



→ Nicholas W. van Aelstyn

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Nicholas W. (“Nico”) van Aelstyn is a partner in the Real Estate, Energy, Land Use & Environmental Practice Group in the firm’s San Francisco office and leader of the ESG and Sustainability Team. He is also a member of the Energy Team.

Areas of Practice

Nico has more than 25 years of environmental counseling and litigation experience. His environmental compliance counseling practice focuses on the full scope of environmental regulation of soils, air and water, as well as many products. His climate change practice encompasses California’s Cap-and-Trade Program (compliance, rulemaking, enforcement and emission trading contracts) and other aspects of AB 32, as well as related state, federal and international programs. His climate finance practice includes handling complex offset transactions in both compliance markets and the VCM, market advice, and ESG counseling. Through his work with the International Emissions Trading Association, Nico is well known for his work to advance voluntary carbon markets, including its Legal Working Group’s development of model ERPAs. He is a founding member and the Team Leader of the firm’s ESG & Sustainability team; Nico’s focus within the Team is on addressing clients’ needs with respect to climate disclosure requirements (Scope 1, 2 & 3 GHG emissions and climate finance risks). Nico’s transactional experience includes environmental due diligence for a wide variety of real estate and corporate transactions, with special expertise in the renewable energy development projects. Nico’s environmental litigation practice focuses on cost recovery actions, regulatory enforcement actions (e.g., administrative enforcement proceedings brought by CARB, DTSC, DPR, AQMDs, RWQCBs and other agencies), writ proceedings to challenge regulations, and representation of PRPs and PRP groups at Superfund sites; he has particular expertise with contaminated sediment sites. Nico has represented clients in every lawsuit filed to date challenging California’s Cap-and-Trade Program. His broad litigation experience also includes commercial, real estate, intellectual property and appellate cases. He has handled matters in state and federal courts across the country, including the U.S. Supreme Court, and various administrative fora.

Honors

Chambers USA, Leading Lawyer, Environment, 2023-2025

The Legal 500 US, Environment Litigation, 2018-2019, 2021-2025

Experience

Climate Change. Nico advises clients on a host of issues relating to climate change issues, particularly those in California. Representative matters include:

- Representing the International Emissions Trading Association (IETA) as an intervenor defendant in the US's constitutional lawsuit challenging California's agreement with Québec linking their two emissions trading programs, *v. California*, No. 2:19-CV-01242 (E.D. Cal.) (California and IETA prevailed on summary judgment and the case is pending before the Ninth Circuit);
- Advising investors in the carbon market established under California's Cap-and-Trade Program;
- Advising companies with respect to California's Climate Disclosure Laws and more generally regarding a range of ESG (environmental, social and governance) issues, risks and opportunities ;
- Represented one of California's largest clean energy providers with respect to all aspects of California's Cap-and-Trade Program, engaging regularly with senior California Air Resources Board (CARB) officials regarding rulemaking and related issues;
- Represented coalitions of trade groups and industrial entities in rulemakings with respect to CARB's Cap-and-Trade Program;
- Represented multiple manufacturing entities with respect to disputes concerning the GHG emission benchmarks that CARB established for their respective industrial sectors and related issues under AB 32;
- Represented landowners in forest offset project agreements (both development and offtake), including numerous transactions representing over \$300 million and many millions of offset credits;
- Represented forest carbon project developers with respect to novel, forward carbon credit offtake agreements, and also w/r/t project-specific issues with CARB;
- Represented an NGO in a large project with the Green Climate Fund to develop REDD+ capacity;
- Represented IETA and others as intervenors in the lawsuit challenging California's offsets program, *Our Children's Earth Foundation v. California Air Resources Board* (2015) 234 Cal.App.4th 870;
- Prepared an *amicus* brief for IETA and others in the lawsuit challenging California's GHG emission allowance auctions, *California Chamber of Commerce, et al. v. California Air Resources Board*, (2017) 10 Cal.App.5th 604 (the Court's decision reflected the argument of our brief);
- Advising numerous clients with respect to regulatory compliance issues under both state and federal greenhouse gas regulatory programs.

CERCLA. Nico represents individual PRPs and serves as common counsel for PRP groups at several state and federal Superfund sites. He has negotiated settlements with state and federal regulatory agencies, as well as other PRPs. He also has handled allocation disputes and other internal PRP group issues. Nico has experience with all manner of Superfund sites, including large contaminated sediment sites, regional groundwater plume sites, waste disposal sites, drum reconditioning facilities and various other industrial facilities. Several of these involve natural resource damages (NRD) claims by federal and state natural resource trustees. These sites require comprehensive strategies that address remediation and NRD issues and their intersections with allocation issues. Sites at which Nico is or has recently been active include:

- *Yosemite Slough Superfund Site*, San Francisco, CA (EPA Region IX; its only active sediment site): have been serving as common counsel for the PRP group at the Site since the outset in 2008; led the effort to negotiate an EE/CA with EPA for this removal action; negotiated an Interim AOC with EPA for the performance of pre-

design technical studies; handling negotiations with other PRPs, including several governmental entities, and participating in an ADR allocation process;

