

**Kirsten L. Nathanson**

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Practice Areas

- Environment & Natural Resources
- Administrative & Regulatory
- Litigation
- Trial Practice
- Environmental & Toxic Tort Litigation
- Trade Associations

Kirsten L. Nathanson is a partner in the firm's Environment & Natural Resources Group, focusing on environmental litigation, enforcement defense, risk assessment, and regulatory counseling under the major federal environmental and public lands statutes. Her litigation experience covers the Clean Water Act, Clean Air Act, Endangered Species Act, NEPA, SMCRA, RCRA, and CERCLA, encompassing citizen suit defense, regulatory challenges, remediation cost recovery and defense, Administrative Procedure Act actions, and EPA enforcement.

Current representative engagements include:

- representing a coal company in litigation under NEPA and other federal public lands law related to future operations in the Powder River Basin;
- litigation for various national trade associations against EPA challenging the Chesapeake Bay Total Maximum Daily Load (TMDL) as contrary to the APA and Clean Water Act;
- representing a Fortune 10 company in its contribution claims at a National Priorities List Superfund site;
- performing an environmental risk assessment for a Fortune 100 company's product line;
- litigation for the National Mining Association against EPA and the Corps of Engineers under the APA, Clean Water Act, NEPA, and SMCRA challenging the Enhanced Coordination Process and Detailed Guidance directed toward eastern U.S. coal mining operations;
- defending a Fortune 50 company in a citizen group challenge to the company's environmental remediation activities at a historical industrial facility;
- representing a corporation at the Berry's Creek Study Area, a complex multi-party contaminated sediment CERCLA site; and

- serving as Clean Water Act regulatory and litigation counsel to multiple national trade associations serving agriculture and forestry.

Prior engagements of note include:

- defending a natural gas company in a threatened Clean Water Act citizen suit related to operations in the Marcellus shale;
- litigating the first Endangered Species Act citizen suit against a wind energy project;
- representing a coal company in a citizen suit brought under RCRA and SMCRA related to the company's handling and disposal of coal ash;
- defending a Clean Water Act criminal enforcement action against a private wastewater treatment corporation;
- litigating through trial a Clean Water Act citizen suit for a major animal agriculture corporation;
- serving as national coordinating counsel to a Fortune 10 company in its toxic tort litigation;
- conducting an internal Clean Water Act investigation for a corporation related to historical development activities in wetlands;
- regulatory litigation for the National Mining Association under SMCRA, and for agricultural trade associations under the Clean Water Act and Clean Air Act;
- conducting an internal investigation and risk assessment for a Fortune 100 corporation related to the company's remediation activities;
- defending EPA enforcement actions under CERCLA, including defense of unilateral administrative orders; and
- NEPA litigation for a land developer requiring public lands access for a planned resort development.

Her experience includes federal district court motions and trial practice and federal appellate oral arguments. She is admitted to practice before the U.S. Supreme Court and numerous federal appellate and district courts nationwide.

Kirsten currently serves as Co-President of the Washington, D.C. Chapter of the Women's Energy Network. She is a Past President and a member of the Board of Trustees of the Energy & Mineral Law Foundation and also leads the Crowell & Moring Women Attorneys' Network.

Education

- University of Pennsylvania, B.A. (1992) *cum laude*

- George Washington University Law School, J.D. (1998) with high honors, The Order of the Coif

