



MARY ELLEN TERNES
SHAREHOLDER

(405) 552-2303 **DIRECT**
(405) 228-7303 **FAX**
maryellen.ternes@mcafeetaft.com

McAFEE & TAFT
Leaders in Creating Legal Solutions®

TENTH FLOOR
TWO LEADERSHIP SQUARE
211 N. ROBINSON
OKLAHOMA CITY, OKLAHOMA 73102
www.mcafeetaft.com

BIOGRAPHY

Mary Ellen Ternes focuses her practice on environmental law, including environmental permitting, compliance strategies, enforcement defense, and state and federal litigation, as well as corporate disclosures and transactional matters. With a background in chemical engineering and hazardous waste remediation and combustion permitting, she specializes in air quality as well as hazardous waste issues.

Mary Ellen handles air permitting, including New Source Review (NSR), Title V, New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPs), regulatory interpretation and applicability, compliance strategies and enforcement resolution, including EPA's greenhouse gas emission regulation. She also handles hazardous waste permitting, interpretation and enforcement matters, including generation, classification, exemptions, treatment and disposal issues, Toxic Release Inventory (TRI) reporting pursuant to Emergency Planning and Community Right to Know Act and underground storage tank regulation. She assists clients with water quality permitting and discharge regulation, including wetlands and stormwater issues, as well as Safe Drinking Water Act permitting and compliance.

Mary Ellen has a very active transactional and voluntary cleanup practice, counseling clients regarding "All Appropriate Inquiry," post-closing duties and disclosures. She also has significant experience advising clients regarding Environmental Assessments and Environmental Impact Statements pursuant to the National Environmental Policy Act (NEPA),

Prior to entering law school, Mary Ellen worked as a chemical engineer for the U.S. Environmental Protection Agency (EPA), first as an on-scene coordinator (OSC), federal project and contract officer, in Superfund emergency response and response action site characterization/remediation, and then as a hazardous waste incinerator permit writer in Resource Conservation and Recovery Act (RCRA) incinerator permitting. She left the EPA to join industry, working as an environmental project officer for a commercial hazardous waste incineration company overseeing RCRA, Toxic Substances Control Act and Clean Air Act permitting, compliance and audit activities. During law school, she worked as a law clerk for the EPA Office of General Counsel Air and Radiation Division.

With her unique combination of work experience, training and education in the fields of engineering and law, Mary Ellen has been asked to serve in various leadership and liaison roles within the American Institute of Chemical Engineers and the American College of Environmental Lawyers, integrating law and policy with science and engineering, including a special appointment by AIChE to chair a taskforce leading the organization's government relations and public outreach within the Institute and in Washington, DC., and the College's partnership efforts with the United Engineering Foundation.

She is a frequent author and speaker on environmental issues, particularly as it relates to improving applied science-based policy. Through her leadership roles in the American Bar Association and AIChE, she frequently provides continuing legal and policy education on these issues as well as models for adapting to a carbon-constrained world, carbon tracking, carbon sequestration regulation and developing environmental applications of nanotechnology.

Mary Ellen has contributed to the ABA's *Clean Air Act Handbook* (Chapter 6: New Source Review; co-authored with Bernard F. Hawkins, ed. Robert J. Martineau, Jr. and David P. Novello, second edition, ed. Julie Domike), the ABA's *Nanotechnology Environmental Law, Policy and Business Considerations* (Ch. 4: Clean Air Act and Nanotechnology; ed. Lynn L. Bergeson), and the LexisNexis Global Climate Change Special Pamphlet Series, (EPA's Mandatory Greenhouse Gas Reporting Rule; ed. Bradley M. Marten). In 2007, her comprehensive publication titled "Basic Practical in Nanotechnology" won a competitive, peer-reviewed Best Paper Award at the ABA's Section of Environment, Energy and Resources Fall Meeting.

