

SHER EDLING LLP

PROTECTING PEOPLE AND THE PLANET

SHER EDLING LLP MISSION

Sher Edling LLP represents states, cities, and other public agencies in high-impact, high-value environmental cases. We combine decades of top-level litigation and trial experience with an unwavering dedication to holding polluters accountable for the damage they cause. Our work arises out of our conviction that the courts provide the last even playing field to take on the biggest polluters. We want to change the behavior of the world's largest corporations so that they can no longer make everyone else pay for the damage caused by their pollution. Our team signed up for this work to make a difference for our clients and the world.

EXPERIENCE IN GROUNDWATER LITIGATION

Sher Edling has a deep specialty representing public agencies and water suppliers in lawsuits against the manufacturers and suppliers of toxic chemicals that pollute drinking water. The firm has assembled a unique team with both legal and technical expertise that, coupled with its detailed and extensive experience in groundwater contamination litigation, helps assure its clients of the strongest case and highest possible recovery.

The Sher Edling team has litigated cases involving many chemical contaminants and has deposed hundreds of experts in the technically intricate fields of hydrogeology, chemistry, toxicology, groundwater remediation, drinking water treatment, and related subjects.

PFAS LITIGATION

We currently represent public water providers whose water supplies have been contaminated by PFAS, including PFOA and PFOS. Our litigation focuses on the chemical manufacturers responsible for PFAS and PFAS-related products, rather than the point source contributors, because of the manufacturers' superior knowledge and their wrongful promotion and marketing of products they knew (or reasonably should have known) would contaminate drinking water supplies and pose widespread health risks to people around the nation, as well as their failures to warn about those risks. The primary manufacturers of PFOS/PFOA historically were the 3M Company ("3M") and, beginning in 2002, E.I. DuPont de Nemours & Company ("DuPont"). DuPont was also among the largest users of PFOA, which it used in the manufacture of Teflon.

Our extensive experience with these cases means that we are well acquainted with the factual, scientific, technical, legal, and strategic aspects of each litigation. Our litigation would recover for the State the full costs of investigating, monitoring, and treating public and private water supplies, as well as the costs of restoring the State's natural resources.

Sher Edling is well-positioned to handle this litigation. For example, Vic Sher served as lead outside counsel for the State of New Hampshire in its prosecution of the first statewide case to recover the costs of MTBE contamination. From 2003 until 2012, Mr. Sher guided the case as it prepared for trial. Ultimately, the State recovered more than \$140 million in pretrial settlements, and, in the largest trial ever held in the State of New Hampshire, the jury awarded more than \$236 million against ExxonMobil. The New Hampshire Supreme Court affirmed the jury verdict in 2015 (and the U.S. Supreme Court declined to review). *State of New Hampshire v. ExxonMobil*, 168 N.H. 211, 126 A.3d 266 (N.H. 2015).

ENVIRONMENTAL/PUBLIC WELL CONTAMINATION LITIGATION EXPERIENCE

Current Representations

PFOA/PFOS:

Sher Edling currently represents eleven public water providers in New York and New Jersey in cases seeking damages for PFOA/PFOS contamination of drinking water wells caused by off-site pollution from airports, manufacturing facilities, and other sources. Plaintiffs assert a variety of state law tort claims against the manufacturers of PFOA, PFOS, and the products that contain or are manufactured with those toxic perfluorinated compounds.

- Suffolk County Water Authority (NY; 2017)
- Roslyn Water District (NY; 2018)
- Port Washington Water District (NY; 2018)
- Ridgewood Water (NJ; 2018)
- South Farmingdale Water District (NY; 2019)
- Water Authority of Western Nassau County (NY; 2019)
- Atlantic City Municipal Utilities Authority (NJ; 2019)
- Village of Garden City (NY; 2019)
- Carle Place Water District (NY; 2019)
- Village of Mineola (NY; 2019)
- Bethpage Water District (NY; 2019)
- Town of Hempstead (2019)

1,4-Dioxane:

