



Viviana L. Heger
Of Counsel

707 Wilshire Boulevard, 24th Floor
Los Angeles, CA 90017

T: 213.626.2906
F: 213.626.0215
vheger@meyersnave.com

Practice Groups

Climate Change and Green Initiatives
Environmental Law
Land Use

California Bar Number

205051

Education

Loyola Law School, JD, top 15 percentile,
1999

Ohio State University, BA, Journalism, 1989

Practicing Since: 1999

Viviana Heger is Of Counsel in the firm's Land Use and Environmental Law Practice Group. She is an accomplished regulatory attorney with deep experience in a wide variety of complex environmental compliance matters, including more than two decades of experience in environmental permitting for industrial and infrastructure projects, emissions trading programs, and counseling energy, manufacturing, recreation, food and beverage, and municipal clients.

Viviana's extensive experience equips her to strategically and comprehensively tackle the numerous challenges clients face complying in California with federal, state and local laws regulating air quality, greenhouse gas emissions, water quality, hazardous waste and materials management and disposal, chemicals regulations, and remediation and right-to-know requirements, including California's Safe Drinking Water & Toxic Enforcement Act (Proposition 65).

Her depth of experience includes historical expertise in air quality law in California as well as the unique preemption issues facing ports, railroads, and airport facilities. Viviana has been assisting clients in both policy and rulemaking issues since the inception of California's climate change law, local indirect source rules, and technology-forcing programs that the state relies upon for its State Implementation Plan (SIP). She has consistently advocated for the interests of her clients, including formulating best strategies and practices to comply with California's cap-and-trade regulation for greenhouse gases.

Viviana's experience includes compliance counseling and complex litigation (including writs of mandamus, claims of property damage, toxic torts, and environmental citizen suits), administrative petitions and appeals, defense in enforcement, procurement of permits, and abandonment and closure of hazardous material structures. She must often advise and defend clients in crisis or emergency situations involving accidents, spills, releases or other scenarios such as safely closing or abandoning pipelines and underground

tanks, which all require reporting and immediate response actions under state and federal laws.

Based on years of expertise, Viviana quickly identifies practical regulatory strategies that clients can implement effectively in the field to help eliminate or minimize potential liabilities. Viviana's experience also includes advising on health, safety and emergency management plans, as well as litigating claims of property damage, toxic torts, and environmental citizen suits. She also is relied upon to assist in conducting compliance audits and due diligence associated with mergers, acquisitions and financing.

Viviana has assisted clients with contested and non-contested permitting matters in both formal and informal proceeding with state and local regulatory agencies including the South Coast Air Quality Management District and other air districts, California Department of Toxic Substances Control, and regional water quality control boards. She has achieved numerous dismissals, resolutions, and settlements for clients facing violations operating contrary to federally enforceable permit limits, constructing and operating without proper air quality permits, and failure to maintain proper health, safety, and emergency management plans.

Her regulatory expertise includes working with both mobile and stationary sources of pollution and contesting or refining application of onerous Best Achievable Control Technology (BACT) determinations, reporting and compliance under the greenhouse gas regulation, and complying or finding defenses or exclusions to environmental laws involving hazardous waste and materials management, the Clean Water Act (CWA), the California Environmental Quality Act (CEQA), and consumer protection laws including the Toxic Substances Control Act (TSCA) and California's Safe Consumer Product regulations and Proposition 65.

Viviana's regularly utilizes well-formed strong relationships with state and local regulators and attorneys at the California Department of Toxic Substances Control, regional water quality control boards, California Air Resources Board and local air pollution control districts (including South Coast Air Quality Management District), allow her to strategically advocate and defend contested environmental administrative and litigated matters. She has succeeded in excess of 100 matters before the South Coast Air Quality Management District, including dozens of contested hearings, and is among a specialty set of practitioners who know how to succeed within the air district's administrative framework. She also regularly works with other state and local regulators, including the California Fire Marshal's Pipeline Safety Unit and local Certified Unified Program Agencies (CUPAs).

Viviana's clients include major oil and energy companies as well as public entities that operate airports, landfills, and waste treatment facilities. Her unique background includes nearly 10 years in the legal department of a global petrochemical company where she handled environmental compliance and litigation matters relating to marketing, manufacturing and distribution operations. In addition to analyzing state and federal environmental claim liabilities, Viviana compiled the company's compliance manual that covered federal laws and laws of numerous states.

Prior to private practice, Viviana served as a part-time judicial extern for the Honorable A. Howard Matz.

Professional Affiliations

- Member, Association of Women in Water, Energy and Environment (2017-2019)
- Instructor, Paralegal Training Program, UCLA Extension (2007-present)
- Executive Committee of Los Angeles County Bar Association, Environmental Law Section (2005-2019)
- *Pro bono* attorney volunteer, Christian Legal Aid (2012-2016)
- *Pro bono* special education attorney volunteer, Disability Rights Legal Center and independently (2010-2016)

