

David B. Van Slyke

Partner

David is Chair of Preti Flaherty's Environmental Group and Co-Chair of the Climate Strategy Group. A nationally recognized environmental lawyer with a distinguished career at the U.S. Environmental Protection Agency (EPA) in Washington, D.C., David joined Preti Flaherty in 1991. He is a Partner in the Portland office and a former member of the firm's Management Committee.

He is an active participant in all aspects of the firm's environmental practice, including litigation, compliance counseling, environmental audits, defense of enforcement actions, project permitting, due diligence in business and lending transactions and environmental risk management.

David also has testified in U.S. District Court as an expert witness related to EPA policy and procedures and managed CERCLA liability allocation efforts at several significant Superfund sites.

EPA Experience

David represented the EPA at the negotiating table and participated at the highest levels of the agency's compliance and policy-making efforts. He now offers clients a unique, insider's view of Federal environmental law based on his extensive EPA experiences:

- As Acting Associate Enforcement Counsel for Superfund and, prior to that, as Deputy Associate Enforcement Counsel for Hazardous Waste, David managed the nationwide implementation of the EPA's civil judicial enforcement programs under CERCLA and RCRA.
- As Chair of the CERCLA Lender Liability Rule Task Force, David supervised the development of the agency's lender liability rule and the issuance of the agency's first prospective purchaser guidance, approving the initial brownfields-type settlements. Upon joining Preti Flaherty, David was instrumental in the passage of Maine legislation creating liability protections for lenders and establishing Maine's brownfield VRAP program.
- As the EPA's lead headquarters attorney litigating the precedent-setting *U.S. v. Conservation Chemical* Superfund cleanup case, involving more than 200 defendants and third-party defendants, David pushed the case to a successful conclusion. The case was one of the first to be litigated under Superfund.
- David's awards while at the EPA included the Department of Justice Commendation for Outstanding Service; the Assistant Administrator's Enforcement Award for Excellence; a Silver Medal; two Bronze Medals; and numerous Superior Performance and Outstanding Achievement Awards.

Prior to joining the EPA, David was a legal policy analyst for Booz-Allen and Hamilton, Inc., in Washington, D.C., where he helped develop policy on civil



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judicial and administrative enforcement for the EPA's hazardous waste programs. He also worked for Environmental Research and Technology in Washington as a legislative and policy analyst, focusing on legislative initiatives under the Clean Air Act and Clean Water Act.

Practice Areas

- CERCLA Allocation
- Cleantech & Renewable Energy
- Climate Strategy
- Environmental
- Environmental Litigation
- Land Use & Permitting
- Municipal Law and Finance
- Natural Resource Damages
- Offshore & Onshore Wind Power
- Real Estate
- Stormwater

Education

- St. Lawrence University (B.S., 1976)
- Syracuse University College of Law (J.D., 1981)

Admissions

- Maine
- District of Columbia
- U.S. District Court, District of Maine
- U.S. District Court, District of Columbia
- U.S. Court of Appeals, First Circuit

Professional Affiliations

- New England Interstate Water Pollution Control Commission
 - Commissioner, 2013-Present
- Maine State Bar Association
 - Member, Natural Resources and Environmental Law Section
- American Bar Association
 - Member, Environment, Energy and Natural Resources Section
- Cumberland County Bar Association

Honors & Awards

- Chambers USA, Band 1 Environment Lawyer, 2006-Present
- Listed in *Best Lawyers in America* 2005-Present
- Martindale-Hubbell® AV Preeminent™ Peer Review Rating
- Listed in *New England Super Lawyers*
- Fellow – American College of Environmental Lawyers
- Fellow – American Bar Foundation
- Lectures extensively on Superfund, due diligence and hazardous waste issues

Civic Involvement

- Maine Adaptive Sports and Recreation
 - President and Chair of Board, 2014-2016
 - Executive Committee, 2005-2010, 2012-2024, 2016-Present
 - Vice President, 2005-2010, 2012-2014
 - Board Member, 1999-Present
 - Board Governance Committee, 2007-Present
 - Volunteer/Fundraiser, 1991-Present
- Royal River Conservation Trust
- Royal River Recreation Authority, Development Task Force
- Volunteer Lawyers Project
- Soccer Maine Licensed Soccer Coach
- U.S. Youth Soccer Association Certified Referee
- Leadership Maine, Mu Class, Maine Development Foundation
- Maine State Chamber of Commerce, Environment and Energy Committee Member

Firm Involvement

- Environmental Practice Group Chair
- Climate Strategy Group Co-Chair
- Diversity Committee Member
- Green Committee Member

Representative Matters

General

- David has had significant involvement at more than 100 Superfund and RCRA sites across the country. His efforts have ranged from leading PRP Groups, to negotiating consent decrees regarding NPL sites, to litigating cases in various U.S. District Courts and the First Circuit Court of Appeals, to representing creditors and debtors on environmental matters in U.S. Bankruptcy Courts.

Allocation

- David was part of the team selected by the Cooperating Parties Group to perform an allocation relative to the Lower Passaic River Study Area CERCLA site (dioxins, mercury, PCBs and other contaminants of concern).

