



Michael Dunning | Of Counsel

Michael Dunning, Of Counsel to the firm's Environment, Energy & Resources practice, counsels and litigates for clients on environmental, energy and project development, policy matters, legislative advocacy and strategic communications. For more than 10 years, Mike was an Assistant Attorney General in the Washington State Attorney General's office, representing the state's Department of Ecology on a broad range of environmental issues. From 2006 to 2011 he was the Attorney General's Section Chief for the Hazardous Waste Cleanup and Management Section and managed all legal services for Ecology's waste cleanup and management programs. From 2004 to 2005 Mike was Assistant Director for Policy and Legislation at Washington's Department of Health, overseeing and managing the agency's legislative agenda and managing relationships with its stakeholders.

1201 Third Avenue
Suite 4900
Seattle, WA 98101
PHONE: 206.359.3464
FAX: 206.359.4464
MDunning@perkinscoie.com

EDUCATION

- University of Iowa, J.D., cum laude, 1999
- University of Texas, B.A., Political Science, German, 1995

BAR ADMISSIONS

- Washington

COURT ADMISSIONS

- U.S. Supreme Court
- U.S. District Court for the Eastern District of Washington
- U.S. District Court for the Western District of Washington
- U.S. Court of Appeals for the Ninth Circuit

Mike's environmental counseling and litigation experience includes the Clean Air Act, Clean Water Act, Shoreline Management Act, CERCLA, the Washington state superfund law, MTCA, RCRA (and Washington's authorized program, the Hazardous Waste Management Act (HWMA)), TSCA, Washington's solid waste management laws, SEPA/NEPA and Natural Resource Damages. Mike also was "Counsel for the Environment" before EFSEC for three proposed energy projects. On cleanup sites and brownfield redevelopment projects, Mike has assisted clients negotiate complex settlements under the Model Toxics Control Act and CERCLA. He has also represented clients in litigation before administrative boards, state and federal courts at both the trial and appellate levels, and advised his government clients in all aspects of rulemaking and compliance with the Administrative Procedure Act.

REPRESENTATIVE EXPERIENCE

Environmental Litigation

Atlantic Research v. United States*

U.S. Supreme Court
Represented the State of Washington and 39 other states and territories as *amicus curiae* in CERCLA case. The Court agreed with the states and the plaintiff and permitted liable parties to seek cost recovery from other liable parties even in the absence of government enforcement. (127 S. Ct. 2331)

Pakootas & State of Washington v. Teck Cominco*

U.S. Court of Appeals for the Ninth Circuit, U.S. District Court for the Western District of Washington
Represented Washington in CERCLA enforcement lawsuit before the district court

and on appeal, seeking to hold a Canadian company liable for the cleanup of the Upper Columbia River. (552 U.S. 1095 (2008), 646 F.3d 1214 (2011), WL 1839002 (2009), WL 5975266 (2011))

United States and State of Washington v. Moses Lake*

U.S. District Court for the Eastern District of Washington

Represented the State of Washington in negotiation for consent decree with United States and multiple other parties for the cleanup of large TCE plume at the former Larson Air Base in Moses Lake, Washington. (No. CV-10-459-LRS)

In Re the Matter of U.S. Dept. of Energy; Washington v. U.S. Dept. of Energy*

U.S. Court of Appeals for the District of Columbia Circuit, Atomic Safety Licensing Board

Served on a team of Assistant Attorneys General representing the State of Washington in its efforts to force the federal government to continue the Yucca Mountain high level nuclear waste depository. (NRC proceeding) (NRC Docket No. 63-001-HLW, ASLBP 09-892-HLW-CAB04); (No. 10-1050)

In Re Asarco*

U.S. Bankruptcy Court for the Southern District of Texas

Successfully represented the State of Washington in enforcing its claims and successfully obtaining full value as settled with debtor in what has been described as the most complex environmental bankruptcy in history. (No. 05-21207)

Dierker v. Clarke et. al*

U.S. Court of Appeals for the Ninth Circuit, U.S. District Court for the Western District of Washington

Successful defense of Dept. of Ecology and Governor in citizen suit seeking to overturn the agency's cleanup decisions at the Cascade Pole site in Olympia. (48 Fed.Appx. 267)

Washington v. North Lot Development, LLC (North Lot Development)*

King County Superior Court (Washington)

Represented the State of Washington in negotiation for consent decree ensuring cleanup of the north parking lot area of Century Link Field (Seattle Seahawks Stadium). The decree facilitated an estimated \$250 million redevelopment of the property for a commercial, multi-use, transit oriented brownfield project. (No.11-2-27892-1)

Washington v. Kimberly Clark Corp.*

Skagit County Superior Court (Washington)

Represented the State of Washington in negotiation of consent decree requiring implementation of environmental cleanup and natural resource damage concerning Fidalgo Bay, Washington. No. (No. 09-2-01247)

Washington v. Clark County, WA*

Clark County Superior Court (Washington)

Represented the State of Washington in negotiation of consent decree and amendment requiring the implementation of environmental cleanup concerning the former Camp Bonneville Military Reservation near Vancouver, Washington. This successful negotiation involved CERCLA early transfer of the base to Clark County from the Dept. of Defense and full funding from the federal government to Clark County for State-lead MTCA cleanup of cleanup munitions-related contamination. (No.