Since its debut in 2004, the *International Who's Who of Environment Lawyers* has named Mary Ellen to its prestigious list of pre-eminent environmental lawyers worldwide each year. In 2008, Mary Ellen was granted early election as a fellow of the American College of Environmental Lawyers, a professional association of private and public sector environmental lawyers recognized by their peers as pre-eminent in their field. Her achievements have also earned her inclusion in *Chambers USA Guide to America's Leading Lawyers for Business* (energy and natural resources: environment), *The Best Lawyers in America* (environmental law and environmental litigation) and *Oklahoma Super Lawyers* (environmental, energy and natural resources, environmental litigation), in which she has been named to its list of "Top 25 Women Oklahoma Super Lawyers." She was also named "Best Lawyers' 2011 Oklahoma City Environmental Lawyer of the Year," an honor only given to a single lawyer in each legal specialty in each community.

REPRESENTATIVE EXPERIENCE

Regulatory Advocacy and Counseling:

- Air Quality
 - Developed audit approach, disclosure and Clean Air Act permitting strategy for energy client for enhanced oil recovery utilizing carbon dioxide injection, involving EPA stationary source aggregation policy, impact of new EPA greenhouse gas emission permitting requirements, beneficial EPA interpretation excluding product recovery from pollution control, and negotiating construction of compression equipment through enforcement negotiations to achieve desired permit status allowing successful resolution.
 - Advised multiple energy, manufacturing and commercial clients regarding application and implementation of EPA's Greenhouse Gas Reporting Rule, including oil and natural gas producers, carbon dioxide injection operators, landfill operators, wastewater treatment plant operators, chemical and other manufacturing plant operators and commercial boiler owners and operators.
 - Developed air permitting strategy for reactivation of chemical manufacturing plant, guiding facility through the Clean Air Act requirements as interpreted by the EPA for greenhouse gas including Prevention of Significant Deterioration (PSD), application of Best Available Control Technology (BACT), Plantwide Applicability Limits (PAL) and carbon dioxide capture and sale.
 - Counseled ethanol plant developer in air permitting strategies.
 - Advised refinery client regarding Title V minor modification procedures, permissible construction, and segmentation risks in avoiding plant shutdown.
 - Advised cement kiln operators and other manufacturers regarding enforcement vulnerability and compliance strategies regarding fugitive emissions from conveyer belts, stacks, product piles and quarries.

- Advised manufacturer regarding enforcement exposure arising from Title V permit deviations, exceedances and annual compliance certifications due to troubled process issues. Initiated root cause analysis allowing system wide improvements that greatly reduced upset conditions as well as Title V reporting issues.
- Counseled a metal fabrication manufacturer regarding particularly problematic air permit potential to emit calculations arising from market demand based specialty coatings operation, creating coating constituents mass balance and compliance demonstration strategy to maintain minor source status.
- Responded to EPA Request for Information on behalf of vintage automobile restoration company, successfully negotiating resolution without penalty or formal enforcement action EPA allegations regarding “manufacture” of automobiles without Clean Air Act mandated certificate of conformity.
- Advised commercial airline regarding appropriate response to United Kingdom inquiry involving European Union carbon dioxide Emission Trading Scheme (Aviation).
- Advised manufacturing facility regarding defensible Clean Air Act compliance demonstration and testing methods for manufacturing facility with problematic emissions sources and emission constituents, achieving agency approval of proposed methods and successful demonstration of compliance.
- Represented commercial bakery in response to EPA’s national bakery enforcement initiative and negotiations with the American Bakers Association resolving past noncompliance with Clean Air Act refrigerant regulations.
- Compliance, Auditing and Self-Disclosures
 - Developed, coordinated and implemented corporate-wide multi-media environmental audit of all North American facilities for industrial manufacturer, including coordination of EPA and state audit and self-disclosure statutes in response to audit findings and negotiation of voluntary consent orders and compliance schedules with regulators where appropriate, obtaining 100% penalty mitigation through appropriate use of EPA Audit Policy.
 - Develop, coordinate and implement facility-wide multi-media and EPCRA audits on behalf of various manufacturing and other clients. Have obtained 100% penalty mitigation through appropriate use of EPA Audit Policy or state self-disclosure policies.
- Hazardous Waste and Remediation
 - Defended an administrative appeal of a proposed hazardous waste treatment authorizing use of hazardous waste derived fuel by cement kiln facility. Although protestants challenged the use of the fuel, the matter was dismissed for failure to state a claim by an Administrative Law Judge representing the state permitting agency.
 - Advised airport operator regarding remediation dispute with former operator lessees of airport property, crafting remediation and funding contract including dispute resolution process during characterization and remediation of property pursuant to voluntary cleanup order with state agency.
 - Advised manufacturing client regarding enforcement implications of plant closure on secondary hazardous materials remaining in storage tanks at closed plant, implied RCRA tank closure requirements, and enforcement exposure.

