



→ Nicholas W. van Aelstyn

Partner

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Nicholas W. (“Nico”) van Aelstyn is a partner in the Real Estate, Land Use and Environmental Practice Group in the firm’s San Francisco office.

Areas of Practice

Nicholas has more than 25 years of environmental counseling and litigation experience. His environmental compliance counseling practice focuses on climate change, Brownfields redevelopment, sustainability and other regulatory and transactional matters. His climate change practice encompasses California’s Cap-and-Trade Program (compliance, rulemaking, enforcement and emission trading contracts) and other aspects of AB 32, as well as related state, federal and international programs and international offset projects. His climate finance practice includes handling complex offset transactions, market advice, and ESG counseling (environmental, social and governance risks and opportunities). Nico’s transactional experience also includes environmental due diligence for a wide variety of real estate and corporate transactions, with special expertise in the development of renewable energy projects. Nico’s environmental litigation practice focuses on cost recovery actions, regulatory enforcement actions (e.g., administrative enforcement proceedings brought by CARB, DTSC, DPR, AQMDs, RWQCBs and other agencies), writ proceedings to challenge regulations and representation of PRPs and PRP groups at Superfund sites; he has particular expertise with contaminated sediment sites. Nico has represented clients in every lawsuit filed to date challenging California’s Cap-and-Trade Program. His broad litigation experience also includes commercial, real estate, intellectual property and appellate cases. He has handled matters in state and federal courts across the country, including the U.S. Supreme Court, and various administrative fora.

Honors

The Legal 500 US, Environment Litigation, 2018-2019, 2021

Experience

Climate Change. Mr. van Aelstyn advises clients on a host of issues relating to climate change issues, particularly those in California. Representative matters include:

- Representing the International Emissions Trading Association (IETA) as an intervenor defendant in the US’s constitutional lawsuit challenging California’s agreement with Québec linking their two emissions trading programs, *S. v. California*, No. 2:19-CV-01242 (E.D. Cal.) (California and IETA prevailed on summary judgment and the case is pending before the Ninth Circuit);

- Advising investors in the carbon market established under California's Cap-and-Trade Program;
- Advising companies with respect to ESG (environmental, social and governance) risks and opportunities;
- Represented one of California's largest clean energy providers with respect to all aspects of California's Cap-and-Trade Program, engaging regularly with senior California Air Resources Board (CARB) officials regarding rulemaking and related issues;
- Represented coalitions of trade groups and industrial entities in rulemakings with respect to CARB's Cap-and-Trade Program;
- Represented multiple manufacturing entities with respect to disputes concerning the GHG emission benchmarks that CARB established for their respective industrial sectors and related issues under AB 32;
- Represented landowners in forest offset project agreements of various kinds, including numerous transactions representing over \$250 million and many millions of offset credits;
- Represented an NGO in a large-scale project with the Green Climate Fund to develop REDD+ capacity;
- Represented IETA and others as intervenor defendants in the lawsuit challenging California's offsets program, *Our Children's Earth Foundation v. California Air Resources Board* (2015) 234 Cal.App.4th 870;
- Prepared an *amicus* brief for IETA and others in the lawsuit challenging California's GHG emission allowance auctions, *California Chamber of Commerce, et al. v. California Air Resources Board*, (2017) 10 Cal.App.5th 604 (the Court's decision reflected the argument of our brief);
- Advising numerous clients with respect to regulatory compliance issues under both state and federal greenhouse gas regulatory programs.

CERCLA. Mr. van Aelstyn represents individual PRPs and serves as common counsel for PRP groups at several state and federal Superfund sites. He has negotiated settlements with state and federal regulatory agencies, as well as other PRPs. He also has handled allocation disputes and other internal PRP group issues. Nico has experience with all manner of Superfund sites, including large contaminated sediment sites, regional groundwater plume sites, waste disposal sites, drum reconditioning facilities and various other industrial facilities. Several of these involve natural resource damages (NRD) claims by federal and state natural resource trustees. These sites require comprehensive strategies that address remediation and NRD issues and their intersections with allocation issues. Sites at which Nico is or has recently been active include:

- *Yosemite Slough Superfund Site*, San Francisco, CA (EPA Region IX; its only active sediment site): have been serving as common counsel for the PRP group at the Site since the outset; led the effort to negotiate an EE/CA with EPA for this removal action; negotiated an Interim AOC with EPA for the performance of pre-design technical studies; handling negotiations with other PRPs, including several governmental entities, and participating in an ADR allocation process;
- *Portland Harbor Superfund Site*, Portland, OR (EPA Region X): have been representing PRPs at this large, complex sediment site since 2006, from before EPA's issuance of 104(e) information requests through private party cost recovery litigation, the development of an extensive ADR allocation process with approximately 100 PRPs, a PRP group's performance of the RI/FS, EPA's issuance of the ROD, and a 2020 AOC for the performance of remedial design at one portion of the river; actively representing a PRP in the allocation process;
- *Lower Duwamish Waterway Superfund Site*, Seattle, WA (EPA Region X): large, complex sediment site; represented a PRP in the PRPs' extensive ADR allocation process;

