

Kelly D. Brown P.E. *Shareholder*

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Overview

Kelly D. Brown has practiced environmental, health, and safety (EHS) law since 1991, and is a partner in the firm's EHS Section. Kelly's legal practice is a broad-based one as he handles EHS-related litigation, transactional matters, remediation projects, and compliance counseling.

Kelly defends corporate clients in various personal injury and toxic tort lawsuits and administrative proceedings brought by governmental agencies including the Texas Commission on Environmental Quality (TCEQ), Railroad Commission of Texas (RRC), the Environmental Protection Agency (EPA), and the Occupational Safety and Health Administration (OSHA), and represents both plaintiffs and defendants in environmental cost recovery litigation and property damage lawsuits. Kelly also advises a nuclear power plant on a variety of issues, including those before the Texas Low Level Radioactive Waste Disposal Compact Commission.

Kelly works with the firm's corporate and real estate attorneys to allocate risk in various mergers and acquisitions and real estate transactions. Kelly coordinates all HSE aspects of the due diligence in these transactions, provides contract language to properly allocate risk, and oversees related remedial work resulting from such risk allocation.

Kelly advises corporate clients on a variety of EHS issues both in Texas and throughout the United States. Kelly handles air permitting and related compliance issues, as well as those involving solid and hazardous waste, underground storage tank, wastewater, and remediation issues. Along these lines, Kelly conducts and supervises HSE compliance audits to help companies secure immunity from administrative enforcement, and provides advice to corporate clients on questions involving regulatory interpretations.

Kelly has overseen numerous remediation projects through the TCEQ's

Education

South Texas College of Law, J.D., 1991

Texas Tech University, B.S. Chemical Engineering, 1981

Practice Areas

Environmental, Health, and Safety

Commercial Litigation

Admissions

? Texas, 1991

? U.S.D.C., Eastern District of Texas

? U.S.D.C., Southern District of Texas

? U.S. Court of Appeals for the Fifth Circuit

Voluntary Cleanup Program, and has secured multiple Municipal Setting Designations (MSD) for clients as a practical and inexpensive remedial option to contaminated groundwater.

Kelly has represented companies throughout his career in various Superfund-related matters, including the following sites: Bayou Sorrell (Louisiana), Brio Refining, CES Environmental, Devils Swamp (Louisiana), French Limited, Gulf Metals Industries, Gulfco Marine Maintenance, Jones Road Groundwater Plume, Malone Services Company, Marine Shale (Louisiana), Petro-Chemical System (Turtle Bayou), RSR Corp., Sandoval Zinc (Illinois), Stoller (South Carolina), and U.S. Oil Recovery.

Kelly is a past chair of the Houston Bar Association's Environmental Law Section, and was selected to the Best Lawyers in America list 2009-2019 and named Lawyer of the Year in 2015 for Litigation - Environmental. Best Lawyers in America is a registered trademark of Woodward White, Inc. Kelly is also licensed as a professional engineer by the State of Texas (presently on inactive status).

Representative Experience

Litigation

- Acted as common counsel and represented three large multinational corporations in prosecuting CERCLA cost recovery claims for costs arising out of a federal Superfund Site
- Represented oil and chemical companies in numerous personal injury suits related to alleged exposure to benzene, asbestos, silica, and various petroleum products
- Represented a local governmental entity in resisting the landfill's owner/operator planned disposal of industrial waste adjacent to existing municipal waste landfill
- Defended multiple corporations in defending criminal charges filed by local prosecutors for alleged violations of environmental laws
- Represented multi-national corporation in defense of lawsuit filed on behalf of contractor employee alleging personal injury
- Represented oil and gas company in proceeding before the Railroad Commission of Texas (RRC) under Statewide Rule 76
- Defense of a large multinational oil company sued by landowner for CERCLA claims arising from a large plume of hydrocarbon in the

- groundwater attributed to historic operations at a refinery and tank farm
- Represented landfill owner in prosecuting claims against multiple entities for unauthorized disposal of hazardous waste
 - Represented large chemical manufacturer and worked with insurance defense counsel in defense of personal injury claims arising out of an industrial accident
 - Defended food manufacturing company in defending criminal charges filed against local prosecutors for alleged violations of environmental laws
 - Represented private equity group with respect to certain obligations arising out of purchase and sale agreement involving waste disposal facility
 - Defended waste transporter against claims it hauled hazardous waste to non-hazardous waste landfill
 - Defended agricultural chemical company investigated for federal environmental criminal violations
 - Represented landowner/developer in prosecution of claims against prior owners arising out of historical oil and gas development
 - Represented refinery in claims made by federal government that company violated federal and state hazardous waste requirements
 - Represented refinery in defense of lawsuit arising out claims that company's wastes were cause of explosion and resulting injuries and deaths at offsite disposal facility
 - Represented a Fortune 500 company and a metals recycling company in prosecuting cost recovery claims under CERCLA and the Texas Solid Waste Disposal Act for costs arising out of a former State Superfund Site
 - Represented a soap manufacturer in defending landlord's claims that client violated lease and contaminated soil and groundwater
 - Represented an energy company in defense of fraud and negligence claims brought by property buyer for contamination of real property, business losses and personal injury
 - Represented pesticide manufacturer in a lawsuit filed by Harris County and Texas Commission on Environmental Quality (TCEQ) for alleged violations of environmental laws caused by fire at client's facility
 - Served as common counsel to a potentially responsible party (PRP) group at a superfund site in defending a lawsuit alleging that clients were responsible for lost sale due to existence of groundwater contamination beneath plaintiffs' property
 - Defended major chemical company in lawsuit alleging that client tortiously interfered with plaintiff's employment relationship
 - Successfully defended major chemical company in lawsuit filed by individuals alleging personal injuries caused by exposure to client's products
 - Represented large multinational corporations in defending various CERCLA contribution lawsuits