Affiliations

Admitted to practice: District of Columbia, Maryland

Publications

- "Clean Water Act Permitting for Coal Mining: The Battle over Enhanced Procedures, New Water Quality Standards, and EPA's Role," *Mining Committee Newsletter*, Vol. 5, No. 1, ABA Section of Environment, Energy, and Resources (January 2011). Co-Authors: Kirsten L. Nathanson and David Chung.
- "Selected Administrative Procedure and Practice Topics," *American Law of Mining 2d*, Ch. 186 (2009 update). Co-Authors: Tim Means, Kirsten Nathanson and Luke van Houwelingen.
- "Clean Water Act and Amendments; Other Environmental Regulatory Programs Affecting Coal Mining," *EMLF Coal Law Short Course*, Morgantown, WV (August 2009). Co-Authors: Kirsten L. Nathanson and Alison L. Share.
- "Clean Water Act Compliance and Enforcement: EPA Targets the Coal Industry," *Energy & Mineral Law Institute*, Vol. 29, Ch. 7 (2008). Co-Authors: Kirsten L. Nathanson and David P. Ross.
- "Overview of Administrative Agencies," *American Law of Mining 2d*, Ch. 185 (2008 update). Co-Authors: Tim Means and Kirsten Nathanson.
- "EPA Weighs Competing Arguments - And Likely Litigation - On Proposed CAFO Requirements," *ABA Agricultural Management Committee Newsletter*, Vol. 11, No. 1 (April 2007). Co-Authors: Ellen Steen, Kirsten Nathanson and Jessica Hall.
- "Fallout From *TVA v. Whitman*: When Do EPA Orders Deny Due Process?," *ABA Environmental Enforcement and Crimes Committee Newsletter*, Vol. 8, No. 2 (February 2007). Co-Authors: Richard E. Schwartz and Kirsten Nathanson.
- "*Waterkeeper Alliance, Inc. v. EPA*: A View From The Farm Groups' Perspective," *Water Quality and Wetlands Committee Newsletter*, Vol. 6, No. 2 (August 2005). Co-Authors: Ellen Steen, Richard E. Schwartz and Kirsten Nathanson.
- "An Uncertain Outlook for General Permitting Under the Clean Water Act NPDES Program," *Crowell & Moring Mining Law Monitor*, Vol. 22, Issue 1 (Spring 2005). Co-Authors: Rich E. Schwartz, Ellen Steen and Kirsten Nathanson.
- "Federal Court Rejects EPA Reporting Requirement for Metal Mining Waste Rock," *ABA Mining Committee Newsletter* (June 2003). Author: Kirsten L. Nathanson.

- "ELR News & Analysis: Lessons Learned From the Intersection of CERCLA and Contract Law," 32 *ELR* 11481-11489 (December 2002). Co-Authors: Ridgway M. Hall, Jr. and Kirsten L. Nathanson.

Alerts & Newsletters

- "CITIZEN SUIT WATCH: Fifth Circuit Reverses Dismissal of Citizen Suit Based on Pre-Existing Consent Decree," *Environment & Natural Resources Law Alert* (May 11, 2012). Contacts: Kirsten L. Nathanson, David Chung.
- "Supreme Court Allows Pre-Enforcement Jurisdictional Challenges To EPA Compliance Orders - Applicability Beyond the Clean Water Act Is Unclear," *Environment & Natural Resources Law Alert* (March 29, 2012). Contacts: Amy B. Chasanov, Kirsten L. Nathanson, Monica M. Welt.
- "Citizen Suit Watch: Federal Court Demands EPA Review of Nonpoint Source Regulations As Part of Water Quality Standard Review," *Environment & Natural Resources Law Alert* (March 27, 2012). Contacts: Kirsten L. Nathanson, David Chung, Dawn Miller.
- "CITIZEN SUIT WATCH: Supreme Court of Illinois Rejects Attack on Mining Permit Reclamation Plan," *Environment & Natural Resources Law Alert* (February 21, 2012). Contacts: Kirsten L. Nathanson, David Chung.
- "CITIZEN SUIT WATCH: Tenth Circuit Rejects Article III Standing For Local District Attorney in Multi-Party Clean Water Act Citizen Suit," *Environment & Natural Resources Law Alert* (November 9, 2011). Contacts: Kirsten L. Nathanson, Sarah Bordelon.
- "CITIZEN SUIT WATCH: Third Circuit Reverses Lower Court's Dismissal of Citizen Suit on Abstention Grounds," *Environment & Natural Resources Law Alert* (October 25, 2011). Contacts: Kirsten L. Nathanson, David Chung.
- "Crowell & Moring Files *Amicus* Brief In Support of Cert Petitions Seeking Review of the Ninth Circuit's Ruling on Clean Water Act Permitting for Forest Roads," *Environment & Natural Resources Law Alert* (October 21, 2011). Contacts: Clifton S. Elgarten, Kirsten L. Nathanson, David Chung.
- "Federal Court Rejects EPA Overreaching Into Clean Water Act Section 404 Permitting in Victory for Crowell & Moring Client National Mining Association," *Environment & Natural Resources Law Alert* (October 11, 2011). Contacts: Kirsten L. Nathanson, David Chung, John C. Martin.
- "CITIZEN SUIT WATCH: Court Invalidates Arizona Legislation That Eliminated Funding Mechanism For A Clean Air Act State Implementation Plan," *Environment & Natural Resources Law Alert* (September 28, 2011). Contacts: Kirsten L. Nathanson, David Chung.
- "CITIZEN SUIT WATCH: Second Circuit Demands Listing of Specific Contaminants to Satisfy Notice Requirements for RCRA Citizen Suits,"

Environment & Natural Resources Law Alert (August 8, 2011). Contacts: Duane A. Siler, Kirsten L. Nathanson.