- Resolved on behalf of underground storage tank owner and operator inappropriate interpretation of underground storage tank cathodic protection requirements, 40 CFR 280.21, by implementing state agency, specifically, the agency's inappropriate mandate of a new suitability study for previously upgraded tanks, allowing education of agency staff and ultimately global retraction of enforcement position by state agency benefitting industry.
- Assisted manufacturing client in developing Asset Retirement Obligation amount for phosphorus containing waste water land application facility based upon operating history, facility characteristics, and state agency land application facility closure standards.
- Represented plastics manufacturer in resolving compliance issues arising from alleged loss of totally enclosed treatment unit exemption and subsequent unpermitted storage of hazardous waste, negotiating advantageous voluntary consent order resolving compliance allegations.
- Negotiate the scope and extent of many voluntary cleanup projects on behalf of legacy entities responsible for groundwater contamination by chlorinated organics from closed dry cleaning operations, negotiating consent decrees with state environmental agencies including elements of ongoing site characterization, resolution of vapor intrusion issues with multiple lines of evidence, and appropriate source removal actions.
- Developed solvent recycling strategy for national solvent recycler within exemptions provided by the Resource Conservation and Recovery Act, creating methods of demonstrating compliance and white paper regulatory justification, defending program before EPA regional offices and many delegated states in implementing strategy.
- Developed due diligence and remediation oversight strategy for purchaser of heavily contaminated industrial property, including contractual and insurance mechanisms allocating liability for remediation to seller entity while purchaser continued to develop property.
- Represented U.S. Army contractor in defense of chemical weapons hazardous waste incineration permits against challenge by the Chemical Weapons Working Group, successfully defeating allegations allowing permit issuance.
- Negotiated on behalf of the Alliance of Automobile Manufacturers and member entities the EPA guidance beneficially resolving compliance challenges arising from recycling solvent streams in automobile manufacturing coating application operations, resulting in EPA RCRA Online Doc. No. 14632 (Nov. 18, 2002).
- Vigorously represented commercial hazardous waste fuel blender in enforcement proceeding with Department of Justice complaint arising from allegations of noncompliance with Resource Conservation and Recovery Act generator, storage and waste analysis plan requirements, negotiating a final resolution with penalty equaling only 5% of original assessment.
- Toxics Release Reporting
 - Counsel various manufacturing clients regarding application of "manufacturing", "processing" and "otherwise use" in problematic scenarios including mixtures, solder and fluxes, leaching of product constituents into soil, fugitive emissions and volatilization of semi-volatile organics and volatile metals from processes, products and wastes.

- Beneficially resolved EPA and state environmental enforcement issues arising from explosion of chemical manufacturing facility and resulting fire, including chemical inventory and release reporting compliance issues arising pursuant to CERCLA §103 and ECPRA § 304, 311 and 312, with a voluntary consent order including Supplemental Environmental Project.
- Water Quality
 - Defended an EPA-led enforcement action against oil production company arising from alleged oil and brine releases from oil production water flood operations, achieving advantageous penalty reduction and enhanced compliance coordination with regulators.
 - Achieved beneficial resolution of enforcement allegations of Clean Water Act violations by state agency against chemical pesticide manufacturer arising from analyte interference in chemical analysis; developed alternative analytical method for demonstrating compliance approved by state agency.
 - Achieved beneficial and efficient resolution of all environmental issues arising from closure of tire manufacturing facility and resulting gift of property for nature preserve accompanied by property use restrictions, including asbestos abatement issues as well as those arising from black carbon inundated stormwater collection ponds.
 - Beneficially resolved enforcement issues arising from fire at granary resulting in large fish kill from runoff of fire water, achieving advantageous penalty reduction with implementation of corrective measures and supplemental environmental project.
- Environmental Impact Statements
 - Advised commercial airline regarding issues triggering NEPA review arising from airport expansion and runway addition involving supplementation of previously completed EIS.
 - Advised tribal development company in various casino development projects regarding compliance with the National Environmental Policy Act (NEPA) requirements to complete Environmental Assessments and achieve Findings of No Significant Impacts.
- Toxic Substances Control Act
 - Assisted manufacturer of advanced sensor technologies for homeland security, force protection and commercial applications with Toxic Substances Control Act (TSCA) pre-manufacture notice (PMN) and application of low volume and low release/low exposure exemptions.
- Mining
 - Guided gravel quarry operator through state water resources regulations to achieve favorable agency interpretation regarding recirculating gravel wash water as non-withdrawal for agency permitting purposes.

