



David Michelman

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RELATED SERVICES

- Insurance
- Environmental Compliance
- Environmental & Toxic Tort
- Environmental Remediation & Superfund (CERCLA/RCRA)

OFFICES

- Philadelphia

OVERVIEW

David Michelman is a Partner in the Philadelphia office of GRSM. He has been active in the field of environmental law for more than 35 years. He is recognized for his ability to take a leadership role in litigating or settling Superfund cases involving multimillion-dollar cleanups of landfills. He is often asked to serve as Liaison Counsel and/or Common Counsel to represent the common interests of large groups of parties. In this role, he has successfully steered such cases away from expensive, uncontrolled litigation, toward a managed, cost-effective ADR process that is used as a model for other sites. He negotiates de micromis and de minimis settlements designed to get individual parties out of these cases at an early stage. He also participates in global settlement negotiations on behalf of all of the remaining parties to settle all of the federal or state governments' claims against them.

David's practice also involves counseling clients on environmental compliance issues, permitting, and real estate transactions and representing them in litigation involving landfill cleanups and natural resource damage claims, air quality and asbestos management issues, soil and groundwater discharges from ongoing manufacturing operations, disturbances of wetlands, leaking underground storage tanks, stormwater management problems, violations of the Emergency Planning and Community Right-To-Know Act and FIFRA, and toxic tort claims for property damage and personal injuries.

He has developed innovative ways of settling litigation (and reducing fines and civil penalties) through funding EPA-approved Supplemental Environmental Projects, including (1) an EPCRA education and training program that provided compliance seminars to the business community and general public in Puerto Rico, as part of the first multi-party settlement that EPA ever entered into under EPCRA; (2) a pollution reduction plan under which a graphics design company completely changed its operating process to phase out all use of a regulated hazardous substance over a three-year period; and (3) a shellfish restoration and pollution reduction project to re-seed 2.5 million clams to replenish Barnegat Bay, New Jersey's shellfish population and to remove nitrogen and other nutrients from this marine estuary.

In 1974, while he was with the Natural Resources Defense Council (NRDC), he participated in focusing nationwide attention on the destruction of the ozone layer of the upper atmosphere, by bringing lawsuits against various federal agencies to seek a ban on aerosol spray products containing chlorofluorocarbons. Thereafter, during more than a decade of public service with the District Attorney of Philadelphia, he helped found the field of environmental criminal law, developing and supervising criminal prosecutions for the illegal storage and disposal of hazardous, industrial, municipal, and infectious wastes. David was responsible for bringing the first criminal prosecution in Pennsylvania under the state's Racketeer Influenced and Corrupt Organizations (RICO) statute against a hazardous waste transporter who bribed city employees to dump more than 1.5 million gallons of toxic waste at the Enterprise Avenue Landfill. As a result of this investigation and prosecution, the City of Philadelphia successfully cleaned up this site and was able to persuade the U.S. Environmental Protection Agency to make this the first Superfund site to be removed from the National Priorities List (NPL).