- *Cooper Drum Superfund Site*, South Gate, CA (EPA Region IX): counsel for several PRPs working with others in a group under a CERCLA Section 106 order; negotiated an allocation amongst the PRPs, both in and outside of the group; negotiated a consent decree settlement with EPA; representing a PRP in the implementation of the cleanup under the consent decree settlement;
- *Davis Chemical State Superfund Site*, Los Angeles, CA (Cal. DTSC): former solvent recycling facility; common counsel for PRP group that performed RI and prepared RAP; negotiated a consent decree settlement many years later after DTSC renewed enforcement, and defended that settlement successfully in the Central District of California and the Ninth Circuit Court of Appeals; and
- *Casmalia Resources Superfund Site*, Santa Barbara County, CA (EPA Region IX): disposal site; common counsel for small PRP group and coordinating counsel for larger PRP group; negotiated favorable settlements.

Contaminated Property Litigation. Mr. van Aelstyn represents property owners and tenant operators in cost recovery lawsuits regarding contaminated property in state and federal courts. These have included cases concerning a variety of contaminants (VOCs, petroleum products, etc.) and types of property (shopping malls, industrial and rural properties). One extensively litigated case concerned a dispute between the owner of the fee estate and those holding the oil and gas interests. Mr. van Aelstyn successfully negotiated settlements in all of these matters.

RCRA Disputes. Mr. van Aelstyn is representing a government contractor in contract disputes regarding the handling of hazardous wastes generated by Naval vessels.

Brownfields Redevelopment. Mr. van Aelstyn has handled the conversion to productive use of numerous properties with complex environmental issues. He negotiated some of the first prospective purchaser agreements (PPAs) in the country, which concerned the conversion of former disposal sites to retail use.

Other Environmental Matters. Mr. van Aelstyn represents clients in a wide variety of other environmental regulatory matters, environmental due diligence for renewable energy projects as well as corporate transactions and lawsuits. These have included numerous large scale wind solar projects across the U.S. and complex transactions concerning multiple facilities with contamination issues. He's also represented clients in lawsuits concerning enforcement actions under the Clean Water Act and the applicability of U.S. dolphin-safe tuna fishing statutes to U.S. citizens on foreign-flagged vessels.

Articles

- Calif. Cap-and-Trade Linkage Suit Intricate, May Spark Global Doubt: Experts
IHS Markit, 11.21.2019
- Getting the Deal Through: Climate Regulation 2017 - U.S. Chapter, *Law Business Research, Getting the Deal Through - Climate Regulation*, January 1, 2017
- Getting the Deal Through: Climate Regulation 2016 - U.S. Chapter, *Law Business Research, Getting the Deal Through - Climate Regulation*, January 1, 2016

Energy Law Blog

- "Six Key Items to be Aware of Today Concerning FERC Carbon Pricing Policy," February 2, 2021
- "CORSIA Baseline Emissions Decision," August 3, 2021

Real Estate, Land Use & Environmental Law Blog

- "US EPA's COVID-19 Interim Guidance on Site Field Work Decisions," April 15, 2020
- "U.S. EPA's Temporary COVID-19 Enforcement Discretion Policy," March 30, 2020
- "Politics Trumps Economics? Trump's Revocation of California's Waiver Under the Clean Air Act," September 18, 2020
- "On Repeat: Courts Again Uphold Low Carbon Fuel Standard Programs," January 28, 2019
- "GHG Allowance Auctions are Not a Tax; Key Element of State's Cap-and-Trade Program Upheld," April 7, 2017

Media Mentions

FEATURE – Carbon Climax: Crusade to extend California cap-and-trade coming to a head
Carbon Pulse, 04.26.2017

Sheppard Mullin Snags Enviro Partner From Beveridge
Law360, 03.21.2017

Speaking Engagements

"Surviving Allocation - Tips & Sanity Maintenance Approaches for Superfund Counsel," *ABA Section of Environment, Energy, and Resources Webinar*, February 14, 2018

Memberships

ABA (Section of Environment, Energy and Resources (SEER))
Bar Association of San Francisco

Podcasts & Webinars

Nota Bene Episode 101: Catching up with Global Climate Regulation with Nico van Aelstyn
10.14.2020

Nota Bene Episode 50: Who is Filling the International Divergence in Climate Change Regulation? with Nico van Aelstyn
09.18.2019

Practices

Environmental

Environmental Litigation

ESG and Sustainability

Litigation

Real Estate and Land Use

Industries

ESG and Sustainability

Transportation

Education

J.D., University of Oregon, 1990, *Order of the Coif*, Associate Editor, *Journal of Environmental Law & Litigation*

B.A., Williams College, 1986

Admissions

California

Washington, D.C.

California Supreme Court

U.S. District Court, Northern District of California

U.S. District Court, Central District of California

U.S. District Court, Eastern District of California

U.S. Court of Appeals for the Ninth Circuit

Supreme Court of the United States

Circuit Court for Jefferson County, Alabama

U.S. District Court, Northern District of Alabama

U.S. District Court, District of Utah