Sher Edling represents 19 public water providers on Long Island, including Suffolk County Water Authority, the nation's largest supplier of public drinking water from groundwater, in litigation to recover damages for 1,4-dioxane contamination of drinking water wells. The lawsuits all assert claims against the manufacturers of 1,4-dioxane and products containing 1,4-dioxane; several also assert claims under the Resources Conservation and Recovery Act (imminent and substantial danger) against Northrop Grumman Corporation for its decades-long discharges of industrial solvent containing 1,4-dioxane (*see Bethpage Water District v. The Dow Chemical Co., et al.* (E.D.N.Y.) (filed March 7, 2019) & *South Farmingdale Water District v. The Dow Chemical Co., et al.* (E.D.N.Y.) (filed March 11, 2019)).

- Suffolk County Water Authority (NY; 2017)
- Roslyn Water District (NY; 2018)
- Garden City Park Water District (NY; 2018)
- Port Washington Water District (NY; 2018)
- Bethpage Water District (NY; 2018)
- Manhasset-Lakeville Water District (NY; 2018)
- Oyster Bay Water District (NY; 2018)
- Jericho Water District (NY; 2018)
- Locust Valley Water District (NY; 2018)
- Albertson Water District (NY; 2018)
- Westbury Water & Fire District (NY; 2019)
- Water Authority of Western Nassau County (NY; 2019)
- West Hempstead Water District (NY; 2018)
- Carle Place Water District (NY; 2018)
- Water Authority of Great Neck North (NY; 2018)
- South Farmingdale Water District (NY; 2018)
- Plainview Water District (NY; 2019)
- Village of Mineola (NY; 2019)
- Village of Williston Park (NY; 2019)
- Village of Garden City (NY; 2019)
- Town of Huntington/Dix Hills Water Department (NY; 2019)
- Greenlawn Water District (NY; 2019)
- South Huntington Water District (NY; 2019)
- Village of Hempstead (NY; 2019)
- Town of Hempstead (2019)

Transboundary Water Pollution:

City of Imperial Beach et al. v. IBWC, Veolia North America (S.D. Cal. no. 18-cv-457-JM-JMA (filed March 2, 2018)). Sher Edling represents the cities of Imperial Beach and Chula Vista California, as well as the Port of San Diego, which seek equitable relief and damages related to transboundary water contamination against the International Boundary Water Commission and Veolia Water North America.

Hexavalent Chromium:

Sacramento Suburban Water District v. United States, Court of Federal Claims no. 17-860 C (filed June 23, 2017); *Rio Linda Elverta Community Water District v. United States*, Court of Federal Claims no. 17-859 C (filed June 23, 2017); *Sacramento Suburban Water District v. Elementis Chromium, Inc.*, E.D. Cal. no. 2:17-cv-01353-TLN-AC (filed June 30, 2017); *Rio Linda Elverta Community Water District v. United States*, E.D. Cal. no. 2:17-CV-01349-KJM-GGH (filed June 30, 2017). Sher Edling represents these water districts who seek damages for hexavalent chromium contamination of drinking water wells suffered by public water district resulting from off-site contamination of a former U.S. Air Force Base. Plaintiffs assert claims against the U.S. Government under the Resource Conservation & Recovery Act (imminent and substantial danger), the Federal Tort Claims Act, and in the Court of Federal Claims for an unconstitutional taking of property. Plaintiff also asserts state law tort claims against the manufacturers of products containing chromic acid.