Litigation:

- Provided rigorous defense resulting in favorable settlement of Solid Waste Disposal Act citizen suit action alleging violations of municipal landfill closure standards and breach of contract action against municipality. Settlement effectively nullified citizen suit in resolution of contract claims. Coordinated closely with state attorney general in defense of co-defendant state environmental agency. *Stephens v. City of Anadarko, et al*, Case No. 5:06-cv-1357 (W.D. Okla.).
- Provided rigorous defense resulting in favorable settlement of Clean Air Act citizen suit action alleging violations of Clean Air Act permit, state fugitive emission and solid waste disposal regulations against manufacturing entity by adjacent neighbor. Due to previous resolution of

state compliance issues, achieved very efficient settlement with plaintiffs beneficially resolving state common law claims. *Steve Lindsey and Kristi Lindsey v. SGL Carbon, LLC*, Civil No. 07-2105 (W.D. Ark.).

- Provided rigorous defense resulting in dismissal of initial and subsequent Clean Water Act citizen suit and all pendant state law claims against natural gas producer, prevailing on appeal as well. Achieved initial dismissal due to lack of jurisdiction arising from insufficient notice, while in parallel negotiations with the EPA and Department of Justice to resolve noncompliance allegations resulting in agreed Consent Order entered prior to second attempted citizen suit filing. Dismissal of second citizen suit attempt resulted from filing of consent order which constituted diligent prosecution. Prevailed on appeal in the 10th Circuit. *Karr v. Hefner*, 475 F.3d 1192 (10th Cir. 2007).

Transactions:

- Represented an independent oil and natural gas company in its acquisition of various smaller independent oil and gas companies in all environmental matters arising from oil and natural gas exploration and production, particularly air emissions permitting and spill prevention, containment and countermeasure compliance.
- Represented an electrical service company in its acquisition of environmental impacted property in Tennessee, in all environmental matters, utilizing the Tennessee Department of Environment and Conservation Hazardous Waste Management Act of 1983 T.C.A. Section 68-212-225(d) resolving impacts through land use restrictions adopted by seller to benefit subsequent owners including the client purchaser.
- Represented a bulk petroleum storage, transportation and service provider in its acquisition of several bulk storage facilities and truck service companies in all environmental matters arising from petroleum storage and transportation operations, including assigning and resolving liability arising from leaking underground storage tanks, municipal permits and legacy Superfund liability.
- Efficiently completed environmental due diligence for several wind farm projects, coordinating with national counsel on behalf of wind turbine client.
- Represented many automobile dealership companies in their acquisition of multiple dealerships, resolving due diligence issues particularly associated with automobile dealer and maintenance shop operations.
- Represented a major publishing company in its acquisition of a controlling equity interest in a national manufacturer of concrete landscaping products and its subsidiaries in all environmental matters arising from manufacturing and mining operations, particularly resolution of air emissions and stormwater discharge permitting and release reporting issues.
- Represented a developer of advanced sensor technologies for homeland security, force protection and commercial applications, in its merger with a company specializing in thermal imaging and stabilized camera systems in all environmental matters arising from manufacturing operations, particularly issues involving chemical products regulation under Toxic Substances Control Act (TSCA), release reporting under the Emergency Planning and Community Right to Know Act (EPCRA), air emissions, hazardous waste management and stormwater discharges, as well as transfer of radiation permits with oversight by the Nuclear Radiation Commission.
- Represented a major national tire manufacturer in the closure and sale of a tire manufacturing plant in all environmental matters as well as the gifting of facility stormwater ponds and adjacent areas to nature conservation non-profit entity.
- Represented an international manufacturer of polyethylene pipe in the sale of a subsidiary to a competitor in all environmental matters arising from manufacturing operations, including

resolution of property impacts from migration of chlorinated solvents from neighboring property, which was ultimately resolved in subsequent mediation with the owner of the neighboring property.