REPRESENTATIVE EXPERIENCE

Superfund (CERCLA) Litigation Over Sites Contaminated With Hazardous Substances

- **Combe Fill South Landfill (Chester, New Jersey):** Served as court-appointed Liaison Counsel for 120 generators in the Combe Fill South Landfill CERCLA litigation, coordinating their disparate interests in an ADR allocation process, two mediation processes, and settlement negotiations with the federal and state governments. Supervised group's participation in extensive informal discovery, through an ADR Process supervised by a court-appointed neutral which involved 75 depositions, and used the ADR Process results to negotiate five private party de minimis settlements allowing 60 group members to cash out of the litigation early. In a mediation with the governments, developed a negotiating strategy to coordinate and promote the common interests of the landfill operators, generators, transporters, and municipalities. Prepared briefs and presented arguments on key defenses, such as the statute of limitations and consistency with the NCP and challenges to the state's NRD formula and substantive demands. Eventually negotiated a \$99 million settlement of the governments' demands for \$200 million for response costs and natural resource damages. Supervised group's participation in another mediation process to allocate the settlement amount among all of the parties and participated in drafting a consent decree and establishing escrow accounts to fund the settlement. Also identified 50 other PRPs and raised \$3.5 million from these non-parties without actually suing them in a separate de minimis settlement.
- **Burlington Environmental Management Services (BEMS) Landfill (Southampton, New Jersey):** Served as court-appointed Liaison Counsel for 70 transporters in state cost recovery litigation under the New Jersey Spill Act, over \$30 million in past clean-up costs and NRD's (and undetermined future costs) for the BEMS Landfill. In cooperation with the other Liaison Counsel, implemented an ADR Process supervised by a court-appointed neutral. Directed a major effort to identify and bring additional parties into the case, increasing the number of ADR participants from fewer than 50 to 200, and coordinated deposition discovery against opt-out parties. Supervised the participation of Group in informal discovery in this ADR Process, including participating in 20 depositions of former landfill employees and environmental consultants. Streamlined the ADR Process by temporarily modifying it into a less structured mediation process in order to seek an earlier settlement with the state.
- **Combe Fill North Landfill (Mt. Olive, New Jersey):** Served as Liaison Counsel for 10 generators in a state cost recovery action under the New Jersey Spill Act for remediation of the Combe Fill North Landfill. Negotiated a \$1.1 million settlement for this Group as part of an overall settlement of \$10 million for clean-up costs and natural resource damages.

- Sanitary Landfill/Cinnaminson Groundwater Contamination Site (Cinnaminson, New Jersey): Served as common counsel for 25 generators, transporters, and adjacent landowners in a private CERCLA cost recovery/contribution action over the cleanup of a site encompassing a landfill (Sanitary Landfill) and surrounding industrial properties (the “Cinnaminson Groundwater Contamination Site”). Helped direct efforts to identify and join additional parties into the case, coordinated discovery efforts on behalf of the Group, and took depositions of former landfill owners, operators, and employees. Through motion practice, obtained the dismissal of Section 107 cost recovery claims. *SC Holdings, Inc. v. AAA Realty, Inc.*, 935 F. Supp. 1354 (D.N.J. 1996)
- Represented individual generators and transporters of solid and/or hazardous wastes in federal and/or state clean-up actions at landfills, treatment facilities, and industrial facilities in Pennsylvania, New Jersey, New York, and Maryland.

Natural Resource Damages Claims

- In mediation between 200 parties and EPA and NJDEP, negotiated a settlement of millions of dollars of NRD claims by challenging technical flaws in NJDEP’s underlying economic methodology used for calculating NRD’s.
- Represented a major integrated oil company in negotiation of a package, global negotiation settling potential and actual NRD claims at all sites previously operated by the company in the State of New Jersey.

RCRA and Other Enforcement Litigation Involving Solid and Hazardous Wastes

- Enterprise Avenue Landfill (Philadelphia, PA): As an Assistant District Attorney for the Philadelphia District Attorney’s Office, conducted the investigation and prosecution of numerous hazardous waste haulers and City of Philadelphia employees in connection with the illegal disposal of thousands of drums of chemicals at a City landfill and bribery of municipal employees. See, e.g., *Commonwealth v. Clarence Walker*, 298 Pa. Super. 387, 444 A.2d 1228 (1982). The prosecution of the owner of one hauler, ABM Disposal Company, involved the first use of the Pennsylvania Racketeering and Corruptly Influenced Organizations (RICO) statute in prosecuting environmental crimes. Also assisted the City of Philadelphia in a private cost recovery action against the generators of these chemicals (*City of Philadelphia v. Stepan Chemical Co.*, 544 F.Supp. 1135 (E.D. Pa. 1982). The City’s voluntary cleanup of this site was the first completed clean-up ever approved by EPA under Superfund.
- Manfred DeRewal/Environmental Chemical Control Co., Inc.: As an Assistant District Attorney for the Philadelphia District Attorney’s Office, conducted the investigation and criminal prosecution of Manfred DeRewal and Environmental Chemical Control Co., Inc. for the illegal disposal of hazardous wastes. This case involved emptying 3,000-gallon tanker trucks of concentrated nitric and sulfuric acid directly and indirectly into the Delaware River and the improper storage of hundreds of drums of chemicals. Also, assisted the U.S. Attorney’s Office in its parallel federal prosecution, which resulted in the first criminal conviction for an offense under the Clean Water Act.