Litigation / Enforcement Actions

- David is co-lead counsel in the defense of a RCRA imminent and substantial endangerment citizen suit case concerning mercury contamination in Maine's tidally influenced Penobscot River. The case is currently in the remedial options evaluation phase, with court-appointed experts (supervised by a Special Master) pursuing additional investigatory efforts prior to remedy recommendation. (*Natural Resources Defense Council et al v. HoltraChem et al.*, USDC - Maine).
- Co-counsel in defense of state enforcement action seeking a \$250 million remedy to address mercury contaminated soils, sediments and groundwater at RCRA and Maine Uncontrolled Hazardous Substances site. Two-week state administrative hearing resulted in a significantly modified order delineating a refined remedy at a vastly reduced cost (\$100 million). (*United States Surgical and Mallinckrodt US LLC v. Maine Department of Environmental Protection*)

- David was co-lead counsel for the PRP Group that orchestrated the first large multi-party (4,000 PRPs) CERCLA / uncontrolled site liability risk transfer settlement in the country. (*State of Maine v. United States, Settling Non-Federal Defendants et al*).
- David negotiated the settlement of a first-in-the-nation enforcement action brought by the U.S. Environmental Protection Agency concerning alleged liability of a Maine landowner under the Toxic Substances Control Act's Renovation, Repair and Painting Rule (RRP Rule). EPA's complaint sought up to \$225,000, but the alleged liability (relating to scraping and sanding of the exterior of a pre-1978 rental housing unit) was fully resolved via consent order requiring a \$10,000 penalty payable in installments over a two year period. This case presented novel evidentiary proof issues. The alleged violations were captured on video by an unknown individual that was posted on YouTube. The website address for the YouTube posting was then forwarded to the EPA. While the posting was subsequently removed from YouTube, EPA had interviewed the individual who posted the video but refused to disclose the identity of that person to the Respondent. (*In Re Wentworth*)
- David was lead counsel to a major third-party defendant in U.S. District Court litigation involving a manufactured gas plant site. The litigation involved two different lawsuits, one of which went through a 12-day liability and allocation trial. Other aspects of the case, including challenge to a consent decree, were pursued through the First Circuit Court of Appeals. (*Bangor v. Citizens Communication v. Barrett Paving*)
- David was lead counsel to a Fortune 500 consumer products corporation wrestling with a two-decade long RCRA corrective action groundwater remediation effort at a formerly owned facility. He crafted an innovative approach to resolve the matter through a natural resource damage settlement and long-term monitoring. Through a first-of-its-kind set of agreements involving the client, the state, the current owner and a well-established environmental organization, the environmental group purchased alternative resources for public use (funded by grants from the client) and the matter reached a global settlement. (*In Re Kimberly-Clark Corporation*)

Due Diligence / Mergers & Acquisitions

- Leading a team of Preti Flaherty environmental attorneys, David managed the organization and packaging of all environmental and health/safety aspects of a large manufacturing business (including wastewater and air permitting and compliance histories, historical contamination, clean-up requirements and interactions with former owners and regulators) prior to auction sale. The sale was ultimately consummated in a significant nine-figure transaction.
- David and his team assembled environmental permits, prepared environmental histories, and the managed Phase 1 environmental site assessments for 113 different gas stations/convenience stores and fuel oil storage/delivery sites in three states prior to initiation of an auction sale process.
- David was lead environmental lawyer for Brookfield Renewable Energy Partners on its purchase of 26 hydropower projects in Maine and New Hampshire (\$760 million enterprise value) on three different rivers, including two that USF&W Service had designated as critical habitat for endangered species.
- For Granite Shore Power, a joint venture comprised of Atlas Holdings LLC and Continental Commodities Inc., David lead Preti's environmental team in due diligence, purchase offer preparation, negotiation and related matters associated with the auction purchase of Public Service Company of New Hampshire's five stations fleet of thermal assets comprising over 1130 MW of nameplate capacity.

Permitting

- David was lead environmental counsel to Calais LNG, a project that sought to bring a \$1B liquefied natural gas (LNG) regasification terminal and accompanying send-out pipeline to Downeast Maine. The project required complex consultation processes and permitting efforts under the Clean Water Act, the Coastal Zone Management Act and various state statutes involving numerous federal and state agencies, including FERC, DOI, USCG, Army Corps, Maine DEP and the Maine State Planning Office, as well as local governments.

Expert Testimony

- In *ASARCO v. Union Pacific Rail Road*, a CERCLA contribution action, David provided a declaration and expert trial testimony regarding the background on EPA information requests, policies and procedures related to such requests, and the Agency's enforcement process related to failure to adequately respond.

Publications

August 21, 2018

Environmental Alert: EPA Announces Availability of Draft General Permits for Hydroelectric Facilities in NH and MA

Environmental Alert

September 18, 2017

Environmental Alert: Bona Fide Prospective Purchaser Escapes CERCLA Liability

Environmental Alert

May 25, 2017

Environmental Alert: EPA Reconsidering Obama-Era Water Quality Standards It Set for Maine

Environmental Alert

May 2, 2017

David Van Slyke Authors Blog for American College of Environmental Lawyers

American College of Environmental Lawyers

February 16, 2017

Environmental Alert: Court Finds Consultant Not Liable to Prospective Purchaser Regarding ESA Performed for Lender

Environmental Alert

April 19, 2016

David Van Slyke Authors Blog for American College of Environmental Lawyers

June 20, 2014

David Van Slyke Authors Blog for American College of Environmental Lawyers

July 28, 2013

Court Creates Uncertainty for Construction Projects With Army Corps Permits

Environmental Alert

July 25, 2013

EPA Reduces Regulatory Burden for Industrial Facilities Using Solvent Wipes

Environmental Alert

January 1, 1994

David Van Slyke Provides Insight on CERCLA and Allocating the Cost of Municipal Solid Waste Disposal

The Villanova Environmental Law Journal