Prior Representations

- *City of St. Louis (MI) v. Velsicol Corp.* In 2006, the City retained Vic Sher to address DDT-related contamination leaking from a failed Superfund remedy at the former Velsicol facility in St. Louis, Michigan. Investigation revealed that pCBSA had already reached many of the City's wells. The case settled in 2011 with the City recovering \$26.5 million to fund a new water system.
- *In re MTBE Products Liability Litigation (City of New York) v ExxonMobil*, 725 F.3d 65 (2nd Cir. 2013). In 2008, the City of New York asked Vic Sher to assume the lead trial counsel role in the City's case against the oil industry over MTBE contamination of wells in Queens, the first to proceed to trial in a nationwide multidistrict litigation. In 2009, a four-month federal jury trial resulted in a verdict for the City of \$104.7 million, with a total recovery of more than \$125 million. The Second Circuit affirmed in all respects in 2013. Mr. Sher also was designated by the court as national co-lead counsel for the plaintiffs in the related federal multidistrict litigation, *In Re: MTBE Products Liability Litigation*.
- *State of New Hampshire v. ExxonMobil*, 168 N.H. 211, 126 A.3d 266 (N.H. 2015). In 2003, the New Hampshire Attorney General retained Vic Sher as lead outside counsel to prosecute the first statewide case to recover the costs of MTBE contamination. Over most of the next decade, Mr. Sher guided the case as it prepared for trial. First, the oil companies tried to transfer the case to federal court; Mr. Sher argued the case in the U.S. Court of Appeals for the Second Circuit that sent the matter back to state court where it belonged. Then, Mr. Sher prepared the expert and legal approach that allowed the State to prove its case against the oil companies on a landscape basis without getting bogged down in impossible intricacies of individual sites. The oil companies challenged virtually every aspect of the case, including the State's rights to recover costs related to private wells and the ability to prove its case based on expert evidence of the extent of contamination. Ultimately, the State recovered more than \$140 million in pretrial settlements, and, in the largest trial ever held in the State of New Hampshire, the jury awarded more than \$236 million against ExxonMobil. The New Hampshire Supreme Court affirmed the jury verdict in 2015 (and the U.S. Supreme Court declined to review).

- *In re MTBE Products Liability Litigation* (S.D.N.Y. 2003 – 2011). This multi-district litigation over public well contamination by the gasoline additive MTBE included more than 150 cases from around the country. The District Court designated Vic Sher as one of three co-lead counsels for the plaintiffs. Most of the cases settled against most of the defendants in 2008 for an aggregate \$423 million cash payment plus a “safety net” for future well impacts. Mr. Sher’s clients –public water agencies located in California – received more than \$108 million from the group settlement.
- *In re Methanex* (NAFTA Tribunal). In 2004 the U.S. Department of State retained Vic Sher as a consultant on the environmental and expert aspects of an international trade case brought by Methanex, a Canadian manufacturer of MTBE that claimed California’s ban of MTBE because of concern over groundwater contamination violated NAFTA’s free trade provisions. The matter was resolved against Methanex in 2005.
- *South Lake Tahoe Public Utility District v. Atlantic Richfield Co., et al.* Vic Sher was a senior member of the trial team on this landmark MTBE case, which settled in August 2002. The Utility District brought an action against a manufacturer of MTBE (Lyondell), the California refiners who supplied gasoline containing MTBE, and several local gasoline station owner/operators. The case went to trial starting in September 2001 against six non-settling defendants. In April 2002, the jury returned a special verdict on refiner/manufacturer liability, finding that MTBE and gasoline containing MTBE were defective products, and that Shell and Lyondell Chemical had acted with “malice” by failing to disclose the significant hazards associated with the use of MTBE in gasoline. The matter finally settled in August 2002 for a total of more than \$69 million.
- *City of Santa Monica v. Shell, et al.* Vic Sher served as lead outside co-counsel in the MTBE lawsuit relating to the City’s Charnock well field, which provided about 40% of the City’s drinking water (a total of about 7,500 gallons per minute (“gpm”) peak capacity). MTBE contamination forced the City to shut down the wells and well field in 1996. Government agencies identified about thirty potential source sites (current or former retail gasoline stations and two oil company pipelines) within a one and one-quarter mile radius of the well field. The City filed suit in June 2000 against the manufacturers of MTBE and the refiners of gasoline containing MTBE based upon causes of action for products liability, negligence, nuisance, and trespass. In 2003 the City achieved a landmark settlement with all but one defendant, Shell, which settled in 2006. Under the settlements, the City received approximately \$130 million in cash plus the full costs of constructing, operating, and maintaining an MTBE treatment facility to clean Santa Monica’s water, with a total overall settlement value of about \$500 million.
- *City of Pomona, CA v. SQMNA*. The City retained Vic Sher to address perchlorate contamination from historic use of Chilean nitrate fertilizer on surrounding citrus crops. Mr. Sher argued the successful appeal of the trial judge’s exclusion of expert testimony on stable isotopic analysis and related issues, *City of Pomona v. SQM North America Corp.*, 750 F.3d 1036 (9th Cir. 2014), and helped try the case in 2015 (the Ninth Circuit recently reversed a defense verdict).
- *County of Maui Board of Water Supply v. Dow Chemical et al.* (DBCP). DBCP, a soil fumigant used widely in Hawaii (and elsewhere) on pineapple and other crops, contaminated and threatened the County of Maui’s public drinking water wells located around the Island. Vic Sher (with his then firm Miller & Sher) represented the plaintiff. A 1999 settlement with the chemical manufacturers resolved the County’s lawsuit and provided the County with a 40-year guarantee of all costs associated with designing, building, installing, maintaining and operating granular activated carbon (GAC) facilities on any County well that either is currently contaminated or becomes contaminated during the 40-year life of the settlement.

