



## Donald J. Patterson, Jr.

Principal

[dpatterson@bdlaw.com](mailto:dpatterson@bdlaw.com)

+1.202.789.6032

1350 I Street NW, Suite 700, Washington, DC, 20005-3311

### **Don's extensive environmental counseling practice enables him to represent his clients effectively in rulemakings, enforcement, and appellate litigation.**

His environmental litigation, negotiation and enforcement experience allows him to evaluate complex and nuanced environmental issues that arise in environmental due diligence and the drafting of stock and asset purchase agreements. Moreover, his experience with many federal and state environmental programs – Resource Conservation and Recovery Act (RCRA) hazardous and solid waste, state medical and infectious waste, the Clean Water Act (CWA), the Clean Air Act (CAA), Prevention of Significant Deterioration (PSD), New Source Review (NSR), minor source permitting, federal and state reporting, and others – enables him to approach and settle environmental problems—including government and citizen suit enforcement—with a holistic approach that resolves environmental and health claims, economic issues, and toxic tort and reputational concerns.

Facilitated by his broad experience, Don serves in an outside general counsel role for the Pharmaceutical Product Stewardship Working Group and the MED-Project, consortiums of pharmaceutical companies formed to respond to and comply with multiple local and state household unwanted medicine and sharps takeback programs in California, Washington, New York, and Massachusetts.

He is a former member of the firm's Management Committee and previous chair of the firm's Environmental Practice Group.

After law school, Don moved to Washington, DC to begin his 35-year career in the private practice of environmental law and environmental litigation. Don has built his practice around the principle that varied experience in a wide range of substantive areas of environmental law and in multiple types of representation allows him to deliver sophisticated, innovative and cost-effective environmental and related legal services to his pharmaceutical, oil and gas, mining and manual processing, retail, and other clients.

### **Education**

- College of William and Mary (B.A., *summa cum laude*, 1979)
  - Phi Beta Kappa

- University of Michigan (J.D., 1982)

### **Bar Admissions**

- District of Columbia

### **Professional Affiliations**

- American Bar Association, Section of Environment and Energy Resources
  - Co-Chair, Waste and Resource Recycling Committee

### **Honors & Awards**

- *Who's Who Legal, part of Law Business Research Ltd.*, recognition in Environmental Law (2017-2020)
- *The Legal 500*, recognition in Environmental Law (2014-2015; 2017)

## **Representative Matters**

### **Environmental Enforcement, Negotiation, and Litigation**

A critical and ongoing part of Don's representation is his environmental enforcement, negotiation, and litigation practice. In recent years, Don has defended clients in enforcement matters including:

- A CAA enforcement case where the United States Environmental Protection Agency (EPA) headquarters and EPA Regions 3 and 5 have alleged nonattainment new source review and minor source permitting violations in the natural gas industry.
- A CAA flaring case brought by EPA Region 6 in the oil and gas industry.
- An Emergency Planning and Community Right to Know (EPCRA) and RCRA release/spill case in EPA Region 5 in the oil industry.
- Multiple EPCRA release and reporting cases in a number of EPA Regions for numerous clients.
- A Clean Water Act (CWA) and RCRA Section 7003 imminent and substantial endangerment case brought by EPA Region 9 in the waste management industry.
- A RCRA Subtitle I underground storage tanks case in EPA Region 2 in the downstream oil industry.

Don also represents clients in EPA and "state equivalent" Comprehensive Environmental Response Compensation and Liability (CERCLA or "Superfund") actions for clients in the mineral processing, oil and gas, pharmaceutical, printing, and other industries. This representation, in scores of cases across the country, has ranged from allocation battles to the resolution of complex remedial issues,

at sites with hundreds of potentially responsible parties to single party sites. Don also represents clients in natural resource damages (NRD) cases and in claims against the U.S. government and has performed a number of internal investigations in response to threatened government environmental enforcement.

### **Counseling, Rulemaking and Appellate Litigation**

Don provides daily counseling on challenges involving hazardous and solid waste and related recycling operations, medical, sharps and infectious waste disposal, water discharges, air emissions, Drug Enforcement Agency compliant disposal of controlled substances, Department of Transportation transport of hazardous materials, and other regulatory issues. He has been heavily involved for many years in counseling mining and mineral processing industry clients with regard to the RCRA regulatory definition of solid waste and the Bevill Amendment. He also represents clients with regard to a range of RCRA and other rulemakings before EPA.

