

# Adam P. Kahn

## Partner

*Boston*

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Adam is recognized as a leading practitioner in environmental and energy law matters. For over 25 years he has represented commercial, institutional and governmental clients on renewable and conventional energy issues, complex project siting and permitting, environmental and energy disputes, environmental compliance, corporate and real estate transactions, and remediation and redevelopment of contaminated property.

Adam is a lead member of the firm's Energy & Cleantech practice group. He also frequently counsels clients on emerging issues from climate change and greenhouse gas regulation to environmental sustainability and corporate social responsibility. Along with his extensive domestic practice, Adam has worked in the arena of international environmental law, including representing clients on environmental matters before the International Court of Justice in The Hague.

Adam served as Co-Managing Partner of Foley Hoag and as a member of the firm's Executive Committee from 2009 to 2017. Prior to joining the Executive Committee, he was the past coordinator of both Foley Hoag's environmental practice group and Chair of the firm's Administrative Law Department, which includes environmental, energy and regulated industries, health care, government strategies and public law practice groups. Adam is also the former Chair of the firm's Committee on Diversity and Inclusion. Adam worked as an environmental consultant prior to going to law school.

### BAR ADMISSIONS

- Massachusetts

### COURT ADMISSIONS

- U.S. District Court for the District of Massachusetts
- U.S. Court of Appeals First Circuit

### REPRESENTATIVE EXPERIENCE

#### Energy Facility Experience

- Represents the developer of the "Vineyard Wind" project with regard to energy and environmental permitting for the first large-scale off-shore wind farm and related transmission facilities in North America, which will supply 800 MW of renewable energy to Massachusetts utilities. *Vineyard Wind, LLC* (Massachusetts EFSB 17-05 and 19-05).
- Represents the developer of "Park City Wind," an offshore wind project that will supply 804 MW of renewable energy to Connecticut utilities, with regard to energy



### INDUSTRIES

Energy & Cleantech

### PRACTICES

Corporate Social Responsibility

Environmental Litigation

Environmental Compliance

International Business

International Litigation & Arbitration

International Court of Justice

Litigation

Public International Law

Real Estate & Development

### EDUCATION

Harvard Law School, J.D., *magna cum laude*, 1992

Brown University, A.B., *magna cum laude*, 1987

and environmental permitting.

- Represents the developer of a proposed HVDC undersea and underground electric transmission line in the northeastern US with regard to environmental, permitting and siting matters.
- Represented an owner of a combined cycle electric generating facility with regard to energy and environmental approvals needed to authorize a major expansion in capacity. *Milford Power LLC* (Massachusetts EFSB 17-04).
- Represented an importer of liquefied natural gas and owners of electric power generating facilities in Massachusetts Department of Public Utility and litigation matters relating to financing of gas pipelines by electric ratepayers. *ENGIE Gas & LNG LLC v. Department of Public Utilities*, 475 Mass. 191 (2016); and Massachusetts Department of Public Utilities Dockets 15-181 and 16-05.
- Represents the owners of a 1,200 MW pumped storage and traditional hydroelectric facility on the environmental aspects of a FERC relicensing process. *FirstLight Power Resources, Turners Falls Hydroelectric Project (FERC No.1889) and Northfield Mountain Pumped Storage Project (FERC No. 2485)*.
- Represents the owners, operators, developers, or EPC contractors for dozens of solar power generating facilities with regard to environmental permitting, due diligence, transactional and compliance matters.
- Represented many developers of electric generation facilities in the northeastern United States in environmental permitting and facility siting matters. For example, *US Generating (Millennium Power)*, EFSB 96-4.
- Represented a Canadian owner of hydroelectric facilities in obtaining approvals to expand a 600 MW pumped storage generating facility. *Bear Swamp Power Company, LLC* (EFSB Advisory Opinion, June 2008).
- Represented a developer in siting, permitting, and related litigation for a proposed 47 MW woody biomass facility.
- Regularly advises owners and operators of fossil fuel, hydropower, fuel cell, solar, waste-to-energy, distributed generation, combined heat and power, emergency backup and landfill gas generating facilities with regard to transactional, project development, permitting, environmental compliance, and enforcement matters.
- Represents clients with respect to the use, acquisition, creation and sale of carbon and emission-related credits.

