



Aaron H. Goldberg

Principal

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Aaron applies his decades of experience with hazardous waste regulatory law to help clients comply with the rules, help mold the rules, and defend against allegations of noncompliance.

He holds an advanced degree in chemistry, has extensive training in economics, and is a former consultant to the U.S. Environmental Protection Agency. His unique, multidisciplinary background—law, science, economics, and government—informs nearly every aspect of his work and makes him a valuable bridge between attorneys, engineers, business managers, consultants, and regulators.

Aaron has focused on hazardous waste issues since the beginning of the federal regulatory program in 1980. With this historical experience, he offers clients broad-based regulatory counsel on hazardous waste matters, including compliance counseling, strategic planning, advocacy, challenging rules in the courts, applying for permits and variances, and responding to enforcement actions. His clients consist of companies and trade associations in the chemicals, electronics, recycling, petroleum, pharmaceuticals, retail, steel, and mining industries, as well as government entities and non-profit organizations.

In addition to helping clients manage hazardous wastes and recyclable materials, Aaron advises companies on U.S. and international requirements for transport of hazardous materials and dangerous goods, as well as on worldwide regulations for preventing diversion of chemical products to use in the production of chemical weapons or illegal drugs. He was recently appointed by the National Academy of Sciences as the sole attorney on a committee tasked with advising the U.S. Army on planning for eventual closure of two facilities currently being used to destroy the nation's remaining stockpile of chemical weapons.

Aaron is the firm's most senior LGBTQ lawyer. Throughout his career, he has seen remarkable changes—from the start when he feared that his future would be in jeopardy if people discovered anything about his personal life, to now when his orientation is not only accepted but embraced by colleagues and clients.

Education

- Yale University (B.S., *magna cum laude*, 1979)
 - Chemistry

- California Institute of Technology (M.S., 1983)
 - Chemistry
- Stanford University (J.D., 1985)

Bar Admissions

- District of Columbia
- Texas

Court Admissions

- U.S. Court of Appeals - D.C. Circuit
- U.S. Court of Appeals - Sixth Circuit

Professional Affiliations

- American Bar Association
- American Chemical Society
- National LGBT Bar Association

Hazardous Waste & Recyclable Materials

Aaron has been actively involved in hazardous waste regulatory issues from the beginning of the U.S. federal regulatory program under the Resource Conservation and Recovery Act (RCRA) in 1980 to today. Examples of his work in this area are provided below. Outcomes in individual matters may vary significantly, depending on the facts involved and other factors.

Advocacy

Over the years, Aaron has helped to prepare comments for clients on countless RCRA rulemakings, as well as on many related hazardous waste rulemakings at the state level and outside the U.S. On behalf of a large retail industry trade association, Aaron argued for and helped convince the U.S. Environmental Protection Agency (EPA) not to adopt a proposed recordkeeping requirement for non-hazardous wastes that was projected to cost the industry hundreds of millions of dollars each year, and to move forward with two proposals to reduce the hazardous waste requirements for nicotine replacement therapies and aerosol cans in ways estimated together to save the industry similar amounts.

Agency Rulemaking Challenges

Aaron played a key role in drafting the briefs in successful court challenges to major elements of EPA's definition of hazardous waste, including: the "mixture" and "derived-from" rules; several

hazardous waste listings; and the toxicity characteristic as it applies to mineral processing wastes. He was also instrumental in blocking efforts by a national environmental organization to overturn a state's interpretation of its regulations which would have classified most municipal wastewater treatment sludge in the state as hazardous wastes.

Enforcement Action Defense

Aaron negotiated a 90 percent reduction in penalties in a multimillion-dollar enforcement action involving air emissions and process residuals at a cement plant that burned hazardous wastes as fuel. In another case, he obtained a highly favorable settlement in a path-breaking enforcement case against a U.S. government complex that raised novel constitutional and homeland security issues. He recently convinced EPA to withdraw its Complaint against a specialty chemical company in one of the first cases brought by the agency as part of a new nationwide enforcement initiative under the RCRA "Subpart BB" air emission requirements.

Regulatory Counseling

For clients across a wide range of industries, Aaron has analyzed the regulatory status of countless materials under federal and state definitions of solid and hazardous wastes. He helps companies understand and comply with the regulatory requirements applicable to hazardous wastes and in many cases identifies exemptions that enable them to minimize regulatory burdens.

International Transboundary Waste Issues

Aaron frequently assists clients in determining how to ship recyclable materials between countries in accordance with the requirements of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, and corresponding national rules and regional agreements.

Hazardous Materials & Dangerous Goods Transport

Aaron assists clients with regulatory issues associated with the transport of hazardous materials or dangerous goods under the U.S. Department of Transportation (DOT) Hazardous Materials Regulations (HMR) and their international counterparts. Examples of his work in this area are provided below. Outcomes in individual matters may vary significantly, depending on the facts involved and other factors.

