

Allen A. Kacenjar Jr.

Partner

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About Allen

Allen Kacenjar's practice encompasses all areas of environmental law with particular emphases in risk management counseling, regulatory advocacy, high-stakes environmental litigation, and complex environmental deal-making.

Allen's primary focus is on crafting practical solutions that minimize his clients' exposure to environmental liabilities. Allen has deep experience helping companies navigate the complex web of US environmental, health, and safety laws to achieve results that make both environmental and business sense. He routinely helps clients develop and implement strategies to improve compliance and avert enforcement risks before they arise. Where such problems already exist, Allen has extensive expertise helping clients resolve enforcement matters in creative ways that rebuild relationships with regulators while creating strategic business advantages. Where more amicable efforts fail, Allen consistently achieves favorable results for clients in environmental litigation – ranging from complex cost recovery matters involving numerous technical experts to nuanced regulatory appeals before the US Supreme Court and the US Courts of Appeals.

Experience

Regulatory

- Designed and implemented full-scale corporate audit program for international chemicals company, including system to track all findings, ensure protection of privileged communications, encourage prompt and proper resolution of concerns, and management of voluntary environmental disclosures.
- Led internal TSCA compliance investigation for a specialty chemicals company, resulting in voluntary disclosure of identified concerns, negotiation of a consent agreement with minimal penalty and full ability to continue manufacture and use of products.
- Leading PFAS risk management, regulatory compliance, and strategic planning initiatives for clients across multiple industrial sectors.
- Developing, submitting and convincing EPA to revise EtO risk modeling for major chemicals facility, reducing presumed risks by an order of magnitude.

- Successful resolution of potentially criminal air noncompliance concerns at major industrial complex without penalty through voluntary disclosure and proactive engagement with state regulators.
- Advised manufacturer targeted by EPA MACT residual risk rulemakings of ways to mitigate testing costs, shape agency rulemaking efforts, and minimize risk of overreaching regulatory requirements.
- Comprehensive regulatory advocacy leading to US EPA's reevaluation of multiple aspects of its methylene chloride risk management rules under TSCA.
- Developed US climate change strategy for an international steel company, including assessment of the preferred regulatory approach, advocacy in support of that approach, and submission of comments on numerous rulemakings.
- Developed air modeling, toxicology and other arguments to minimize risks of toxic tort claims alleging EtO exposure.
- Advised on FIFRA registration, compliance and enforcement defense matters, including through the conduct of audits and voluntary disclosure of related findings to mitigate risk.
- Guided major international manufacturer's response to an agency enforcement air permitting initiative, securing the ability to continue operating while avoiding imposition of any penalty, and gaining credibility with regulators.
- Designed product redistribution and recycling system for an international chemicals manufacturer with extended attention to RCRA, TSCA, and Department of Transportation implications; resolved related RCRA enforcement proceedings.
- Assessed and avoided state and federal enforcement of PSD claims against international manufacturer by securing favorable permit modifications that eliminated compliance risk.
- Securing US Army Corps and Ohio EPA permits necessary to enable development of a major hospital complex on a site with significant wetlands, endangered species, and other siting concerns.

Transactional

- Lead environmental counsel on hundreds of major corporate transactions requiring identification and valuation of environmental, health, and safety risks; negotiation of key contractual protections; and identification and resolution of compliance and permitting concerns.
- Extensive efforts with all aspects of environmental insurance, including the negotiation of novel and complex coverages, the filing and management of claims.
- Lead environmental underwriter for thousands of "Reps and Warranties" policies across all industries and jurisdictions.
- Negotiated successful divestiture of major coal ash impoundment and landfill in "liability transfer" arrangement that included the elimination of all related closure, compliance and permitting obligations for seller.
- Managed international legal and technical team charged with mitigating risk and cost of substantial environmental indemnity claims alleging historic contamination from divested operating and third-party disposal sites.
- Secured grant-funded US\$200 million removal of the largest remaining dam on the Cuyahoga River, successfully eliminating related liabilities, mitigating enforcement risks, and enhancing relationships with regulators and the local community.
- Counseled a large municipality regarding the US\$100 million remediation and redevelopment of a historic automotive plant into a high-tech business incubator including resolution of intricate RCRA, Ohio VAP, TSCA, political and business concerns.