## Domestic Litigation and Enforcement

- Represented a supplier of liquefied natural gas before the Massachusetts Supreme Judicial Court in obtaining a determination that the Department of Public Utilities lacks the authority to approve electric ratepayer financing of gas pipelines. *ENGIE Gas & LNG LLC v. Department of Public Utilities*, 475 Mass. 191 (2016).
- Represented the owner of a chemical manufacturing facility in West Virginia in claims against prior owners and operators with regard to PCB contamination. *MPM Silicones, LLC v. Union Carbide Corporation* (N.D. New York, 2018). After trial, the court awarded MPM 95% of its removal costs.
- Represented an owner of an electric power generating facility in a federal criminal environmental matter in the northeastern United States relating to the operation of air emissions monitoring equipment.

- Represented the owner of one of the largest chemical manufacturing facilities in the northeastern United States against Department of Justice federal claims that the facility did not comply with federal and state clean air act requirements.
- Represented a party in litigation brought by the Department of Justice involving air emission and waste handling issues at a waste-to-energy facility located in Illinois.
- Represented the owner of a combined cycle electric power generating facility with regard to an enforcement matter pertaining to that facility's compliance with applicable greenhouse gas measurement and reporting initiatives.
- Represented a party in litigation brought by the Department of Justice involving air emissions from two biomass plants in California.
- Represented the owners of hydroelectric facilities in Maine against citizen suits alleging that the facilities violated the federal Endangered Species Act. *Friends of Merrymeeting Bay v. NextEra Energy Resources, et al.* (D. Me. 2011-2013).
- Represented the owner of a coal-fired power plant in the northeastern United States with regard to a citizen suit alleging violations of air emissions regulations.
- Represented the owners of two coal-fired power plants in the mid-Atlantic region relating to emissions monitoring and related compliance issues.
- Represented a municipality in defending its wastewater discharge permit at the EPA Environmental Appeals Board.
- Represented an owner of multiple mining facilities in a litigation brought by a state attorney general alleging multiple violations of state clean air and clean water acts.
- Represents numerous clients in single and multi-party superfund enforcement and litigation actions.
- Defended operators of institutions and industrial facilities, including recycled and virgin paper mills; asphalt, aggregate and concrete manufacturers; power plants; chemical manufacturing facilities; communications facilities; electronics manufacturers; medical device manufacturers; and others against enforcement actions brought by state and federal environmental agencies, Attorneys General, and the United States Department of Justice.
- Successfully appealed Title V operating permit conditions for a paper mill and a 345 MW electric power generating facility in New York State.
- Obtained the dismissal of claims against the owner of a 300 MW cogeneration facility relating to alleged violations of air emissions permits.
- Successfully challenged the denial of air emission reduction credits by a state environmental agency.
- Obtained a favorable decision on behalf of a chemical manufacturer in defense of environmental remediation cost recovery and property damage claims. *Mystic Landing v. Pharmacia Corp.*, 417 F. Supp. 2d 120 (D. Mass. 2006) and 443 F. Supp. 2d 97 (D. Mass. 2006).
- Secured the disputed tax exempt status for a regional land bank commission. *Martha's Vineyard Land Bank Comm'n v. Bd. of W. Tisbury*, 62 Mass. App. Ct. 25 (Mass. App. Ct. 2004).
- Successfully defended local and state approvals allowing the construction of such projects as a controversial public high school, a high technology corporate campus and a private golf club. *Clifford v. City of Everett*, No. 03-4339 (Mass. Super. Ct. 2004), *White Pine, LLC v. Massachusetts DEP*, No. 99-5758 (Mass. Super. Ct. 2001), and *Fitzgerald v.*

## International Litigation and Arbitration

- Defended the Republic of Uruguay in an environmental challenge brought by Argentina in the International Court of Justice regarding the construction of pulp mills on the River Uruguay. *Pulp Mills on the River Uruguay (Argentina v. Uruguay, 2010)*.
- Represented the Republic of Ecuador before the International Court of Justice regarding aerial spraying of herbicide without adequate precautions. *Case Concerning Aerial Herbicide Spraying (Ecuador v. Columbia, 2013)*.
- Represented a sovereign state in multiple ICSID arbitrations regarding environmental issues associated with gold mining.
- Served as environmental law expert in a German arbitral proceeding relating to compliance of a manufacturing facility with U.S. environmental law.