- "CITIZEN SUIT WATCH: Tenth Circuit Adopts Broad View of Issue Preclusion and *Parens Patriae* in Affirming Dismissal of Clean Air Act Citizen Suit," *Environment & Natural Resources Law Alert* (July 15, 2011). Contacts: Kirsten L. Nathanson, Providence Spina, David Chung.
- "CITIZEN SUIT WATCH: Court Dismisses a Master Complaint in the Deepwater Horizon Multi-District Litigation," *Environment & Natural Resources Law Alert* (July 14, 2011). Contacts: Kirsten L. Nathanson, David Chung.
- "CITIZEN SUIT WATCH: District Court to Enjoin Use of Pesticide Pending Completion of Endangered Species Act Consultation," *Environment & Natural Resources Law Alert* (July 1, 2011). Contacts: J. Michael Klise, Kirsten L. Nathanson.
- "CITIZEN SUIT WATCH: Ninth Circuit Rejects CERCLA Citizen Suit Jurisdiction Over Pursuit of UAO Penalties," *Environment & Natural Resources Law Alert* (June 24, 2011). Contacts: Kirsten L. Nathanson, Christopher Leopold, David Chung.
- "CITIZEN SUIT WATCH: Recent District Court Decisions Illustrate Reach of Diligent Prosecution Defense For Post-Consent Decree Citizen Suits," (June 10, 2011). Contacts: Kirsten L. Nathanson, David Chung.
- "State of New York Files Suit Against Federal Agencies Seeking Environmental Review of Natural Gas Development in the Delaware River Basin," *Environment & Natural Resources Law Alert* (June 2, 2011). Contacts: R. Timothy McCrum, Kirsten L. Nathanson, Daniel W. Wolff, Providence Spina.
- "CITIZEN SUIT WATCH: Ninth Circuit Asserts Citizen Suit Jurisdiction Over Challenge To Longstanding Regulation And Reaffirms Clean Water Act Permitting Requirements For Forest Roads," *Environment & Natural Resources Law Alert* (May 31, 2011). Contacts: Kirsten L. Nathanson, J. Michael Klise, David Chung.
- "CITIZEN SUIT WATCH: State Enforcement Does Not Bar RCRA Citizen Suit, As Seventh Circuit Narrowly Construes Federal Abstention," *Environment & Natural Resources Law Alert* (May 16, 2011). Contacts: Kirsten L. Nathanson, David Chung.
- "Mining Law Monitor - Volume 25, Issue 1 - (Summer 2009)," *Mining Law Monitor* (August 1, 2009). Contacts: J. Michael Klise, Kirsten L. Nathanson.
- "Supreme Court Reverses the Ninth Circuit and Restores Order to Clean Water Act Permitting, Rejecting Reallocation of Permitting Authority Over Discharges of "Fill Material" from Corps of Engineers to EPA," *Environment & Natural Resources Law Alert* (June 22, 2009). Contacts: Richard E. Schwartz, Kirsten L. Nathanson, Luke van Houwelingen.
- "U.S. Supreme Court Issues Significant Reversal in Key CERCLA Case, Narrowing Scope of "Arranger" Liability and Upholding Apportionment