- Defended environmental consulting firm that was sued for alleged failure to discover contamination during a pre-acquisition due diligence; obtained very favorable settlement for client
- Defended developer in lawsuit filed by subsequent purchaser that alleged client failed to adequately disclose and resolve wetlands issues on property prior to sale
- Represented chemical company in lawsuit by over 6,000 plaintiffs alleging historic continuing air pollution; obtained a summary judgment for client on approximately 3,000 claims, whereupon the remaining claims were settled on very favorable terms
- Represented environmental consulting firm in prosecuting claim that ex-employees breached fiduciary duty by misappropriating confidential information

Transactions

- Counsel for waste management company that was sold to larger waste management company
- Counsel for large multinational oil and petrochemical company on numerous transactions throughout the United States in which it acquired various operating facilities
- Counsel for water bottling company that purchased expansion facility
- Counsel for industrial manufacturer being sold to Fortune 500 company
- Counsel for window manufacturer that bought expansion facility
- Counsel for U.S. energy company in connection with the acquisition of intrastate natural gas pipeline and related gas plants
- Counsel for seller of former pesticide facility being sold for use as part of a mixed use (residential/commercial) development
- Counsel for limited partnership that purchased former steel plant
- Counsel for steel distribution facility that was contaminated by nearby major chemical plant
- Counsel for purchaser of former tanning facility being converted for other industrial use

Enforcement Defense

- Represented multiple corporations regarding common ownership/control issues arising with respect to air quality permitting strategy
- Defended large national laboratory against hazardous waste allegations made by EPA

- Defended chemical manufacturer against allegations brought by EPA for alleged hazardous waste violations
- Defended large multinational corporation against allegations by the EPA that the company failed to comply with the agency's Risk Management Program (RMP) rule
- Defended chemical manufacturer against hazardous waste allegations made by EPA
- Defended large multi-national corporation against EPA claims that company violated the General Duty Clause of the Clean Air Act
- Defended chemical manufacturer against claims brought by EPA alleging violations of the Emergency Planning and Community and Right to Know Act
- Defended oil and gas company against claims brought by the RRC alleging violations of agency permitting requirements
- Defended midstream tank terminal operator against claims brought by EPA alleging violations of the General Duty Clause in the Clean Air Act
- Represented numerous entities in responding to RCRA 3007 requests submitted by EPA
- Secured non-applicability determination from TCEQ in favor of petrochemical manufacturer regarding air emissions control requirements
- Represented chemical manufacturer in defense of claims by City of Houston arising out of wastewater discharge
- Defended major corporation in enforcement action filed by TCEQ alleging the violation of the state's hazardous waste law
- Prosecuted successful appeals of TCEQ compliance history rating determinations for petroleum terminal and petrochemical manufacturer
- Defended fertilizer manufacturer in enforcement actions filed by EPA and the California Environmental Protection Agency (CAL-EPA) alleging violations under their respective hazardous waste laws
- Defended state enforcement action involving alleged RCRA and Clean Air Act violations at a pipeline terminal
- Defended waste management company against both civil and criminal allegations related to wastewater discharge
- Defended homebuilder against EPA enforcement action for alleged violations of federal stormwater rules
- Defended major chemical company in enforcement actions filed by EPA alleging violations under the Clean Water Act, Resource Conservation and Recovery Act, and Clean Air Act
- Defended metals recycling facility against multi-media enforcement action filed by TCEQ, alleging the company violated state's air quality regulations, hazardous waste requirements, and storm water requirements
- Represented various clients in securing certificates of completion and/or innocent owner program certificates through the Voluntary Cleanup

Programs (VCP) at TCEQ and the Railroad Commission of Texas

- Secured single property designation through the TCEQ for purposes of air permitting

Honors/ Affiliations

Honors:

- Selected by peers for inclusion in the 2009-2019 editions of The Best Lawyers in America (Woodward White, Inc.) in the area of Environmental Law and Litigation - Environmental
- Lawyer of the Year in 2015 for Litigation – Environmental, Best Lawyers in America list (Woodward White, Inc.)

Affiliations:

- Houston Bar Association
- Texas Bar Foundation - Life Fellow
- Licensed professional engineer (inactive status)

Academic Honors:

- Phi Delta Phi (South Texas College of Law)
- Tau Beta Pi (national engineering honor society)
- Omega Chi Epsilon (national chemical engineering honor society, Texas Tech University)