- **Illegal Construction and Demolition Waste Site (Philadelphia, PA):** Represented a contractor facing criminal charges under Pennsylvania’s Solid Waste Management Act for dumping construction and demolition debris at an unpermitted site. Negotiated a guilty plea to a lesser offense, with a sentence of probation. Obtained DER approval for a remediation plan for the site and supervised its remediation (arranged for the fine which they were allowed to work off through a remediation project at another site). Prevented the contractor from being debarred on future City contracts, and the forfeiture of over one million dollars’ worth of trucks.
- **Solvent Waste Disposal Site (Pottstown, PA):** Represented a corporate officer of a business that manufactured dump trailers for the solid waste disposal industry, in civil and criminal litigation. This involved a criminal prosecution for illegal storage and disposal of waste solvents and federal court litigation of a fraud/RICO action seeking rescission of the \$14 million purchase of that business (due to non-disclosure of the illegal disposal of waste).
- **Plating Waste Disposal Site (Hatboro, PA):** Represented the owner of a metal plating facility in negotiating a resolution of his civil and criminal liability from the discharge of heavy metals into a public sewer system and into the ground and the abandonment of drums of wastewater sludge and plating wastes.
- **Leaking Shipping Container (Port of Rotterdam, the Netherlands):** Represented a chemical exporter in a criminal investigation under RCRA arising from the leakage of chemicals from a shipping container during transit from the U.S. to Nigeria, which caused a 1 million Euro cleanup. This investigation focused on whether these old chemicals were legally shipped as a salable “product” for the dyeing industry or were actually “waste” that was improperly exported without a permit for disposal.
- **Waste Oil Processing Facility (Philadelphia, PA):** Represented a waste oil processing facility and its president in permit proceedings with the PA Department of Environmental Protection and a criminal prosecution by the PA Attorney General’s Office, over operating the facility without a permit. Obtained the first permit ever issued by DEP for a waste oil processing facility and kept the company operational through negotiated guilty pleas which placed the company and its president on probation.

Emergency Preparedness/Community Right to Know (EPCRA)

- Served as lead counsel for five manufacturers in Puerto Rico who were assessed over \$1.2 million in administrative civil penalties by the EPA over reporting violations for storage of hazardous chemicals. Negotiated the first multi-party settlement that EPA had ever entered into under EPCRA, for a minor fine (\$90,000) plus implementation of a \$210,000 Supplemental Environmental Project (SEP) to provide EPCRA education and training program for the business community and general public in Puerto Rico.

- Served as counsel for a graphics design business which was assessed civil penalties for failure to report use of a hazardous chemical. Negotiated a settlement that implemented a Supplemental Environmental Project to change the facility's production process to completely eliminate its use of the hazardous chemical (nitric acid).
- As counsel for a paint manufacturer sued by EPA over labeling violations for a pesticide product, designed and implemented a program to reduce pollution and restore natural resources in Barnegat Bay, NJ, by planting and harvesting more than 2 million clams.

Underground Storage Tanks

- Represented gasoline station owner in appeal of state administrative clean-up order over gasoline leak, challenging State's failure to promulgate regulations for low-interest remediation loans to tank owners under Pa. Storage Tank Act.
- Represented former owner of gasoline station in litigation and mediation with successor owner, operator, and gasoline suppliers.