06-2-05340-4)

Ecology v. Tiger Oil Corp.*

Thurston County Superior Court (Washington)

Represented the Department of Ecology in MTCA enforcement action, settling the matter prior to trial and entering a Consent Decree requiring remediation of the site. Successfully defended MTCA from the defendant's constitutional challenges. (No. 02-2-00956-2)

Schuh & Heinen v. Ecology*

Franklin County Superior Court (Washington)

Represented DOE in APA judicial review of an air quality enforcement action. After successful motion practice, case settled with appellants paying the penalties imposed by Ecology in full. (No. 99-2-50062-1) (consolidated)

Stevens County Conservation District v. Washington State Conservation Commission*

Stevens County Superior Court (Washington)

Successfully defended the State Conservation Commission from a mandamus and injunction lawsuit, seeking to compel the Commission to undertake certain election-related actions. (No. 01-2-00419-9)

Dept. of Energy v. Ecology*

Represented Ecology in appeal filed by U.S. Department of Energy challenging hazardous waste permit conditions at the Hanford site. Successfully settled the case with some revisions to permit conditions. (PCHB No. 01-037)

Kaiser Aluminum v. Ecology*

Represented the Dept. of Ecology in air quality enforcement action. The Board rejected Kaiser's motion to dismiss and case settled. (PCHB No. 00-105)

Goyke v. Ecology*

Represented Ecology in air quality enforcement case, PCHB reversed Ecology's penalty. (PCHB No. 00-162)

Cisco v. Ecology*

Represented Ecology in water quality enforcement action. The Board upheld Ecology's penalty at a reduced amount. (PCHB No. 99-146)

Bouma Farms v. Ecology*

Represented Ecology in water quality enforcement action. The Board upheld Ecology's penalty at a reduced amount. (PCHB No. 00-023)

Treadwise v. Ecology*

Represented Ecology in prosecution of air quality penalty. PCHB upheld penalty issued by Ecology in full. (PCHB No. 99-139)

In the Matter of Wallula Power Project*

Served as Counsel for the Environment (CFE) in this licensing proceeding before the Energy Facility Site Evaluation Council (EFSEC). Applicant sought a permit to construct a large natural gas power plant in south-central Washington. CFE settled with applicant prior to hearing, ensuring that the project fully mitigated its environmental impacts. (Application 2001-01)

Eklund v. Ecology*

Represented Ecology in Shoreline Management Act (SMA) enforcement action with San Juan County before the Shoreline Hearings Board and on judicial review to Thurston County Superior Court. PCHB required appellant to restore damage to shoreline on Henry Island and to modify dock design. Superior Court upheld the PCHB decision. (PCHB No. 99-029)

CERCLA/MTCA/RCRA Counseling*

Provided legal, strategic and policy counseling to Dept. of Ecology clients on a variety of issues, permits and cleanup or corrective action sites, including RI/FS, Proposed Plan, ROD and CAP development and review.

Legislative Advice and Counsel*

Provided legal, policy and process advice and counsel to multiple Dept. of Ecology clients on proposed agency request legislation and bills proposed by Ecology stakeholders. Briefed legislative staff and Legislators on legislation as requested.

Rulemaking Advice and Counsel*

Provided legal, strategic and policy advice to several Ecology programs on draft agency rules.

Public Records Act*

Provided counsel to multiple agency clients on public records act compliance. Represented the agency in public records act litigation.

* Prior Experience

PROFESSIONAL RECOGNITION

- Rising Star, *Washington Law & Politics*, 2007; 2009
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PROFESSIONAL LEADERSHIP

- Washington State Bar Association, Environmental & Land Use Law Section, 2012 Annual Midyear Meeting & CLE Program, Co-Chair, 2012
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RELATED EMPLOYMENT

- Attorney General Of Washington, Olympia, WA, Assistant Attorney General, 1999 - 2004; Chief, Hazardous Waste Cleanup & Management Section, 2005 - 2011
 - Department of Health, Olympia, WA, Assistant Director for Policy and Legislation, 2004 - 2005
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SELECTED PUBLICATIONS

"Implementing Institutional Controls at Brownfields and Other Contaminated Sites"

Author, Article

ABA Washington Chapter, 2nd Ed.

PAST EVENTS

2008 **"Successful State and Tribal Partnership in
Teck Cominco Transboundary CERCLA Case"**
Speaking Engagement
EPA Tribal Environmental Conference / Billings, MT

Printed June 04, 2012