



Randolph C. Visser

Partner

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OVERVIEW

Randolph C. Visser is a partner in the Real Estate, Land Use, National Resources and Environmental practice group in the firm's Los Angeles office. Mr. Visser has over three decades of air quality experience and founded and co-chairs the Firm's Global Climate Change Team.

Areas of Practice

Mr. Visser specializes in environmental compliance, permitting and environmental enforcement defense and administrative and judicial litigation. He has significant experience and expertise in CEQA, NEPA, Proposition 65, California & Global Warming Solutino Act of 2006, and federal, state and local environmental, water and air quality laws, including particularly the South Coast Air Quality Management District (SCAQMD) Regional Clean Air Incentives Market (RECLAIM) Program and other market incentive environmental programs.

Mr. Visser represents numerous commercial, manufacturing, transportation, energy and government contract-related businesses concerning the land use and environmental permitting of complex projects (including as a member of the California multi-agency permit-streamlining "Red and Green Teams") and regulatory compliance and litigation before federal, state and local agencies (including the Cal-EPA, California State Lands Commission, Coastal Commission, the SCAQMD, and other air, waste, and water regulatory agencies), as well as in federal and state courts.

Mr. Visser has written numerous articles, commented in numerous articles and journals and has appeared on radio and television including, KCET's Life & Times (aired 2/27/2007), to discuss varied environmental laws regarding Proposition 65, climate change and related issues.

EDUCATION

- J.D., University of California, Los Angeles School of Law, 1974
- B.A., Northwestern University, 1971

EXPERIENCE

Environmental Regulatory, Land Use & Permitting, and Enforcement Defense

Representation of major lead acid battery recycler in complex variance and appeal proceedings concerning alleged violations of NAAQs and related District rules.

PRACTICE AREAS

- Environmental
- Real Estate

INDUSTRIES

- Aerospace & Defense
- Climate Change and Clean Technology
- Construction and Infrastructure
- Energy
- Life Sciences
- Technology

Representation of numerous commercial, industrial, consumer product, transportation, energy and government-contract related businesses in environmental regulatory compliance, land use and environmental permitting, compliance and due diligence audits, environmental enforcement defense, legislative rulemakings, and administrative litigation before federal, state and local air, water and waste regulatory agencies and in judicial litigation before federal and state courts.

For Southern California steel company, acted as special environmental counsel since 1984 on ongoing basis in numerous and varied land use and environmental permitting, regulatory compliance and enforcement defense matters, including:

- Successfully permitted new \$6.5 million energy effort steel re-heat furnace through County of San Bernadino & SCAQMD including resolutino of complex emissions reduction credit issue
- Selected to State of California Department of Trade & Commerce inter-agency "Green and Red Teams" to expedite and obtain all approvals and permits for Company's planned \$300 million expansion, *i.e.*, new state-of-the-art wastewater treatment plant, pickling lines, strip mills and electric arc furnace. Developed master plan strategy and guided client through regulatory hurdles to obtain all approvals and permits necessary for multi-year plant expansion including removing Trades as obstacle through Project Labor Agreement and charting legal and regulatory strategy to obtain scarce PM (particulate matter) emission reduction credits (ERCs).
- Provided advice and counsel on all of Company's environmental regulatory, litigation, transactional matters across all media, *i.e.*, air, water, waste, including SCAQMD RECLAIM compliance, air credit trading and Proposition 65.
- Successfully obtained over 15 SCAQMD variances and defended or resolved related enforcement proceedings including for Company's hot strip, galvanizing and other furnaces and equipment, many of which required multiple day hearings which threatened the shut-down of the company's most profitable steel furnace production equipment for significant periods of time.
- Obtained reversal of SCAQMD imposition of first time production limits on facility which would have reduced steel production by over 15% leading to revenue reduction of over \$100 Million/yr. Case involved complex federal Clean Air Act NESHAP MACT issues.
- Successfully negotiated \$10 million emission reduction credit purchase.
- Defense of County of San Bernardino District Attorney and multi-agency task force investigation into Company's historical waste management and disposal practices; assistance to Company in re-designing its in-house waste management employee training and facility compliance programs.
- Successfully revived cancelled 1983 emission reduction credit applications for equipment purchased by company from predecessor and obtained \$9+ million of "written off" air credits for Company (which every prior consultant said couldn't be done).
- Persuaded Cal-EPA not to issue unilateral administrative order and negotiated favorable consent agreement covering approximately \$55 million site cleanup.
- Successfully negotiated Expedited Remedial Action Plan agreement with numerous California regulatory agencies for orderly and progressive 10-year \$100 Million site cleaning preventing threatened unilateral enforcement and groundwater contamination liability
- Successfully defended complex PCB spill enforcement action resulting in no prosecution or penalties.
- Conducted environmental due diligence for potential Northern California steel facility acquisition.