- Secured significant grant funding to spur remediation of contaminated industrial property in a transaction uniquely structured to eliminate prospective environmental liability despite ongoing enforcement.

Litigation

- Secured victory before the US Supreme Court in landmark Superfund litigation resulting in the nationwide reassessment of contribution rights (*Cooper v. Aviall*, 543 U.S. 157 (2004)).
- Represented major international chemicals manufacturer in DC Circuit appeals of Hazardous Organic NESHAP (HON) and Miscellaneous Organic Chemical Manufacturing NSHAP (MON) Rules.
- Ongoing appeal of EPA's methylene chloride risk management rules under TSCA before the Fifth Circuit Court of Appeals.
- Defended two New York State agencies against citizen suit claims on issues of first impression involving US\$500+ million in Clean Water Act funding for the state's largest-ever infrastructure project while simultaneously pursuing affirmative relief against US EPA.
- Secured a rare judicial stay by the Eighth Circuit US Court of Appeals on EPA's regional haze regulation of the taconite industry, thus allowing negotiated resolution to secure additional compliance and timing flexibility.
- Defending the largest oil re-refining company in the US from litigation brought by US EPA regarding alleged Clean Water Act compliance issues.
- Defending a major amusement and water park against environmentalist citizen claims under Clean Water Act while simultaneously working to resolve state enforcement and permitting issues.
- Secured vacatur of the US EPA Boiler MACT rule before the DC Circuit Court of Appeals on behalf of clients threatened with disproportionate regulatory impacts (*NRDC v. EPA*, 489 F.3d 1250 (DC Cir. 2007)).
- Secured rare appellate stay of regional haze Federal Implementation Plan governing the taconite industry, enabling the negotiation of rulemaking changes necessary for successful implementation and continued operations.
- Successfully resolved CERCLA litigation involving impacts from a century of operations at a major coke plant in Alabama. Following three separate appeals, the case was before the US District Court for the Western District of Pennsylvania for a new allocation proceeding involving more than a dozen expert witnesses. *Beazer East, Inc. v. The Mead Corporation*, Case No. 91-0408 (W.D. Pa.).
- Defending a manufacturing client from a US\$35 million claim regarding a contaminated 116-city-block area in downtown South Bend, Indiana, involving the seminal interpretation of two statutes, four tort claims, and complex insurance disputes resulting in two Indiana Supreme Court decisions.

Credentials

Education

- Case Western Reserve University, J.D., *magna cum laude*, Order of the Coif, *Case Western Reserve Law Review*, 1999
- Miami University, B.S., 1996

Admissions

- Ohio, 1999

Courts

- U.S. Supreme Court
- U.S. Ct. of App., Third Circuit
- U.S. Ct. of App., Fifth Circuit
- U.S. Ct. of App., Sixth Circuit
- U.S. Ct. of App., Eighth Circuit
- U.S. Ct. of App., District of Columbia Circuit
- U.S. Dist. Ct., N. Dist. of Ohio
- U.S. Dist. Ct., W. Dist. of Pennsylvania
- U.S. Dist. Ct., N. Dist. of Texas
- U.S. Ct. of App., Seventh Circuit

Recognitions

- Ranked in *Chambers USA* for Environment in Ohio 2023 – 2026
- Listed as a key lawyer for Environment: Regulatory by *Legal 500 US 2023*
- Recognized routinely in *The Best Lawyers in America: Environmental Law and Environmental Litigation* and identified as the 2023 Lawyer of the Year in Environmental Litigation in Cleveland
- Listed in *The Best Lawyers in America*, an honor based on an exhaustive peer-review process, since 2018

Expertise

Services

- Litigation
- Environmental, Safety & Health

Industries

- Chemicals

About our firm

One of the world's strongest integrated law firms, providing insight at the point where law, business and government meet. We deliver commercially focused business solutions by combining our legal, lobbying and political capabilities and invaluable connections on the ground to a diverse mix of clients, from long-established leading corporations to emerging businesses, startup visionaries and sovereign nations. More than 1,500 lawyers in over 40 offices across four continents provide unrivaled access to expertise.