

STEVE BONEBRAKE

Mastering the Complexities of Air Law

by Olivia Clarke

Stephen J. Bonebrake first became interested in environmental conservation as a 5-year-old who hiked and backpacked in the mountains with his family.

But it would be much, much later in life before he decided to use that passion to pursue a legal career.

After graduating in 1985 from DePauw University, he worked for three years at Prudential in employee benefits. His younger brother attended law school and he knew some good friends who also went to law school. He wanted a job that intellectually challenged him and believed becoming a lawyer would fill that need. He attended law school at Loyola University Chicago and graduated in 1992.

“I was always interested in conservation, but I wasn’t sure how to go about using that interest,” says Bonebrake, 48. “But it certainly wasn’t happening in the employee benefits department at Prudential.

“I was hoping to meld those two, and I guess the combination of those two sets of events, learning about law school from those who were there and looking for how to use my interest in conservation in what I was doing on a day-to-day basis, influenced me.”

His plan seemed to work; today, he practices at **Schiff Hardin LLP** and represents clients before federal and state tribunals in environmental litigation, adjudication, and rule-making matters.

He handles such matters as private and government cost recovery actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); appeals of the federal Clean Air Interstate Rule (CAIR); participation in the mercury emission and CAIR implementation rule-making proceedings before the Illinois Pollution Control Board; environmental torts; enforcement of the Clean Water Act and the Resource Conservation and Recovery Act; Clean Air Act enforcement; and appeals of water and air permits.

When he started at Schiff Hardin in 1992, he, like other new lawyers at the firm, tried different practice areas to see where he would be a good fit in terms of his skills and how he meshed with the people in a particular practice group.

Doing that is one reason why he likes Schiff Hardin so much. The firm gives lawyers an opportunity to find the right practice for them.

He learned quickly that corporate work didn’t appeal to him. He worked primarily in litigation,



bank/creditors’ rights, and environmental law. After three or four years, he started working more in the environmental law department, and in 1997, he made a complete commitment to the environmental law practice.

Because he had prior experience in litigation, he started handling environmental litigation. In 1999, he worked with legendary Schiff Hardin environmental lawyer Sheldon Zabel on a New Source Review enforcement case.

New Source Review (NSR) requires major stationary sources of air pollution to get permits before they start construction, according to the U.S. Environmental Protection Agency. This program is also referred to as construction permitting or preconstruction permitting. It also applies to construction of major sources and “major modifications” of those sources.

In 1999, the EPA started its NSR enforcement initiative against the coal-fired electric generating industry and brought enforcement cases against six or seven coal-fired power generators, he says.

One of those cases involved one of Schiff Hardin’s clients at the time, Illinois Power. Bonebrake and Zabel worked on the company’s defense for about four years, and he got the chance to really know the Clean Air Act. From there, he started handling many Clean Air Act and Clean Water Act matters.

Following the liability trial of Illinois Power’s NSR case in 2003 and the subsequent

settlement, he continued to represent other companies with NSR enforcement matters.

‘You Need Steve’

More recently, Bonebrake represented Midwest Generation in an NSR matter brought against the company by the U.S. Department of Justice on behalf of the U.S. EPA. A second matter involved EME Homer City in Pennsylvania and its case in federal court.

“In both of those cases, the U.S. alleged that my clients, who are current operators, were liable under the Clean Air Act because of activities the prior owners performed,” he explains.

In both cases, he helped win decisions in his clients’ favor. The courts found that both companies couldn’t be held liable for the previous owners’ actions, he says.

Bonebrake began working with Edison Mission Energy, which owns and operates electric power plants around the United States, in 2003, says Daniel D. McDevitt, vice president and general counsel of the company. The company originally worked with Zabel but after he died, Bonebrake stepped in and became the company’s go-to lawyer.

“He’s very responsive, a very bright guy, and client-oriented,” McDevitt says. “He really knows his subject matter area. He’s truly a skilled lawyer, particularly on air issues and air regulations.”

During the last eight years, he helped the company through some difficult environmental times, McDevitt says, and they talk about three times a week.

"In the world of New Source Review that Steve works in, he is probably one of the top two or three lawyers in the nation," he says. "He is clearly a class leader in that area of the law. And that's where he's been a real key go-to guy for us for the past eight years helping us manage through some very serious challenges."

Renee Cipriano, a lawyer in the environmental practice at Schiff Hardin, has worked with Bonebrake on and off for about 15 years. Cipriano describes Bonebrake as one of the best air law lawyers in the nation. He is an expert in the NSR arena, which can be very complex, she says.

"There are a number of courts across the nation that have taken different positions on the issues presented on (NSR) litigation," Cipriano says. "It's very complex. It involves very technical issues. There is not any clear precedent. The lawyers who help you with these cases really need to immerse themselves in the issues, and there are very few lawyers in the nation who have done that."