- Represented Company at numerous SCAQMD rulemakings and related technology reviews over 20 years.

For leading national water heater manufacturer, successfully obtained product variance from SCAQMD Rule 1121 for continued sale of residential-type, natural gas-fired water heaters; six days of hearing before SCAQMD Hearing Board.

For a major basic materials Company, e.g., copper alloys, ammonia and chlorine, obtained precedential California State water quality law ruling receiving statewide press attention. Successfully petitioned the California State Water Resources Control Board (“SWRCB”) to overturn a regional water board order requiring the Company to continue to provide free bottled water to over 800 local private well-owners if their drinking water wells contained any detectable amount of perchlorate. In a statewide precedential ruling, after numerous administrative and appeal hearings, the SWRCB decided the case in favor of the Company and concluded the Company is not required to provide bottled, replacement water to residents serviced by drinking water wells tainted with perchlorate at or below the state's newly minted 6 ppb public health goal.

For largest Southern California solid waste materials recovery, recycling and transfer company, successfully defended multiple SCAQMD and private party odor nuisance claims and permitted \$1.5 million odor reduction plan and bio-filter installation.

For major industrial company, successfully obtained a favorable SCAQMD RECLAIM policy re-interpretation saving the company over \$10+ million in emission reduction credits, additional emission fees and penalties.

For container glass manufacturer association and its members, managed ongoing environmental compliance and successfully permitted numerous expansion projects, obtained numerous air quality variances, RECLAIM and Title V permits, and defended numerous SCAQMD enforcement actions, including:

- Successfully obtained land use and environmental permits for \$100 million plant expansion.
- Successfully opposed SCAQMD and San Joaquin Valley Unified Air Pollution Control District (SJVAPD) NOx control rulemakings which would have required GPI's individual members to install multi-million dollar NOx control equipment or to consider closing down their plant and successfully persuaded the air districts through a technology review process to raise the Rule's NOx control limit to a level allowing compliance by other less expensive means.
- Successfully negotiated favorable SCAQMD RECLAIM NOx reduction endpoint, resulting in additional multi-million allocation of air credits.
- Successfully obtained numerous air variances and air permits and resolved numerous enforcement actions including Proposition 65 claims.
- Successfully obtained reversal of SCAQMD RECLAIM ruling denying container glass manufacturer air credits valued at \$1m+ which now can be sold, used for air credit trading or plant expansion purposes.
- Successfully obtained complex SCAQMD air quality variance to allow continued operation of facility and related permitting of significant 25% production capacity expansion, avoiding shutdown and \$10 million NSR BACT installation requirements through supplemental analysis, applications and advocacy of New Source Review regulations.

- Successfully defended Company in EPA criminal fraud investigation concerning Automated Credit Exchange (“ACE”), a SCAQMD RECLAIM air credit trading program broker and related ACE bankruptcy proceeding, preserving and protecting Company’s multi-million air credits and air credit trading revenues.
- Provided counseling and representation before SCAQMD Governing Board on numerous air quality rulemakings including RECLAIM and NOx reduction rules and related technology reviews.

Representation of interstate rail transportation carriers as special environmental counsel since 1995 on numerous multi-jurisdictional land use and environmental permitting, regulatory compliance and enforcement defense matters, including:

- Provided comprehensive master land use and environmental permitting strategy for intermodal container transfer project and for joint venture permitting and construction of multi-county oil pipeline along coastal railroad line to Northern offshore oil offloading terminal facilities.
- Successfully negotiated substantive settlement agreement and compliance reporting program to resolve over 200 notices of opacity violations for smoking locomotives, avoiding over \$1 million in fines. (1997-1998)
- Selected to West Coast derailment emergency response team.
- Negotiated substantive settlement agreement and compliance reporting program to resolve over 200 notices of violations for smoking locomotives, avoiding over \$1 million in fines.
- Defense of complex SCAQMD air quality nuisance abatement action for diesel exhaust from idling locomotives, including federal court on injunctive action to enjoin SCAQMD from closing down UP sidings and requiring new facility construction.
- Successfully represented railroad on appeal of 6-year-2 tiered Polanco Act site contamination case, obtaining reversal of defense verdict subsequently upheld on appeal and releasing Company from multi-million dollar damages award.
- Successfully completed unique air compliance audit and air credit generation project resulting in railyard expansion savings and NSR air credit offsets.