- Principles," *Environment & Natural Resources Law Alert* (May 4, 2009).
Contacts: Richard E. Schwartz, Kirsten L. Nathanson, Daniel W. Wolff.
- "Mining Law Monitor - Volume 24, Issue 1 - (Summer 2008)," *Mining Law Monitor* (July 21, 2008). Contacts: J. Michael Klise, Kirsten L. Nathanson, Timothy M. Biddle, Daniel W. Wolff, Lorraine B. Halloway, Willa B. Perlmutter, David P. Ross.
 - "DC Circuit Upholds EPA Consent Agreements With America's Farms," *Environment & Natural Resources Law Alert* (December 4, 2007).
Contacts: Richard E. Schwartz, Kirsten L. Nathanson.
 - "Eleventh Circuit Holds Justice Kennedy's "Significant Nexus" Test To Be Governing Rule Of *Rapanos*," *Environment & Natural Resources Law Alert* (October 25, 2007). Contacts: Richard E. Schwartz, Kirsten L. Nathanson.
 - "D.C. Circuit Rejects Challenges to CAFO Air Consent Agreements," *CAFO Update* (July 17, 2007). Contacts: Richard E. Schwartz, Kirsten L. Nathanson.
 - "EPA Proposes Revised Clean Water Act Regulations for CAFOs in Response to Waterkeeper Decision," *CAFO Update* (June 30, 2006).
Contacts: Richard E. Schwartz, Kirsten L. Nathanson.
 - "EPA Issues New Deadlines for CAFO NPDES Permits and NMPs," *CAFO Update* (February 10, 2006). Contacts: Kirsten L. Nathanson, Richard E. Schwartz.
 - "Environmental Appeals Board Ratifies First Group of Air Consent Agreements ," *CAFO Update* (January 27, 2006). Contacts: Richard E. Schwartz, Kirsten L. Nathanson.
 - "CAFO Rulemaking Litigation Enters the Briefing Stage," *CAFO Update* (November 1, 2003). Contacts: Richard E. Schwartz, Kirsten L. Nathanson.

Speaking Engagements

- "Forest Management and Watershed Health Technical Symposium: A Retrospective on the Connections Between Responsibility Managed Forest and Clean Water in the 40 Years Since the Passage of the Clean Water Act," (February 17, 2012). Panelist: Kirsten L. Nathanson.
- "The Battle for Clean Water Act Permits for Coal Mining - *NMA v. Jackson*," Energy & Mineral Law Foundation Winter Workshops on Energy Law, Lago Mar Resort, Fort Lauderdale, FL (February 12-14, 2012). Speaker: Kirsten L. Nathanson.
- "Agency Guidance Documents: How Much Deference are They Due?," 17th Annual Administrative Law Conference (November 9, 2011).
Speaker: Kirsten L. Nathanson.
- *AEP v. Connecticut* - "What Does It Mean and What Is Next?," Kentucky Mineral Law Conference, Energy & Mineral Law Foundation (October 19-21, 2011). Presenter: Kirsten L. Nathanson.

- "Recouping Attorney Fees: Equal Access to Justice Act and other Fee Shifting Statutes," American Farm Bureau Federation, Legal Information and Networking Committee Conference (September 13-14, 2011). Speaker: Kirsten L. Nathanson.
- "Agency Guidance Documents: How Much Deference are They Due?," 121st Summer Meeting of The Virginia Bar Association (July 22, 2011). Speaker: Kirsten L. Nathanson.
- "The Battle for Clean Water Act Permits for Coal Mining – *NMA v. Jackson* and Related Litigation," Energy & Mineral Law Foundation Winter Workshops on Energy Law (February 2011). Speaker: Kirsten L. Nathanson.
- "Coal Ash -- Beneficial Product, Hazardous Waste, or Both?," EMLF Winter Workshops on Energy Law, Captiva, FL (February 2010). Speaker: Kirsten L. Nathanson.
- "Clean Water Act and Amendments; Other Environmental Regulatory Programs Affecting Coal Mining," EMLF Coal Law Short Course, Morgantown, WV (August 2009). Speaker: Kirsten L. Nathanson.
- "From the Highest Courts," 33rd Mineral Law Conference, Lexington, KY (October 2008). Speaker: Kirsten L. Nathanson.
- "Clean Water Act Compliance and Enforcement -- EPA Targets the Coal Industry," EMLF 29th Annual Institute, Orlando, FL (May 2008). Speaker: Kirsten L. Nathanson.
- "Legal Issues Resolved By, and Remaining After, EPA's NPDES Pesticide Rule," CropLife America Conference on Regulation of Crop Protection Chemicals in the US, Washington DC (April 2008). Speaker: Kirsten L. Nathanson.
- "Biotech Meets Nanotech Down on the Farm -- A Mock Public Hearing to Explore 21st Century Permitting Issues," ABA-SEER Section Fall Meeting, Pittsburgh, PA (September 2007). Speaker: Kirsten L. Nathanson.