"A number of the cases end up settling, although more recently we've seen more go to trial. ...One court is saying one thing and another court is saying something else. You need someone who has actually taken one of these cases to trial. You need Steve."

Peeling Layers of the Law

His practice today involves handling substantive environmental issues dealing with water, land, and air regulations.

Lately, he focuses on air regulations. In addition to handling litigation, he counsels clients on compliance and strategizes how to handle rulemaking, permits, and statutes.

On the corporate side, he assists with corporate and real estate transactions that raise environmental issues including identifying and allocating environmental responsibilities.

"Certainly, environmental law started in the 70s," he says. "It became significantly more mature over the last five or 10 years. What you are seeing in certain industries we work with is they are becoming even more heavily regulated industries. We do a lot of work for power generators, which are heavily regulated. Large manufacturing entities and power generators are the most significant areas of our practice."

"As environmental law has matured, the layers have become deeper. The law has become more complex. It's kind of like peeling an onion—with federal, state, county and sometimes city law—sometimes being consistent and sometimes not. You see how the regulatory drivers can change from

administration to administration with the current administration having a high emphasis on enforcement and on the promulgation of more rigorous standards. And both of those drive environmental work on our end."

For example, large regulated entities face difficult business challenges concerning how to comply with limited resources and how to juggle compliance requirements under different programs that may create inconsistent obligations, Bonebrake says.

Gabriel Rodriguez, practice group leader for the environmental practice at Schiff, Hardin, describes Bonebrake as a lawyer's lawyer. He brings a great deal of intellectual power to a complicated area like NSR. He prepares like no one else he's worked with, he says.

"He's got a niche practice and stays on top of it," Rodriguez says. "He works on it every day. When he's getting ready for a case he's very good at process. He figures out 'What do I need to look at?' He quickly isolates what areas he needs to focus on. He brings discipline to his approach so that he's a very efficient worker."

Bonebrake not only makes a terrific lawyer, but "he's also a really good guy and a really good human being," Rodriguez says.

"He brings a lot of wisdom and foresight about the law, not just when dealing with the environmental practice," he says. "His counsel is something that I seek when I have a difficult decision I have to make. He's one of the guys I go to first."

Bonebrake says his legal background allows him to meld substantive environmental expertise with a litigation tool kit.

He describes himself as extremely analytical, patient, and tenacious.

When dealing with complex transactions, a lawyer must be very analytical to take apart a complex scheme that involves a plethora of state and federal rules. The pieces must be put together to learn what gets considered the most important and what the real drivers are. He needs patience to put this all together and tenacity to see a matter through until its conclusion.

When tackling a legal issue, he first learns what his clients' short- and long-term goals are, and he works with his clients to develop a strategy.

"One of the things I try to find out is what their timing need is," he says. "What specifically do they need and when do they need it? And I try to give them the best answer within those time constraints. If you are always assuming they need it in real time, then you may be passing up an opportunity to provide a more in-depth answer."

He typically tries tackling his most difficult tasks in the morning because that is when he's at his freshest. He spends a great deal of

time on conference calls, sometimes on the phone for three or four hours, rather than working in meetings.

He also handles firm matters, including mentoring associates and being involved in performance reviews. As a younger lawyer, he consumed his days more with billable matters because that's how younger lawyers learn about law.

"I think it's very important to continue throughout our careers to train and mentor the younger folks coming through so that the firm continues to flourish," he says.

The most rewarding part of mentoring, he says, "is when you work closely with somebody and see them succeed. That's an extremely rewarding proposition. It's better to give than to receive. I get a lot of enjoyment out of seeing someone prosper as they go along."

"What can be challenging is working closely with someone and finding over time that perhaps they don't have an interest or the capacity to make it happen. I think all of the more experienced practitioners have had that experience where they invested in someone and it didn't work out. That can be frustrating."

Enjoying the Rewards of the Outdoors

Bonebrake grew up in Northbrook with a younger brother who became a lawyer and an older brother who became a law librarian at Northwestern University.

Just as his mother instilled a love of the environment in him, he too, tries to do the same with his own family.

He, his wife, Julie, and their three children, Laura, William and Scott, regularly go backpacking, camping and hiking.

"We all enjoy outdoor activities," he says. "I think it's important to expose children to outdoor activities early on. When talking about activities like hiking and backpacking, there are great rewards at the end. There is that scenery that you get to see at the end. There is that lake you can spend time at where you are the only one there. You get to places that no one else gets to without backpacking."

"In order for those things to happen, a great deal of effort is required. If people aren't exposed to that as children and the first time is as adults, the effort may preclude them and prevent them from coming back again. ...I'm fortunate to have children who enjoy backpacking and hiking and skiing. They understand that it takes the work to get the reward. We also enjoy the family time."

When asked what he hopes clients understand about him as a lawyer, he says, "I'm a creative lawyer and a problem solver. I work a lot with clients on trying to solve compliance on a strategic basis and in a way that makes sense in connection their business goals." ■