For major independent power company, provided a comprehensive environmental, health and safety liability analysis and "on call" compliance counseling for their national and international projects and to develop a master form agreement for retention of all its environmental consultants worldwide.

For major recycle paperboard and box manufacturer, selected to West Coast emergency spill response team, defended Company in state-federal task force criminal and civil proceedings re cleanup of Salton Sea; negotiated complex settlement with LARWQCB concerning compost toxicant of paper waste contaminating U.S. waters resulting in no enforcement or permitting.

For major label manufacturer, defense of complex, multi-party toxic tort action arising from contaminated groundwater and San Gabriel Valley Groundwater Superfund site.

For major pulp and paper manufacturer, provided environmental compliance and enforcement defense arising from alleged illegal disposal of waste in Salton Sea.

For major independent power purchaser, managed environmental due diligence for successful bid on 3 East Coast coal-fired power plant acquisitions.

For nation's largest bio-medical diagnostic equipment manufacturer, defended State Superfund private cost recovery actions, resolved EPA EPCRA non-reporting complaints, and provided ongoing counsel on numerous bio-medical air, waste, EPA rulemaking, EU and Clean Air Act Title V permitting matters.

For substantial telecommunications and government contracts firm, provided defense in two minor State Superfund matters.

For major conglomerate, settled major 13-year multi-party EPA/California San Fernando Valley El Monte Operable Unit Superfund action and private cost recovery actions favorably to Company.

For wood preservatives manufacturing company, successfully defended and settled complex commercial breach of contract, wood mold litigation and related regulatory compliance, "cancer cluster" toxic tort claims and enforcement.

For major leading vegetable seeds producer, provided ongoing environmental and life sciences compliance advice.

For major ink jet printer manufacturer, resolved SCAQMD enforcement action for customer non-compliance with myriad of SCAQMD solvent rules.

For leading U.S. energy company, successfully negotiated contracts for Northern California power plant SCR air pollution installation and provided site cleanup counseling.

For satellite telecommunications company, provided environmental regulatory compliance and government contract counseling on numerous matters.

For major bio-medical genomics company, conducted regulatory compliance audit.

Proposition 65

Provided Proposition 65 compliance counseling and litigation defense to numerous companies including marine terminals and shipping lines, pharmaceutical and chemical companies, California's largest steel processor, the container glass industry, pulp, paperboard packaging companies, electronics companies, medical device and fluorescent lamp manufacturers and retailers, and certain national bus and rail transportation companies.

For national container retail company, provided advice, counsel and defense in Proposition 65, CPSIA and chemical-related issues.

For numerous children's jewelry, clothing and toy manufacturers and distributors, successfully defended Proposition 65 lead exposure claims and litigation.

For a major pesticide manufacturer, prevented a particular pesticide from being Proposition 65-listed through the "authoritative bodies" process.

For a manufacturing facility, successfully defended chemical exposure claims resulting in dismissal without monetary penalties.

For more than a dozen hotel chains, successfully defended Proposition 65 actions brought

against the hotel industry for tobacco product and smoke exposures, which resulted in favorable low-cost settlements of some and dismissal without monetary penalties for others.

For major tanning lotion manufacturer, successfully defended Proposition 65 claims for exposures to formaldehyde, resulting in plaintiff's withdrawal of Proposition 65 notice without our client paying any monetary amounts.

For a cattle-breeding hormone manufacturer, successfully defended Proposition 65 claims for food and water exposures, resulting in dismissal without monetary penalties.

For leading national school municipal bus operator, successfully defended Proposition 65 claims for diesel engine exhaust exposures, resulting in dismissal without monetary penalties in one instance and stipulated judgment for defense in the other based on lack of evidence.

For various national gift shop owners and hotel spa operators, successfully defended Proposition 65 claims for exposures to chemicals from candles, resulting in withdrawal of notices without monetary penalties.

For national manufacturer of tools, lead screws and galvanized nails, resolved Proposition 65 claims for alleged exposure to lead and other heavy metals, which resulted in favorable settlement of some claims and dismissal of others.

For national hotel and airport cigar gift shop retailers, resolved environmental exposure claims in significant complex, coordinated multi-party and multi-jurisdictional Proposition 65 Tobacco Product Litigation.