- *Hawaii Water Service Co. v. Dow Chemical Co. et al.* (DBCP, TCP). In 2003 HWSC retained Vic Sher in connection with DBCP and TCP contamination of the wells that supply the Kaanapali Resort on Maui, HI. DBCP and TCP came from applications of soil fumigants manufactured by Dow Chemical and Shell Chemical to pineapple fields up-country from the Resort's water supply. The matter resolved favorably in 2008. Vic Sher was also lead counsel on a series of TCP cases in California's Central Valley, including on behalf of the communities of Oceanside, Livingston, Shafter, and Bakersfield.
- *City of Riverside v. Shell Oil Co. et al.* (DBCP). Growing plumes of DBCP impacted a large number of wells in the City of Riverside's public water system. In 2001, the chemical manufacturers settled the City's litigation by paying \$4.1 million and agreeing to provide all costs associated with treating DBCP-contaminated drinking water in currently contaminated wells or wells that become contaminated in the future. To date, the City has built two large combined GAC treatment facilities under the settlement, treating a combined flow of approximately 15,000 gpm, and the City anticipates needing a substantial number of additional wells treated over the 40-year life of the agreement either individually or in additional centralized treatment facilities.
- *City of Riverside/Lockheed Martin (TCE)*. TCE from a Lockheed Martin defense facility impacted wells in the City of Riverside's public water system. Vic Sher helped the City negotiate a settlement (without the need for a lawsuit) under which Lockheed Martin has paid all costs of treating wells contaminated with TCE from this plume.
- *Lake Davis Rotenone Contamination*. A program to eradicate pike from Lake Davis, California, by the California Department of Fish & Game went horribly awry. Vic Sher represented Plumas County in negotiations that ultimately led the Legislature to appropriate more than \$9 million for public and private damages suffered from the lake poisoning.

OTHER PUBLIC SECTOR CLIENTS

Water Contamination:

- City of Patterson, CA (2019; TCP well contamination)
- City of Oceanside, CA (2005 – 2011; TCP well contamination)
- California Water Service Company (2003 – 2016; MTBE, TCP, PCE/TCE well contamination)
- City of Bakersfield, CA (2008 – 2016; TCP well contamination)
- City of Livingston, CA (2005 – 2011; TCP well contamination)
- City of Sunnyvale and Sunnyvale Redevelopment Agency, CA (2008 – 2011; PCE/TCE groundwater and soil contamination)

Climate Change Damages:

Sher Edling also represents the State of Rhode Island and nine cities and counties in litigation to hold fossil fuel companies accountable for the climate change adaptation costs they are incurring because those companies produced, promoted, and marketed products they knew would cause rising seas, warming temperatures, and other consequences that their own experts deemed potentially "severe" or "catastrophic."

- State of Rhode Island (2018)
- City of Baltimore, MD (2018)
- City and County of San Francisco, CA (2018)
- City of Oakland, CA (2018)
- City of Richmond, CA (2018)
- City of Santa Cruz, CA (2017)
- County of Santa Cruz, CA (2017)
- Marin County, CA (2017)
- San Mateo County, CA (2017)