Presentations and Publications

- Presenter, “Vapor Intrusion Regulation Update: Status and Impact of 2020 Supplemental Guidance,” Meyers Nave webinar, December 2020
- Update Coauthor, *California Land Use Practice*, Chapter 14, CEB, 2020
- Author, “Clean Water Act Update: SCOTUS’ New ‘Functional Equivalent’ Test and *County of Maui* vs. EPA’s New Navigable Waters Protection Rule,” Meyers Nave Client Alert, May 7, 2020
- Author, “US Supreme Court Expands CERCLA Jurisdiction and PRP Definition,” Meyers Nave Client Alert, April 29, 2020
- Presenter, “PFAS Update: The “Forever Chemical” in the News, in the Movies and in the Courts,” Association of Women in Water, Energy and Environment webinar, March 2020
- Author, “New WOTUS Rule Attempts to End 40 Years of Ambiguity,” Meyers Nave Client Alert, January 29, 2020
- Author, “The Cleanup Checklist: Meeting Your Spill Reporting Obligations,” *ACC Docket* (Association of Corporate Counsel magazine), November 2018
- Presenter, “The New and Improved Proposition 65 Warning Regulations,” Joint Technical Symposium, October 2018
- Author, “Practitioner Insights: Challenges Ahead for Clean Power Plan as EPA Eyes Repeal,” Bloomberg BNA *Daily Environment Report*, November 24, 2017
- Presenter, “Working Together for Environmental Justice,” Los Angeles County Bar Association, April 2013
- Presenter, “Clean Water and Stormwater in Southern California,” Law Seminar International, December 2012
- Moderator, “Be Prepared for a Rainy Day,” Los Angeles County Bar Association, January 2012

- Author, “Determining the Fate of AB 32,” *Law360*, February 2011
- Author, “Legislative Reform Alters Policy and Scope of TSCA,” *Corporate Compliance Insights*, October 2010
- Author, “Reporting Releases and Other Incidents,” *Law360*, April 2010

Representative Experience

- Represented refinery as plaintiff in federal court cost-recovery litigation against a dozen defendants including the owner of an adjacent oilfield and refinery wastewater treatment site and pipeline entities. The site is under Los Angeles Regional Water Quality Control Board oversight, and the cost-recovery causes of action include CERCLA, RCRA and common law claims. Client sought to recover millions of dollars in past costs as well as future costs in the millions or tens of millions of dollars.
- Settled complex litigation involving dozens of improperly abandoned pipelines and multiple hazardous waste sources associated with a former oil production wastewater treatment plant, recovering large percentage of client’s clean-up costs under tort theories, the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
- Advised and implemented multi-phase warning protocol for a major utility company to address emissions associated with portable diesel-powered back-up generators, shielding client from frivolous Proposition 65 litigation.
- Settled for a *de minimis* amount various historical air quality violations for a manufacturing facility operating without a modified air permit and secured Emission Reduction Credits (ERCs) valued at up to \$1.2 million; in-house counsel reported "better-than-expected" results on Association of Corporate Counsel webpage (acc.com).
- Developed a recycling strategy to avoid all hazardous waste disposal costs, saving a manufacturing facility about \$200,000 in disposal fees; developed a compliance plan for underground piping that ensured timely permitting and allowed client’s project to remain profitable and on track.
- Successfully rescinded an imminent and substantial endangerment order from the Department of Toxic Substances Control and negotiated consent agreement that coordinated other potential responsible party contribution toward remediation of co-mingled plume contaminants at active manufacturing facility.
- Developed and implemented strategy that successfully secured insurance coverage to fund remediation of co-mingled plume contamination despite narrow eligibility under environmental insurance policy.
- Negotiated reasonable terms and conditions of an individual National Pollutant Discharge Elimination System (NPDES) permit and Time Schedule Order that significantly reduced monitoring and other responsibilities imposed on industrial discharger, while appealing certain limits under the Total Maximum Daily Load (TMDL) program.

- Strategically filed appeal and variance petitions with the South Coast Air Quality Management District in a way that secured within weeks dozens of permit revisions that had been pending for several years, thereby eliminating violations for operating contrary to the permit.
- Eliminated *all* South Coast Air Quality Management District notice of violation penalties associated with historical permit exceedances and settled remaining violations for a *de minimis* amount, after obtaining and using public records to demonstrate that the agency inspector was misinterpreting the facility permit.
- Succeeded in dozens of matters to obtain variances to temporarily suspend application of local air quality rules and permit conditions at administrative hearings before the South Coast Air Quality Management District hearing board for various oil company and industrial clients.
- Succeeded in dozens of matters involving source and facility determinations under state and federal air quality laws that apply to complex operations located, or co-located, on various parcels of land.
- Resolved enforcement matters for several manufacturing facilities involving allegations of hazardous waste mismanagement by the Department of Toxic Substances Control and local implementing agencies, avoiding significant penalties and fines.
- Resolved litigation against a small metal finishing facility that had failed to properly characterize and disposed of metal-bearing dusts as hazardous waste.
- Assisted in successful certification of environmental impact report (EIR) for expansion of a northern California refinery, including the development and implementation of mitigation measures for greenhouse gases.
- Secured CEQA notice of exemption for a tank installation by a gasoline terminal facility operating on land owned by the California Public Utilities Commission (CPUC), satisfying both CPUC and CEQA requirements and avoiding exhaustive CPUC environmental review that otherwise would have been required.
- Settled without penalties multiple days of violation for operating a portable CARB-certified engine without local permits and avoiding prolonged administrative hearings or a variance.
- In matters involving operations near and at the ports of Los Angeles or Long Beach and at the Los Angeles airport, unraveled the interplay between federal preemption and the scope of permissible local air quality rules, leading to the development or implementation of local plans for the reduction of air pollution.
- In matters involving operations in highly industrial areas, developed compliance strategies to address the interplay between Proposition 65 warning protocols related to beyond-the-fenceline emissions associated, thereby avoiding over-warning for client.
- Utilized new regulatory scheme to challenge enforcement of clean-up and abatement order (“CAO”), securing favorable results in judicial review.
- Defeated virtually all arguments in motions to dismiss a federal Comprehensive Environmental Recovery, Compensation, and Liability Act and Resource Conservation and Recovery Act matter involving multiple PRPs, thereby preserving and enhancing ability of cost recovery for clean-up costs incurred since 2014.