For chemical and resin manufacturer, defended \$50 million chemical toxic tort and Proposition 65 lawsuit brought by neighboring facility and related SCAQMD odor nuisance violations.

Environmental Transactional Experience

Representation of numerous transactional clients in connection with the acquisition or sale of businesses that have real property assets with an array of environmental issues, such as the presence of asbestos-containing materials, soil and groundwater contamination, and ongoing operations that are being conducted without proper permits and related compliance counseling. In connection with these transactions, assisted clients with their review of the environmental issues that arise during the course of the transactions, and in negotiating and drafting transactional documents that address issues such as required cleanup, permit and licensing issues, and indemnification against losses or damages arising as a result of preexisting conditions.

For major national residential and commercial real estate developer, negotiated and obtained EPA approval for the company's 10,000-acre master planned community in Arizona.

For seller of a 47-acre "Brownfields" site with nearly 700,000 square feet of manufacturing facilities located in Commerce, California, managed all environmental compliance and cleanup issues including negotiation of a voluntary cleanup agreement with the Department of Toxic Substances Control (DTSC) affecting both the subject site and adjacent properties, preparation and negotiation of environmental provisions for purchase

and sale documentation, access agreements, allocation of environmental liabilities and negotiation of environmental insurance. In addition, a condemnation action used as a pretext for access for environmental testing was successfully thwarted.

For a number of independent power producers in connection with the development of electric generating facilities, assisted in identifying the environmental issues that should be addressed and in negotiating and drafting agreements with the site owners that include extensive provisions with regard to environmental matters such as cleanup, permitting, licensing and indemnification provisions. Some of the facilities are located on sites known to be contaminated or are located on "brownfield" sites.

For major conglomerate, managed "soup to nuts" environmental site compliance and cleanup issues for sale of major Southern California facility with significant historical legacy site contamination including negotiation of complex cleanup agreements and deed restrictions with DTSC, defense of SCAQMD enforcement actions, etc.

Enforcement Matters

For more than 20 years, have represented numerous industrial companies in the steel, container glass, pulp and paper, energy, cement, mineral mining, transportation and government contracts industries in defense of federal, state and local agency enforcement actions for non-compliance with laws and regulations.

For major steel company, resolved a multi-agency District Attorney hazardous waste investigation and enforcement action as well as resolved major SCAQMD compliance actions which threatened the shut-down of the Company's production equipment for long periods of time.

For glass manufacturer, defended a new source performance standard NOV and new source review non-compliance notice.

For wood product manufacturer, defended a new source review NOV, which EPA had issued as part of its initiative in the early 1990s against the engineered wood products industry for alleged violations of the prevention of significant deterioration requirements in the late 1970s and early 1980s.

HONORS

- Chambers USA, Environmental, 2007, 2008 and 2009: "[Mr. Visser is a] thorough, efficient and knowledgeable" attorney, who displays "a good blend of pure legal ability and practical business sense." "He is regularly instructed in air quality cases and operates at the cutting edge of the rapidly changing climate change sector." "[Randy co-chairs the Firm's] global climate change team and wins praise for his environment and land use practice, which has a focus on air quality matters. He is an authority on Proposition 65 and well versed in advisory and dispute resolution work."
- Who's Who Legal: California, 2008, 2009
- Profiled by Los Angeles Business Journal in October 6, 2008 edition as one of "L.A.'s Leading Environmental Lawyers."
- Praised by legal observers per the Daily Journal's 2007 supplement "Top Southern California Law Firms"
- Listed in 2008 and 2009 Southern California's "Best Lawyers" under Environmental Law by Los Angeles Times Magazine

- Listed in PLC's Which Lawyer? Yearbook 2007 as a "recommended" environmental attorney
- Southern California Super Lawyers, Environmental/Land Use, 2004, 2005, 2006, 2007, 2008, 2009, 2010
- Who's Who Legal, 2009 California Edition, "highly nominated and highly ranked" in the state's environmental practice and noted as co-founder of Sheppard Mullin's Global Climate Change practice

