

# GREEN MATTERS

GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP

## Environmental Justice

By: Alexa Hyland

It was three years ago that L.A. environmental attorney Terry Avchen began researching how he could recover money from the U.S. government on behalf of **Steadfast Insurance Co.**, which is paying millions to cleanup a contaminated perchlorate site in Santa Clarita.

Avchen argued that the government was responsible for the costs of cleaning up the rocket fuel byproduct because it arranged for disposal of the hazardous waste that caused the contamination.

And in a precedent-setting settlement, Avchen succeeded.

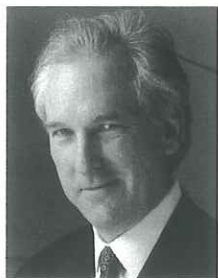
Two weeks ago, an L.A. federal district court judge signed off on a \$33.8 million settlement between Steadfast and the government. "I was surprised we were able to settle the case. Typically the government does not settle cases like this unless on the eve of trial," said Avchen, a partner at Century City firm **Glaser Weil Fink Jacobs Howard & Shapiro LLP**. "But it did not want to have a legal precedent on its liability for perchlorate."

Before suing the government, the Schaumburg, Ill.-based company agreed to pay up to \$75 million of the cleanup costs under an insurance policy held by **Whittaker Corp.**

Since 1934, a number of companies, including Whittaker, manufactured and tested munitions, explosives and fireworks at the site, which is known as the Whittaker-Bermite site. The 988-acre parcel, in the heart of the Santa Clarita Valley, remains in the cleanup phase.

Avchen said the site became contaminated after the companies followed the government's disposal guidelines requiring that the perchlorate be dumped in a pit, set on fire, and then watered down. But after watering the perchlorate, Avchen said the waste dissolves into the water table, contaminating drinking water.

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## Partner Profile

**Terry Avchen** is the Chair of the Environmental/Energy Department at Glaser, Weil, Fink, Jacobs, Howard & Shapiro, LLP. This group addresses the rapidly growing renewable and alternative energy arenas, with projects ranging from solar power to hydroelectric. The group has extensive experience in climate change, including greenhouse gas issues,

carbon credits, clean energy technology, sustainable (LEED) development, as well as traditional CERCLA, NEPA, and CEQA issues.

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## LEEDer of the Pack

### Building "Green" and the Increasing Importance of Counsel

By: Jerry Katz & Ryan D. Nowicki

Not only has building "green" been a fast-growing trend in the United States, it is now a legal requirement for many real estate developments in certain parts of the country. So-called "green buildings" generally share five major characteristics:

1. their sites are environmentally sustainable,
2. they use water more efficiently,
3. they minimize use of energy and damaging atmospheric chemicals,
4. they generate less material waste and are built with materials from environmentally-friendly resources, and
5. they maximize indoor air quality.

Incorporating green building standards, such as the Leadership in Energy and Environmental Design ("LEED") standards issued by the U.S. Green Building Council ("USGBC"), adds a slight up-front cost premium to a real estate development project. However, this premium is more than outweighed by multiple benefits. For example, over the lifetime of a green building, the combined economic, governmental, tax, and environmental incentives can provide over ten-times the return on any premium cost associated with building to LEED standards.

Legal issues are present with respect to virtually every aspect of a LEED project, and competent legal counsel can mitigate the risk associated with certification under green building program standards, such as by navigating through the maze of state and local regulations for green building construction. For example, as of September 5, 2008, over 25 cities in California enacted mandatory green building ordinances, all of which differ in one respect or another. Legal counsel can also provide the necessary guidance to ensure that developers obtain all of the governmental incentives and tax benefits available for building green.

A properly integrated and coordinated team of professionals, including legal counsel, architects, engineers and contractors, can add value to a green building project by helping to ensure that the project achieves its LEED certification goal and that developers reap the many rewards of building green.