Environmental Permits

- Obtained the first waste-oil processing permit ever issued by PADEP, despite the fact that the company was under criminal investigation for failing to obtain a permit before commencing operations.
- Obtained plan approval for a New Source under the Clean Air Act for emissions from the installation of a new press at Rotogravure Printing facility. Obtained administrative permit amendment for plan approval for emissions from a parts washing unit (which was part of a Title V permit).
- Approval from the NJ DEP for the sale of a minority stockholder's interest in a corporation that owned a former landfill property that was undergoing closure activities.

Asbestos

- Counsel to a commercial roofing contractor in Clean Air Act enforcement action over failure to follow NESHAPS work practice requirements in roof removal at a multi-unit apartment complex.
- Defended asbestos removal contractor against criminal charges under Clean Air Act for knowingly permitting subcontractor to remove asbestos from building without complying with NESHAPS work practices rules.
- Represented manufacturer of building products that contained asbestos in personal injury class action in Puerto Rico, obtaining a prompt dismissal from the litigation.

Air Pollution Permitting and Enforcement of the Clean Air Act

- Resolved a civil penalties action by the Pennsylvania Dept. of Environmental Protection against a printing company for initiating construction of a New Source prior to issuance of a permit. Obtained Clean Air Act New Source Review plan approval for the emissions from the installation of the new rotogravure printing press at this facility. Also obtained an administrative permit amendment for a plan approval for emissions from a parts washing unit (which was part of the facility's Title V permit).
- Represented plastics manufacturer in negotiation of a settlement with state air quality agency over the construction of several New Sources (extruding machines) without obtaining a permit first.
- Represented a rubber textile manufacturer in resolving its air quality violations with the City of Philadelphia.

Construction and Demolition Waste

- Represented contractor charged criminally under Pa. Solid Waste Management Act for dumping construction and demolition debris at an unpermitted site. Negotiated a guilty plea to a reduced charge of "short-dumping" (with a sentence of probation and a fine which they worked off through a remediation project at another site). Prevented debarment on City contracts and the forfeiture of over one million dollars worth of trucks. Won DER approval for a remediation plan for the site.

Real Estate Transactions and Brownfields Clean-Ups of Contaminated Sites

- Counsel for real estate developer in obtaining state regulatory approval of in-situ remediation of fuel oil contamination through soil venting so that property could be used for parking lot and hotel.
- Counsel for owner of industrial park in negotiating sale, supervising cleanup of petroleum hydrocarbon spills, and obtaining release of liability from PADEP.
- Counsel for a plastics processing company in obtaining ECRA approval for the sale of its facility after a heating oil spill.
- Counsel for a tire retailer in the purchase of a former gas station facility in obtaining Brownfields Prospective Purchaser Agreement from NJDEP, releasing it from potential liability for ongoing cleanup by former owner.
- Counsel for the owner of a shopping mall in obtaining Act 2 release of liability for soil and groundwater contamination from fuel oil release from adjoining property.

Toxic Tort Litigation

- Represented multiple parties in a \$33 million property damage and personal injury claim class action lawsuit brought by homeowners surrounding GEMS Landfill.
- Represented manufacturer of caulking products in asbestos property damage class action, obtaining early dismissal on jurisdictional grounds.

Environmental Insurance Coverage

- Assisted policyholders in obtaining a defense and/or indemnification for claims involving landfill or gasoline station clean-ups.
- Assisted an insurance carrier with a coverage determination under a Cost-Cap Environmental Insurance Policy by auditing whether \$12 million in costs were properly expended for the cleanup of a Superfund site.
- Assisted companies in obtaining Environmental Impairment Liability or Pollution Legal Liability Insurance for landfills and contaminated industrial properties.

International Environmental Problems

- Representation of a U.S. manufacturer with respect to an environmental due diligence investigation due to the acquisition of a factory in Northwestern Mexico.