MEMBERSHIPS

- Editorial Advisory Board for Environmental Law360, 2009
- Los Angeles County Bar Association, Environmental Section, Executive Committee, Chair (2006-2007), Officer (2001-2007), Member since 1997
- Executive Committee, Chair of the 14th and 15th Annual Super Symposium, Environmental Section, Los Angeles County Bar Association, 2000-2001
- Senior Advisor, UCLA Law School, Journal of Environmental Law and Policy, 1998-2006
- Alumni Board of Directors, UCLA Law School, 2001-2005
- Editorial Board, Prop 65 News, 2001-2004
- Member, Environmental Section, State Bar of California
- Member, Association of Iron and Steel Engineers, 1997-2004
- Member, National Association of Environmental Professionals, 1998-2004
- Home Rule Advisory Group, South Coast Air Quality Management District, 1997-2001
- Editorial Board, Los Angeles Lawyer Magazine, 1995-2000
- Member, Cal-EPA Site Mitigation Manager Task Force, 1999-2000

ARTICLES

- Q&A With Sheppard Mullin's Randolph Visser, *Law360*, July 30, 2009
- Catching the Green Wave, *Los Angeles Daily Journal*, June 11, 2008
- It's Getting Easier Being Green, *Los Angeles Daily Journal*, June 4, 2008
- Climate Heats Up For Eco-Practices, *The Recorder*, May 21, 2007
- "Take Caution - When Heeding Advice of Government Agents" (Jan. 24, 2006, *San Francisco and Los Angeles Daily Journal*)
- "The Toxic Substances Control Act: A Primer for Engineers, Scientists, Executives and Patent Lawyers," LACBA Environmental Section Website (2005)
- "Superfund Primer: A Practical Guide to the Comprehensive Environmental Response, Compensation and Liability Act," LACBA Environmental Website (2005)
- LACBA Environmental Website (Re-designed in 2003)
- "Terrorism: The New Security Reality - Volatile Combinations: The Events of September 11 May Have Increased The Exposure of Chemical Companies to Lawsuits Based on the Use of Their Products In Terrorist Acts," *Los Angeles Lawyer* (November 2002)
- "Toxic Tort Litigation and Beyond," LACBA Environmental Section Newsletter Article (2002)
- "What To Do When The Inspector Shows Up," LACBA Environmental Section Website (2002)
- California Independent Petroleum Association (CIPA) Environmental Manual, Co-Author (1999-2000)

Real Estate & Construction Law Blog Articles

- "California Adopts First Low-Carbon Fuel Standard to Reduce Greenhouse Gas Emissions from Transportation Fuels", May 21, 2009
- "U.S. Supreme Court Holds Superfund's Traditional Joint and Several Liability and Arranger Liability Have Their Limits: Bar May Be Lowered For Demonstrating Apportionment Liability", May 8, 2009
- "Reducing Greenhouse Gas Emissions: California Air Resources Board Releases Draft AB 32 Scoping Plan", July 1, 2008
- "California Air Resources Board Issues Proposed Regulations to Require Facilities to Report Greenhouse Gas Emissions Under the Global Warming Solutions Act", November 1, 2007
- "California Air Resources Board Proposes Additional Early Action Measures Pursuant to the Global Warming Solutions Act (AB 32)", September 8, 2007
- "Summary of Proposed Draft Regulation to Reduce Emissions of Diesel Particulate Matter, and Other Pollutants From In-Use On-Road Heavy-Duty Diesel-Fueled Engines", August 21, 2007
- "Update to June 15, 2007 Blog: The California Air Resources Board Passes New Regulations Limiting Off-Road Diesel Engine Emissions (13 CCR SEC. 2449)", July 31, 2007
- "Private Parties Under CERCLA May Sue Potentially Responsible Parties for Cost Recovery Even if They Are Barred from Suing For Contribution", June 18, 2007
- "CARB Proposes New Diesel Emission Regulations(13 CCR SEC.2449)", June 15, 2007

SPEECHES

- "A Continued Red, White and Green Case Docket – The U.S. Supreme Court Year in Review"(moderator), Los Angeles County Bar Ass'n 23d Annual Environmental Law Super Symposium
- "Clarity or Confusion - The Aftermath of the U.S. Supreme Court's Landmark 2006-2007 Environmental Law Decisions" (moderator), 22nd Annual Environmental Law Super Symposium: A Climate for Change - Environmental Law On the Rise Again
- "Recent Hits and Coming Attractions: A Supreme Court Environmental Law Update" (moderator), 21st Annual Environmental Law Super Symposium: From Sacramento to Washington - New Winds are Blowing
- "Perchlorate 2006: Progress Toward Understanding and Cleanup - Policy Roundtable: Water Replacement Orders and the Olin Decision," (lead speaker), GRA Conference, Santa Clara (Jan. 26, 2006)
- "Is California on the Road to Adopting the Precautionary Principle?" LACBA Annual Environmental Conference (Apr. 2004)