Environmental

Our attorneys are experienced practitioners and litigators with regional and national experience across a broad spectrum of environmental matters. We routinely counsel clients on how to effectively navigate complex federal and state regulations, successfully permit facilities and related activities, and ensure compliance with applicable regulatory requirements. We also advise on environmental issues impacting mergers and acquisitions, real estate, and other transactions and regularly represent clients in administrative and judicial litigation matters as well as in enforcement actions before federal and state regulators.

Our clients include a wide variety of commercial businesses and public entities, including diversified energy companies such as large merchant generators, renewable energy producers (wind, solar, hydro, and energy storage), pipeline and electric-transmission-line developers, private equity firms, and public utilities. We also represent telecommunications companies, real estate companies and developers, landowners, museums, wildlife importers and brokers, and a wide variety of commercial and manufacturing businesses, including aluminum, food products, beverage, aerospace and defense, chemical, and medical device manufacturers. *Chambers & Partners* ranks Barclay Damon's Environmental Practice Area among top environment practices, noting, “Barclay Damon LLP is particularly well known for supporting energy sector clients with permitting for electrical transmission projects and midstream oil and gas assets” as well as “compliance work and tackling Superfund issues.” One client said, “Barclay Damon's knowledge with regard to New York State's regulatory requirements was paramount to moving our case forward.”

Our attorneys have broad practical knowledge gained from years in high-level positions at environmental administrative agencies. Several attorneys also have advanced professional degrees in engineering and scientific disciplines and have extensive experience in selecting, coordinating, and working with consultants covering a wide array of technical and scientific knowledge. The group also includes experienced litigators who represent our clients in a broad range of environmental litigation before administrative agencies as well as in both state and federal courts.

Our breadth of experience includes:

- Project permitting and siting
- Mergers and acquisitions, financings, and real estate transactions, including due diligence and drafting and negotiating environmental reps and warranties, indemnities, and other contractual provisions
- Federal and state Superfund matters, including significant experience with the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA)
- Brownfields development
- The use and disposal of hazardous waste and hazardous substances and the associated federal and state regulatory requirements, including the Resource Conservation and Recovery Act (RCRA) and the Toxic Substances Control Act (TSCA)
- Environmental impact review, whether under the NYS Environmental Quality Review Act (SEQRA) or, at the federal level, the National Environmental Policy Act (NEPA), which can include issues associated with noise, traffic, community character, historic resources, and visual impacts
- The Clean Air Act and issues associated with stationary and mobile-source air emissions, including New Source Review (NSR)/Prevention of Significant Deterioration (PSD) Review, emission trading, general conformity, and hazardous air pollutants
- The Clean Water Act and Safe Drinking Water Act, covering issues associated with impacts to groundwater, wetlands, streams, and other water bodies as well as National and State Pollutant Discharge Elimination System (NPDES/SPDES) permits

- Wildlife law, including the Endangered Species Act, the Migratory Bird Treaty Act, the Marine Mammal Protection Act, the Convention on International Trade in Endangered Species, and the Lacey Act
- Mining
- Petroleum and chemical spills, bulk storage, and handling

Representative Experience

- Successfully defended in the US Second Circuit Court of Appeals a challenge to the New York State Department of Environmental Conservation's (NYSDEC) granting of an application for a Water Quality Certification under § 401 of the Clean Water Act, which is required for the construction through NYS waters of a major natural gas pipeline project.
- Defended a manufacturing client in action brought by neighbors alleging the client caused damage to their real property. Complaints from neighbors prompted the NYS Department of Environmental Conservation (NYSDEC) to perform a site inspection, resulting in an enforcement action being commenced by the agency. Neighbors commenced the actions in small claims court, and the outcome is pending.
- Defended a manufacturer of magnetic ferrous powders in a NYS Department of Environmental Conservation (NYSDEC) enforcement action where the agency alleged multiple violations of state air permitting regulations and violations of conditions of the facility's state facility air permit. The violations could've resulted in criminal penalties against the company and company principals. The client was also in the midst of transferring a controlling interest to another company, potentially impacting the sale, including seamless transferring all NYSDEC-issued permits to the new entity to continue the operations. The NYSDEC enforcement action ended in a satisfactory settlement for the client.
- Authored an *amicus curiae* brief in support of the position that the costs of obtaining a state mining permit incurred in relying on permissive zoning must be considered in determining whether the applicant had established vested rights prior to the enactment of a zoning prohibition.
- Assisted numerous municipal bodies as special counsel regarding SEQRA compliance.
- Successfully represented numerous municipal bodies in Article 78 Proceedings challenging SEQRA approvals.
- Providing strategic advice for the replacement of more efficient and cleaner turbines at an existing generating facility, including securing the necessary permit modifications to enable the project to go forward and interfacing with NYSDEC and other state and local agencies to secure the necessary permits and approvals in a timely manner.
- Represents an energy storage projects developer in handling all aspects of the projects, including counseling on all siting and permitting issues to ensure the most efficient and successful project development while preserving the in-service dates as well as interfacing with key regulators.
- Secured pre-action dismissal of CERCLA and related state laws related to a company's installation of gas and electric utilities with earth-moving equipment that resulted in a persuasive precedent for future cases regarding the appropriate pleading standard for CERCLA cases.
- Represented a kitchenware products maker and distributor in an action under the Resource Conservation and Recovery Act (RCRA) as well as common law negligence and willful and wanton misconduct based on the placement of the company's glass cullet on a neighboring property by the co-defendant, a hauler contracted by the company. Ultimately settled the action on favorable terms and avoided protracted motion practice and a likely trial.
- Serve as lead counsel regarding NY permitting for an interstate-pipeline company proposing to expand its existing infrastructure in Pennsylvania, New York, and New Jersey.

- Successfully moved to reopen a default judgment that had been taken against a rigging company in a NYSDEC enforcement proceeding and then obtained the voluntary dismissal of the complaint by the agency at the close of discovery.
- Represented an individual in his sale of interest in a car dealership franchise that involved sensitive environmental issues and took over three years to complete, including negotiating all transaction documents.
- Successfully defended a multinational corporation against a lawsuit claiming the operation of a 13,000+ acre underground mining operation had not been subjected to an adequate environmental impact review.
- Represents a residential hamlet and a town to establish a water district and to finance improvements pursuant to NYS Town Law, including SEQRA compliance, governmental permitting, and USA Rural Development Agency finance.
- Successfully defended action brought by a consortium of environmental groups challenging the environmental review and permitting conducted by the NYS Department of Environmental Conservation for the resumption of operations of a historically coal-fired electric generating facility on natural gas. Secured a successful outcome before the lower court that withstood appeal following the Appellate Division's granting of the motion to dismiss the appeal as moot.
- Conducted acquisition due diligence for renewable energy assets focusing on local permitting.
- Advised a state agency in its role as an involved agency under SEQRA for a controversial new hospital project, during which we provided strategic advice throughout the environmental review process, including interfacing with the applicant and assisting with the development of a defensible environmental impact statement (EIS), which ultimately led to having all claims in the subsequent legal challenge dismissed against the state.
- Completed environmental and real property due diligence in connection with a series of equity investment transactions in several solar energy facilities in Massachusetts and New York, and as local counsel, advised our client, the investor, of the legal and business risks and prepared permit schedules for closing.