Don has advised many companies and successfully negotiated with private parties and states and federal entities, with regard to the full range of regulatory and remediation issues associated with legacy contamination sites and contaminated properties, including waste management, notification, and options for cleanup. He has negotiated "guaranteed fixed price" remediation approaches on brownfields properties. Additionally, he counsels clients on the pros and cons of "voluntary disclosures" under federal and state programs.

In his appellate litigation practice, Don has represented the National Mining Association ("NMA") (among other clients) for thirty years. He recently represented the NMA as intervenor-respondent in litigation involving EPA's 2015 regulatory definition of solid waste, presenting a successful oral argument against the environmentalists challenge to EPA's decision not to expand regulation to 32 existing RCRA regulatory exclusions. *American Petroleum Institute v. EPA*, No. 09-1038 (D.C.Cir. July 7, 2017). For many years, he has been lead counsel in numerous mining industry regulatory advocacy and administrative litigation challenges, particularly in the RCRA context. See *Appalachian Voices v. McCarthy*, 989 F.Supp.2d 30 (D.C.D.C. 2013).) (the U.S. District Court for the District of Columbia agreed with NMA and dismissed environmental plaintiffs' claims that RCRA Section 2002 (b) required review of Bevill Amendment regulatory provisions and the RCRA "toxicity characteristic" every three years); *Association of Battery Recyclers v. U.S. Environmental Protection Agency*, 208 F. 3d. 1047 (D.C.Cir. 2000) (D.C. Circuit struck down EPA's unlawful expansion of its RCRA regulatory definition of solid waste).

### **Environmental Representation in Mergers and Acquisitions**

Don represents clients in multi-billion dollar international deals in the pharmaceutical and natural resources industry, among others, with regard to the four potential environmental elements of major mergers and acquisitions:

- Environmental due diligence, including due diligence on product safety and product import/export components related to environmental and health concerns.

- Negotiation and drafting of environmental representation and warranties and indemnities, and related provisions allocating environmental and related liabilities, in stock and asset purchase agreements and related documents.
- Environmental permit transfers.
- Post-transfer environmental compliance.

For such representation, Don typically partners with deal counsel, handling the environmental and related issues and functioning as an integral part of the internal and external deal team.

## Publications

July 17, 2019

### **DC Circuit Denies Petition Challenging Transfer-Based Exclusion under RCRA**

Beveridge & Diamond

October 3, 2018

### **California Adopts Statewide Producer-Funded Pharmaceutical Household Drug and Sharps Take-Back Program**

Beveridge & Diamond

July 12, 2018

### **New York State Adopts Drug Take Back Law Requiring Drug Manufacturers to Develop, Implement and Pay All Costs of a Statewide Drug Take Back Program**

Beveridge & Diamond

March 26, 2018

### **State of Washington Adopts Statewide Drug Take-Back Legislation**

Beveridge & Diamond

March 8, 2018

### **D.C. Circuit Revises Its 2017 Ruling on the RCRA Definition of Solid Waste, Clarifying When Recyclable Materials May Be Classified as Non-Wastes**

Beveridge & Diamond

2018

### **Environment: United States**

Environment & Climate Regulation

July 14, 2017

### **DC Circuit Invalidates Part of the RCRA Definition of Solid Waste**

Beveridge & Diamond

2017

**Environment: United States**

Environment & Climate Regulation

May 10, 2016

**Massachusetts Enacts First-in-Country Opioid Take Back Law**

Beveridge & Diamond

April 12, 2016

**EPA Requests Comment on Tentative Denial of Petition to Expand Dramatically the RCRA Corrosivity Characteristic**

Beveridge & Diamond

2016

**Environment: United States**

Environment & Climate Regulation

October 7, 2015

**Environmentalists Issue Notice of Intent to Sue EPA for Alleged Failure to Review and Revise RCRA Oil and Gas Regulations**

Beveridge & Diamond

September 10, 2015

**EPA Proposes New Rules for Pharmaceutical Wastes That Qualify as RCRA Hazardous Wastes**

Beveridge & Diamond

April 23, 2015

**EPA Commits to Respond in Early 2016 to Petition Seeking to Make the RCRA Corrosivity Characteristic 10 Times More Stringent**

Beveridge & Diamond

2015

**Environment: United States**

Environment & Climate Regulation