Regulatory Counseling

Aaron advises clients on compliance with the regulations for hazardous materials and dangerous goods transport including the requirements for classifying materials, packaging, marking, labeling, placarding, shipping papers, emergency response information, security planning, registration, and personnel training. His work has covered virtually all types of hazardous materials and dangerous

goods, all modes of transportation—road, air, rail, and sea—and transport both in the U.S. and around the world.

Compliance System Development

Aaron assists companies in developing training programs and other internal systems to ensure that products and/or wastes are properly shipped. For example, he helped a nationwide retailer prepare a personnel training program, a security plan, and a practical guide for ensuring that its numerous shipments with varying combinations and amounts of products satisfied applicable regulatory requirements.

Enforcement Action Defense

Aaron has favorably resolved numerous enforcement actions brought by the DOT Office of Hazardous Materials Enforcement and other agencies with HMR enforcement authority, such as the Federal Aviation Administration (FAA) and the Federal Railroad Administration (FRA). In many instances, he has convinced the authorities that the activities in question did not represent actual regulatory violations, did not warrant penalties, or warranted substantial reductions in proposed penalties.

Special Permits and Competent Authority Approvals

For a reverse logistics company, he prepared a successful application to DOT for a special permit to streamline the requirements for complex and diverse shipments of products containing lithium batteries. For a manufacturer that had previously obtained an emergency special permit to facilitate a product recall, he helped draft a successful application for modifications to improve the system for collection and recycling/disposal of the products.

Letters of Interpretation Applications

On many occasions, Aaron has sought and obtained favorable interpretations of applicable rules from both DOT and international dangerous goods regulators. Such interpretations have taken the form of verbal opinions and/or formal letters from the relevant authorities.

Preemption Determinations

Aaron has developed and pursued arguments that certain state rules for transport of hazardous wastes are preempted by the HMR, in one case submitting an application to DOT for a formal preemption determination.

Precursors

Aaron advises clients on compliance with regulations designed to prevent the diversion of chemical products to illicit purposes, such as in the production of chemical weapons or illegal drugs. Examples of his work in this area are provided below.

Controlled Substances and Their Precursors

Controlled Substances Disposal

For a waste services company, Aaron worked to develop a nationwide program for collection and disposal of unused pharmaceuticals, helping to ensure that it would be consistent with applicable controlled substance rules of the Drug Enforcement Administration (DEA), as well as regulations governing transport of hazardous materials and disposal of hazardous wastes.

Precursor Safeguards

Aaron counsels a variety of manufacturers, importers, and users of chemical products that contain controlled substance precursors (e.g., GBL and MEK) on the potential regulation of such products under U.S. and international rules for ensuring that such chemicals are not diverted to the production of narcotics or psychotropic substances. He has helped clients develop and implement plans for reporting apparent non-compliance to government authorities and correcting the problems in ways that limited any business disruptions.

International Advocacy

For a major high-tech trade association, Aaron helped develop a successful strategy to ensure that the UN Commission on Narcotic Drugs (CND) did not adopt a World Health Organization (WHO) recommendation to list two chemicals that are widely used in industrial applications under Schedule I of the Psychotropic Substances Convention, which would have severely limited or even prohibited continued production and use of the chemicals.

Chemical Weapons and Their Precursors

Applicability Assessments

Aaron advises companies in a variety of industries (e.g., chemicals, electronics, and consumer products) on the extent to which the Chemical Weapons Convention (CWC) may apply to their products and operations, sometimes helping to draft requests to CWC National Authorities for determinations of the applicability of their CWC implementing statutes and regulations to particular materials and processes.

Declarations

Aaron has helped prepare annual CWC declarations of past chemical production activities and anticipated future activities for facilities worldwide, taking into account the unique requirements

imposed by some countries. He has also formulated company-specific strategies for key CWC reporting issues, such as how to address chemical intermediates, confidentiality, changes in facility ownership, sites with multiple owners/operators, contract manufacturing, and delineation of individual plants within a plant site.

Inspections

Aaron provides both on-site and remote representation of facilities undergoing CWC inspections by the Organization for the Prohibition of Chemical Weapons, for example, by preparing Pre-Inspection Briefings and negotiating limits on the scope of document productions and facility tours. He has also developed a detailed guidance manual on inspections for CWC-regulated facilities throughout the world.

Chemical Weapons Destruction and Response

Aaron has been appointed by the National Academy of Sciences as the sole attorney on a committee tasked with advising the U.S. Army on planning for eventual closure of two facilities currently being used to destroy the nation's remaining stockpile of chemical weapons. He has also assisted a client in developing a response to a suspected chemical weapons incident.