- Represented the shareholders in the sale of the stock of a manufacturer of pipe fittings and systems and fusion equipment to a Switzerland-based corporation in all environmental matters, including assignment of liability arising from environmental impacts resulting from prior site operations involving chlorinated organic solvent degreasing operations as well as radiation source permit transfers.

Representative clients:

- Metal fabrication and coatings facilities
- Weapons destruction contractors for the Department of the U.S. Army
- Ethanol manufacturing plants
- Oil and natural gas exploration and development
- Oilfield services facilities
- Construction sites
- State fair grounds
- Concentrated animal feeding operations
- Hazardous waste fuel waste blenders
- Hazardous waste combusting cement kilns and incinerators
- Oil and other hazardous material recyclers
- Power plants
- Steel mills
- Petroleum marketers, distributors and bulk storage plants
- Developers of contaminated property under voluntary cleanup regulations and Brownfields
- PRP entities for Superfund sites (remediation plan development and liability allocation)
- Automobile, pulp and paper, specialty chemical, pharmaceutical, pesticide and fertilizer manufacturers
- Wood treaters
- Metal, solid waste, and chemical recycling facilities
- Quarry operations and gravel mills
- Demolition contractors
- Hospitals
- Bakeries
- Real estate developments
- Convenience stores
- Underground storage tank owners and operators
- Wind turbine manufacturers
- Waste tire recyclers

ADMISSIONS

- Arkansas, 1995
- South Carolina, 2002
- District of Columbia, 2003
- Oklahoma, 2003
- U.S. District Courts for the Eastern and Western Districts of Arkansas
- U.S. District Court for the Western District of Oklahoma
- U.S. Court of Appeals for the Tenth Circuit

EDUCATION

- J.D., with high honors, University of Arkansas at Little Rock, 1995; Managing Editor, *UALR Law Journal*
- B.E., Vanderbilt University, 1984 (Chemical Engineering)

PROFESSIONAL ORGANIZATIONS AND MEMBERSHIPS

- Oklahoma Bar Association (Environmental Law Section)
- Environmental Federation of Oklahoma (Air Committee; Hazardous Waste Committee; Conference Planning Committee)
- American Bar Association, Section of Environment, Energy & Resources (Co-Chair, Climate Change, Sustainable Development and Ecosystems Committee (current); Chair Ethics Committee, 2007-2009; Council Member, 2004 - 2007; Co-Chair, Annual Conference on Environmental Law, 2001-2004; Chair, Air Quality Committee, 1999-2001; Technical Chair and Chief Organizer, Clean Air Act Satellite Seminar, 2002-2004)
- American Institute of Chemical Engineers (Chair, Legislative and Regulatory Section, and Chair, Climate Change Section for the Environmental Division; Chair, Chemical Engineering and The Law Forum; Representing Nanoscale Science and Engineering and ChE&L Forums within Center for Energy Initiatives; United Engineering Foundation Founders Society Technology for Carbon Management Project; Chair, AIChE 2010 Spring National Meeting)
- Air and Waste Management Association (Chair, Central Arkansas Chapter, 2001; Technical Chair, Hazardous Waste and Combustion Specialty Conference, 1999)

CIVIC INVOLVEMENT AND LEADERSHIP

- Commissioner, Ward 3 (through 2014) Environment, Health and Sustainability Commission for the City of Nichols Hills, Oklahoma
- Vanderbilt University School of Engineering (Secretary, Engineering Alumni Council)
- International Women's Forum, Oklahoma Chapter
- Traveler's Aid and Homeless Assistance Network (Chair, Corporate Sponsor Committee, 2006)
- Oklahoma Academy for State Goals
- INFORM/Dangers of Methamphetamine (Instructor)
- Boy Scout Pack Leader