## Permitting, Compliance, and Brownfields Redevelopment

- Advises hundreds of clients on legal requirements for remediation and redevelopment of contaminated properties.
- Represents Massachusetts Development Finance Agency with respect to remediation and redevelopment of the former Fort Devens.
- Represented municipalities or redevelopment authorities in Chelsea, Everett, Worcester, Springfield, Arlington, Somerville and Malden, Massachusetts, in the acquisition, remediation, sale and redevelopment of former industrial properties for school, medical, residential, commercial, park, transportation and industrial use.
- Advised the Massachusetts Bay Transportation Authority with respect to the permitting of the Greenbush Commuter Rail Line in metropolitan Boston.
- Represented the Massachusetts Development Finance Agency in the siting of a \$1.1 billion pharmaceutical manufacturing facility at the former Fort Devens.
- Obtained permits for construction of a new recycle paper mill and for a significant expansion of a major textile manufacturing facility in New Hampshire.
- Assisted developer of a 900,000 sq. ft. high tech office complex and recreational facility in obtaining needed endangered species, MEPA, and wetlands approvals.
- Obtained environmental permits for Vineyard Golf Club (Edgartown, MA) and The Bay Club of Mattapoisett (MA).
- Represents municipalities, manufacturers, and institutions with respect to regulatory closure of solid waste facilities.
- Counsels energy and industrial corporations with respect to sustainability, environmental corporate social responsibility.
- Represents multiple owners of property addressing indoor air pollution issues including those involving vapor intrusion, PCBs, asbestos and lead.
- Represents clients on federal and state endangered species act issues, including compliance with CITES, federal ESA, and state equivalent compliance.
- Prepares environmental policies and supervised compliance and “beyond compliance” audits for industrial, energy, academic, and institutional clients.
- Advises clients on strategies for compliance with the International Finance

Corporation's Environmental and Social Standards, a benchmark for sustainable industrial and infrastructure projects in the developing world.

## Transactional Experience

- Represents buyers, sellers, landlords, tenants, owners, and operators in transactional matters with environmental and energy dimensions, including power plants, manufacturing facilities, commercial property, and brownfields sites.
- Conducts due diligence, negotiates transaction terms, and obtains permits and approvals.
- Negotiates environmental insurance policies and develops other mechanisms to limit liability and facilitate transactions.

## PROFESSIONAL EXPERIENCE

- Worked as a scientist at Environ Corporation prior to law school

## HONORS & INVOLVEMENT

### Honors

- Elected a Fellow to the American College of Environmental Lawyers (2014 to present); Board of Regents (2018 to present)
- Ranked in "Band 1" by CHAMBERS USA: AMERICA'S LEADING LAWYERS FOR BUSINESS as one of Massachusetts' Leading Environmental Lawyers (ranked 2003 to present)
- Named BEST LAWYERS' Boston Litigation - Environmental Lawyer of the Year (2015 and 2018)
- Listed annually in THE BEST LAWYERS IN AMERICA
- "Leading" practitioner in PRACTICAL LAW COMPANY, PLC CROSS-BORDER ENVIRONMENTAL HANDBOOK
- Listed in MASSACHUSETTS and NEW ENGLAND SUPER LAWYERS
- Listed as Global Leader in WHO'S WHO LEGAL: ENVIRONMENT
- Listed as Global Leader in WHO'S WHO LEGAL: CLIMATE CHANGE

### Involvement

- Boston Bar Association
  - ▶ International Environmental Law Committee, Chair (2009-2011)
  - ▶ Hazardous and Solid Waste Committee, Chair (1999-2000)
  - ▶ Clean Air Committee, Chair (2000-2003)
  - ▶ Steering Committee of Environmental Law Section (1999-2004)
- Lex Mundi, Environmental Law Group, Firm Representative
- Massachusetts Bar Association, Member
- American Bar Association, Member
- Brookline Conservation Commission, Commissioner (1999 to 2007)
- Director, JMR Barker Foundation (2015 to present)

- Member, Board of Directors, Lovin' Spoonfuls Inc. (2018 to present)

## **PUBLICATIONS**

### **Foley Hoag Alerts and Updates**

- Massachusetts Legislature Passes Permit Extension Act As Part of Economic Development Legislation (August 3, 2010)
- EPA Proposes Transport Rule to Address Interstate Air Pollution (July 13, 2010)
- National Cap-and-Trade Legislation Passes the House: At 1,428 Pages, Nearly Something for Everyone (July 1, 2009)
- Supreme Court Decision Gives New Hope to Defendants in Superfund Cases (May 6, 2009)

## **SPEAKING ENGAGEMENTS**

- Frequent speaker on a variety of environmental, energy and legal profession matters