

## 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 compliance counseling, environmental audits, defense of enforcement actions, project permitting, due diligence in business and lending transactions and environmental risk management.

### 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 the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) and the Resource Conservation and Recovery Act (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 under that policy. Since joining Preti Flaherty, David has been 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.



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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 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

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

- 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

- Listed in Woodward-White's *The Best Lawyers in America*
- Listed in *Best Lawyers in America* 2005-2015
- Martindale-Hubbell® AV Preeminent™ Peer Review Rating
- Listed in *New England Super Lawyers*
- Fellow - American College of Environmental Lawyers
- Lectures extensively on Superfund, due diligence and hazardous waste issues
- State Law Editor, BNA's *Environmental Due Diligence Guide*

## Civic Involvement

- Maine Adaptive Sports and Recreation
  - President and Chair of Board, 2014-2016
  - Vice President, 2005-2010, 2012-2014
  - Board Member and *pro bono* General Counsel, 1999-2014
  - 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 "D" License Soccer Coach
- U.S. Youth Soccer Association Certified Referee
- Leadership Maine, Mu Class, Maine Development Foundation
- Maine State Chamber of Commerce, Environmental Committee Member

## Case Studies

### Cleaning Up Responsibly

Environmental cleanup of a contaminated site poses many serious challenges. The Maine Department of Environmental Protection ordered a company to conduct a \$350 million remediation of a former chlor-alkali facility. This meant difficult and potentially dangerous evacuation of closed and capped sludge landfills and the transport of enormous quantities of mercury-contaminated soil over hundreds of miles. Looking for a better solution, the company turned to Preti Flaherty's Environmental Law Group.

### Turning a mountain into a mole hill

Preti Flaherty appealed the widely publicized DEP decision to the state's citizen Board of Environmental Protection.

Given the history of the site and the scope and scale of the proposed remedy, we knew there would be significant public attention focused on the proceeding. Working closely with our client and their public relations team, we integrated a full-scale community relations effort into our litigation plan to ensure that the local community understood and supported the remedial alternative being proposed by our client in the BEP proceeding. The aim was to alleviate concern by maintaining an open line of communication with the public. Our team regularly kept town officials and opinion leaders fully informed about the process and the plan being developed before the BEP.

### A win for everyone

The approach succeeded. The BEP's decision, issued after nine days of hearings involving more than 25 witnesses, significantly altered the original DEP plan, reducing the cost by more than \$100 million. By aligning our litigation strategy and client's interests with the town's interests, and leveraging local support, we transformed a major disadvantage before the BEP into one of our greatest assets.

## Representative Matters

- 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.

- 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).
- 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.
- 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 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 remedy phase, with court-appointed experts (supervised by 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 \$250 million remedy to address mercury contaminated soils, sediments and groundwater at RCRA and Maine Uncontrolled Hazardous Substances site. Two-week state administrative hearing lead to modified order requiring \$100 million remedy. Case is currently under appeal. (*United States Surgical and Mallinckrodt US LLC v. Maine Department of Environmental Protection*, Superior Court- Maine).
- 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 and posted to 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 addition, the Respondent had tested the paint on the housing unit prior to doing the work, but the test result was a false negative.
- 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 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.
- 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.

## Publications

September 18, 2017

**Environmental Alert: Bona Fide Prospective Purchaser Escapes CERCLA Liability**

*Environmental Alert*

May 25, 2017

**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

**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*