Healthcare Law Representative Experience

Licensing and Disciplinary Matters

- Represented physicians, physician's assistants, nurses, physical therapists, and other health care professionals in investigations and disciplinary matters involving various State professional boards, including negotiating agreements to allow clients to continue working while addressing the corrective action needed.
- Negotiated private, non-disciplinary agreement with the PA Board of Medicine to permit physician to continue to practice and negotiated reciprocal agreements with four other State Boards.
- Negotiated with the PA Board of Medicine and Voluntary Recovery Program (VRP) to permit impaired physician to voluntarily leave medical practice, without disciplinary action, while continuing participation in a private substance abuse recovery program (rather than the VRP Program).
- Represented physician before the Virginia Board of Medicine in obtaining closure of investigation of claims submitted by her telehealth company employer.
- Represented nurse in PA Board of Nursing investigation of former employer's claim of neglect of patient, resulting in no disciplinary action being taken.
- Represented nurse before the NJ Board of Nursing in hearing over non-compliance with RAMP program requirements.

Medicare/Medicaid Compliance and State Regulatory Compliance

- Represented MA Pediatric Practice in settlement of overpayment claims under State Medicaid Program through the defense of audit claims and voluntary disclosures.
- Representation of physician before State Medicaid Program's Board of Hearings in appeal of Notice of Termination of Provider Registration.
- Representation of physician in MA Board of Medicine potential disciplinary investigation.

- Representation of physician before the Missouri Board of Medicine in licensure inquiry.
- Representation of physician before the Massachusetts Board of Medicine in licensure inquiry.
- Represented physicians and other health care providers in audits by CMS over Medicare compliance issues.
- Represented physicians in investigations by government agencies over Medicaid compliance issues.

Healthcare Transactional Matters

- Negotiated purchase of existing MA pediatric practice.
- Negotiated an ownership buy-in agreement and new employment agreement (including limitations on a proposed restrictive covenant) for an oral surgeon, with multiple parties that took over the dental practice at which the oral surgeon was working.
- Advised dentist on purchase of existing PA dental practice.

Healthcare Litigation

- Successfully defended and obtained a jury verdict at trial in favor of a MA pediatric practice against an age-discrimination claim by a former employee.
- Coordinated a joint defense of our client (a chiropractor) and two physicians against complex litigation in NJ State Court over a breach of contract claim and fraud arising from services performed out-of-network rather than in-network.
- Brought lawsuit and motion for a preliminary injunction in PA State Court for a state-licensed private home healthcare agency against its competitor for unfair competition.
- Defended an adult day care center against a PA State Court motion for a preliminary injunction against multiple parties by a competitor alleging unfair competition.
- Negotiated settlement of NY litigation for Connecticut physician over breach of hospital employment contract based upon restrictive covenant.
- Conducted mediation and negotiated settlement for RI physician in breach of contract claim based upon restrictive covenant.
- Defense of oral surgeon against PA breach of contract litigation with former employer based upon restrictive covenant.

White-Collar Criminal Defense

- Defended surgeon against criminal charges by PA Attorney General's Office arising from prescription medication.
- Defended PA general practitioner against federal investigation of potential fraud.

- Advised MA physician regarding State Attorney General Office's investigation of potential fraud by former partner.

PRESENTATIONS

- University of Pennsylvania, Guest Lecturer
- Environmental Training Institute of the Caribbean
- Philadelphia Geological Society

CREDENTIALS

Admissions

- Pennsylvania
- New Jersey
- Massachusetts
- U.S. District Court, District of New Jersey
- U.S. District Court, Eastern District of Pennsylvania
- U.S. District Court, District of Massachusetts
- U.S. Court of Appeals, Third Circuit

Education

- J.D., Georgetown University Law Center, Washington, District of Columbia, 1974
- B.A., University of Pennsylvania, Philadelphia, Pennsylvania, 1971

Languages

- French