a major incident, companies from a wide range of industry sectors, including oil and gas, energy, chemical, refining, manufacturing, maritime, construction and transportation, turn to our team and rely on our integrated incident response and environmental crimes experience.

### Our Services

The increasing efforts to broaden the criminal liability of businesses, along with federal initiatives to expand criminal prosecutions of cases involving worker endangerment, calls for experienced defense counsel who understand complex regulatory regimes and the relevant operational and technical issues. Our team of dedicated environmental litigators is prepared to step in at the initial investigative stage, address the complex legal issues in parallel civil and criminal actions, and provide clients with a clear assessment of the potential exposure and liability issues that may lie ahead. In addition to assisting in complex evidence gathering, working with a wide range of experts, and supporting

### RECOGNIZED BY

- *U.S. News – Best Lawyers®* “Best Law Firms”
  - Environmental Law (National; Austin) 2019, 2018
  - Litigation – Environmental (Oakland) 2019; (National; New York; Washington, DC) 2019, 2018



efficient electronic discovery, our team is especially capable of working with witnesses in complex cases. We also have significant experience in resolving suspension and debarment matters.

Led by a former head of the US Department of Justice (DOJ) Environmental Crimes section, our environmental crimes attorneys have significant experience in environmental and workplace safety cases, including a deep understanding of the government's approach to the investigation and prosecution of such matters. Our team includes former Assistant United States Attorneys and trial attorneys from the DOJ Environment & Natural Resources Division (ENRD) who offer clients an inside perspective on governmental players and their likely tactics and concerns.

Katten has represented clients under a wide variety of most major federal environmental and safety statutes, including the Clean Air Act (CAA), the Occupational Safety and Health Act (OSH Act), the Resource Conservation and Recovery Act (RCRA), Clean Water

**"Well respected in the field and has experience dealing with the federal agencies."**

*Chambers USA 2016 (Environment)*

Act (CWA), Outer Continental Shelf Lands Act (OCSLA), Act to Prevent Pollution from Ships (APPS), Oil Pollution Act (OPA), Ports and Waterways Safety Act (PWSA), Ocean Dumping Act (ODA), National Environmental Policy Act (NEPA), Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA) and Marine Mammal Protection Act (MMPA), among others.

For example, we routinely work with operators in connection with investigations into offshore incidents, such as releases, spills, fatalities and fires. Criminal enforcement of environmental and workplace safety incidents in the Gulf of Mexico has increased dramatically following the Deepwater Horizon incident. Our attorneys have been retained to respond to some of the most significant incidents in the Gulf of Mexico, including Deepwater Horizon and the Black Elk Energy fatalities and oil release. We have helped clients respond to investigations by the US Department of Interior (DOI), the Bureau of Safety and Environmental Enforcement (BSEE), the US Coast Guard (USCG), the Federal Bureau of Investigation (FBI), the US Environmental Protection Agency (EPA), the US Chemical Safety Board (CSB), and the Occupational Safety and Health Administration (OSHA).

Our extensive familiarity with the government enforcement apparatus in the Gulf region, including the prosecutors and investigators who handle cases through the Investigations and Review Unit (IRU) run by DOI–BSEE, allows our team to cover all phases of the process, including representation of the operator before BSEE and the agency's IRU regarding alleged regulatory violations. We advise clients with respect to informal resolution as well as appeals before the Interior Board of Land Appeals (IBLA) of Incidents of Non-Compliance (INCs) issued by BSEE.

Katten's deep bench also has experience in the area of corporate monitorships, including experience with all components of corporate compliance programs, as well

as an understanding of prosecutor and regulator compliance expectations. Two Katten attorneys have been selected to serve as monitors. One was appointed by the DOJ to serve as an independent Foreign Corrupt Practices Act (FCPA) compliance monitor for the world's largest manufacturer of generic pharmaceuticals. The other is the court-appointed corporate monitor over the largest international cruise ship company related to an environmental criminal conviction.

### **Our Experience**

- Representation of an oil company in an ongoing criminal investigation into a pipeline release.
- Representation of an offshore labor services company in connection with the *Black Elk* case, a federal criminal investigation of a multi-fatality explosion in the Gulf of Mexico that followed *Deepwater Horizon*. Successfully obtained dismissal of all felony counts in the indictment on a motion to dismiss.
- Representation of a well services company in connection with a federal criminal OSHA/DOJ investigation of a fatality at a fracking site.
- Representation at trial of one of the world's largest providers of wastewater management solutions in connection with a federal criminal prosecution. Secured an acquittal of a 26-count criminal indictment.
- Representation of a Fortune 50 energy company in connection with a federal criminal Clean Air Act/Risk Management Plan investigation focused on whether American Petroleum Institute (API) Standards and Recommended Practices can be the basis for a criminal prosecution.
- Representation of an offshore oil services company in connection with a federal criminal investigation involving allegations of safety violations, false statements and misrepresentations in connection with offshore BSEE regulations.
- Representation of one of the world's largest integrated producers of polymers and fibers in connection with a federal criminal investigation into shipments of byproducts, co-products and co-products used as fuels.
- Representation of a leading lawn and garden manufacturer in connection with the largest federal

criminal investigation in the history of the FIFRA program.

- Frequent representation of companies and individuals in vessel-related criminal cases.
- Representation of a leading processor and marketer of fresh and packaged meats in connection with a federal criminal investigation into allegations of unpermitted discharges of process wastewater.
- Representation of a Fortune 500 energy company in connection with a state securities investigation into climate change disclosures.
- Representation of a leading construction materials and services company in connection with a federal criminal investigation into stormwater management practices at multiple facilities located throughout the Northeast.
- Counsel to a manufacturing company in securing a declination from the Department of Justice in connection with a multi-facility federal grand jury investigation involving allegations of illegal dumping of hazardous waste, bypassing of a treatment system, improper waste disposal and failure to report waste releases.
- Representation of a Fortune 50 energy company in connection with a federal criminal investigation

arising out of the application of NSPS Subpart J to flaring operations at an oil refinery.

- Representation of one of the largest independent midstream energy companies in North America in connection with a federal criminal investigation into the alleged dumping of hazardous materials down a storm drain as part of a scheme involving the false production of biodiesel.
- Counsel in regard to securing a declination from the Department of Justice on behalf of a power plant operations and management company in connection with a criminal investigation involving allegations of tampering with emissions equipment and submitting false information to environmental and energy regulators in violation of the Clean Air Act and the Federal Power Act.
- Representation of a crew member of a fishing vessel operating in the South Pacific who was detained for alleged MARPOL and APPS violations, which could result in substantial prison time. Katten successfully prepared the client on making an extensive proffer to the prosecutor, convincing the government to revise its approach to the case, and resulting in the client's freedom.