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## Q&A With Sheppard Mullin's Randolph Visser

*Law360, New York (July 30, 2009)* -- Randolph C. Visser is a partner in the construction, environmental, real estate and land use practice group in Sheppard Mullin Richter & Hampton LLP's Los Angeles office. He has over three decades of air quality experience and founded and co-chairs the firm's global climate change and climate technology practice.

Visser specializes in environmental regulatory compliance, enforcement defense and administrative and judicial litigation. He represents numerous commercial, manufacturing, transportation, energy and government contract-related businesses in the land use and environmental permitting of complex projects, regulatory compliance and enforcement defense across all media environmental laws and litigation before federal, state, regional and local environmental regulatory agencies, as well as in federal and state courts.

### **Q: What is the most challenging case you've worked on, and why?**

A: I successfully petitioned the California State Water Resources Control Board ("SWRCB") to overturn a regional water board order requiring a major basic chemicals company to continue to provide free bottled water to over 1,000 Santa Clara County local private well-owners if their drinking water wells contained any detectable amount of perchlorate.

In a statewide precedential ruling, the SWRCB decided in favor of the company, concluding companies are not required to provide replacement bottled water to residents serviced by drinking water wells tainted with perchlorate at or below the state's newly minted 6 ppb public health goal.

The SWRCB held that the regional water boards must defer to the drinking water public health goal set for that chemical by the State's drinking water regulatory experts. Prior to this ruling, regional boards commonly required replacement water at the lowest natural background level in their sole discretion regardless of state drinking water standards.

Perchlorate has been in the news frequently of late as environmental groups have suggested that nothing less than one part per billion is safe and industrial groups contend that over 200 parts per billion is safe. The case precedent is of great import in California and across the United States because perchlorate is a rocket fuel chemical which has contaminated the groundwater underlying many of our military defense bases and many states' drinking water supplies, foreboding potential cleanup and abatement costs in the hundreds of billions of dollars.

Aside from the case's legal and regulatory complexities, persuading a state regulatory agency to relax pre-existing chemical-in-drinking water restrictions over "No rocket fuel in drinking water" chants by environmental advocacy groups was quite daunting and not for the faint of heart.

**Q: What accomplishment as an attorney are you most proud of?**

A: In 2005-2007, on behalf of the leading national water heater manufacturer, and coordinating with the industry as a whole, I successfully obtained from the SCAQMD Hearing Board a multiyear and multiphased product variance, from SCAQMD Rule 1121, for the continued sale of residential-type, natural gas-fired water heaters in Southern California.

The three-year proceeding resulted in new Ultra Low NOx water heaters, meeting the most stringent technology-funding air quality rate limit in the country — 75 percent reduction in NOx — resulted in reductions of over 210 tons NOx/yr. (NOx is a precursor to smog.)

There are over 4 million residential gas-fired water heaters in the SoCal 4-county region with over 10 percent or 400,000 being replaced each year. This result was a win-win for both the company and the environment. I now am proud to own one.

**Q: What aspects of law in your practice area are in need of reform, and why?**

A: Presently, companies must chart a compliance path through a convoluted range of overlapping, and often conflicting or contradictory local, regional, state, federal and international laws and regulations, at risk of significant civil and criminal penalties — even for actions taken decades ago. Hundreds of legislative enactments at local, state and federal levels attempt to regulate specific chemicals and individual consumer and commercial and industrial products by varying methodologies in differing fashions.

Despite thousands of trial and appellate court decisions since 1980, the U.S. Supreme Court just recently provided first time guidance on the critical environmental joint and several and arranger liability issues in *BNSF et al. v. United States et al.*, 556 U.S. \_\_\_\_ (2009). It is easier to chart a course through an Escher painting than to satisfy every responsible company's goal to comply with all environmental laws. In a global world, to the average commercial enterprise, this way lies madness.

**Q: Where do you see the next wave of cases in your practice area coming from?**

A: We are in what is known as the third wave of environmental law. We now face an onslaught of potential new future legacy issues in the form of climate change, nanotechnology, biotechnology and genetically modified crops, foods and products.

The wheels of justice, i.e., the law, grinds slowly and "time is not our friend" in formulating new proactive environmental policies and strategies for stemming the tide to prevent or manage the exponentially escalating health and welfare risks in these areas.

**Q: Outside your own firm, name one lawyer who's impressed you and tell us why.**

A: Andrea Ordin (Morgan, Lewis & Bockius LLP)

I practiced with Andrea Ordin for over a decade — a more elegant, smart and insightful practitioner you will never find. UCLA alum. First woman U.S. attorney for the Central District of California, chief assistant attorney general of California in charge of environmental and consumer affairs, with notable wins in the United States and California Supreme Courts. Private practice since, though still dedicating a good portion of her continuing career to public service and community affairs, e.g., Los Angeles Police Commission. Andrea is what we all strive to be in a lawyer.

**Q: What advice would you give to a young lawyer interested in getting into your practice area?**

A: Look ahead — keep your eyes on the horizon. As L.P. Hartley opened in his great novel "The Go Between": "The past is a foreign country. They do things differently there." And so we did.

In this ever faster-paced digital global world, a lawyer must be prepared to adopt his or her practice to change with the changing times. Each wave is followed by a trough but the "fourth wave" will come more quickly than each preceding one.

I promise you — you will not practice, at least for very long, what you studied or planned starting out as an environmental lawyer. The future environmental, health and safety challenges in this area are great. No lawyer can, or should, ask for a more challenging career than that.