- *Portland Harbor Superfund Site, Portland, OR (EPA Region X)*: have been representing PRPs at this large, complex sediment site since 2006, from before EPA's issuance of 104(e) information requests through private party cost recovery litigation, the development of an extensive ADR allocation process with approximately 100 PRPs, a PRP group's performance of the RI/FS, EPA's issuance of the ROD, and a 2020 AOC for the performance of remedial design at one portion of the river; actively representing a PRP in the allocation process;
- *Lower Duwamish Waterway Superfund Site, Seattle, WA (EPA Region X)*: large, complex sediment site; represented a PRP in the PRPs' extensive ADR allocation process;
- *Cooper Drum Superfund Site, South Gate, CA (EPA Region IX)*: counsel for several PRPs working with others in a group under a CERCLA Section 106 order; negotiated an allocation amongst the PRPs, both in and outside of the group; negotiated a consent decree settlement with EPA; representing a PRP in the implementation of the cleanup under the consent decree settlement;
- *Davis Chemical State Superfund Site, Los Angeles, CA (Cal. DTSC)*: former solvent recycling facility; common counsel for PRP group that performed RI and prepared RAP; negotiated a consent decree settlement many years later after DTSC renewed enforcement, and defended that settlement successfully in the Central District of California and the Ninth Circuit Court of Appeals; and
- *Casmalia Resources Superfund Site, Santa Barbara County, CA (EPA Region IX)*: disposal site; common counsel for small PRP group and coordinating counsel for larger PRP group; negotiated favorable settlements.

Contaminated Property Litigation. Nico represents property owners and tenant operators in cost recovery lawsuits regarding contaminated property in state and federal courts. These have included cases concerning a variety of contaminants (VOCs, petroleum products, etc.) and types of property (shopping malls, industrial and rural properties). One extensively litigated case concerned a dispute between the owner of the fee estate and those holding the oil and gas interests. Nico successfully negotiated settlements in all of these matters.

RCRA Disputes. Nico represented a government contractor in disputes regarding the handling of hazardous wastes generated by Naval vessels.

Brownfields Redevelopment. Nico has handled the conversion to productive use of numerous properties with complex environmental issues. He negotiated some of the first prospective purchaser agreements (PPAs) in the country, which concerned the conversion of former disposal sites to retail use.

Other Environmental Matters. Nico represents clients in a wide variety of other environmental regulatory matters, environmental due diligence for renewable energy projects as well as corporate transactions and lawsuits. These have included numerous large scale wind solar projects across the U.S. and complex transactions concerning multiple facilities with contamination issues. He's also represented clients in lawsuits concerning enforcement actions under the Clean Water Act and the applicability of U.S. dolphin-safe tuna fishing statutes to U.S. citizens on foreign-flagged vessels.

Articles

- Greenwashing, Causation and Collusion – Climate Change Claims and Litigation in the Spotlight
Commonwealth Climate and Law Initiative, 10.17.2023

- U.S. Policymakers Examine the Role of Blockchain Technology in Energy Transitions
New York Law Journal, 08.04.2022
- Calif. Cap-and-Trade Linkage Suit Intricate, May Spark Global Doubt: Experts
IHS Markit, 11.21.2019
- Getting the Deal Through: Climate Regulation 2017 - U.S. Chapter, *Law Business Research, Getting the Deal Through - Climate Regulation*, January 1, 2017
- Getting the Deal Through: Climate Regulation 2016 - U.S. Chapter, *Law Business Research, Getting the Deal Through - Climate Regulation*, January 1, 2016

Blockchain and Cryptocurrency: Law of the Ledger

- "California District Court Finds that EKRA Applies to Compensation Methodologies for Labs' Employed Marketers Who Market to Physicians," June 29, 2022

Energy Law Blog

- "A Quick Guide to EV Charging Infrastructure Funding and Incentives in California," June 29, 2022
- "Six Key Items to be Aware of Today Concerning FERC Carbon Pricing Policy," February 2, 2021
- "CORSIA Baseline Emissions Decision," August 3, 2021

Real Estate, Land Use & Environmental Law Blog

- "California Extends Carbon Market through 2045 with Modest Changes; Provides Market Stability and Reaffirms the State's Climate Commitments," September 24, 2025
- "Recent Updates to State and Federal Climate Disclosure Laws," March 14, 2024
- "Change is in the Air: Everything You Need to Know About California's Sweeping New Climate Disclosure Laws," November 7, 2023
- "California Air Resources Board Adopts 2022 Scoping Plan," January 19, 2023
- "EPA Endorses New Standard for Phase I Environmental Site Assessments," January 11, 2023
- "PFAS As Hazardous Substances: Top 5 Implications For Businesses," September 14, 2022
- "US EPA's COVID-19 Interim Guidance on Site Field Work Decisions," April 15, 2020
- "U.S. EPA's Temporary COVID-19 Enforcement Discretion Policy," March 30, 2020
- "Politics Trumps Economics? Trump's Revocation of California's Waiver Under the Clean Air Act," September 18, 2020
- "On Repeat: Courts Again Uphold Low Carbon Fuel Standard Programs," January 28, 2019
- "GHG Allowance Auctions are Not a Tax; Key Element of State's Cap-and-Trade Program Upheld," April 7, 2017

Media Mentions

Environmental markets wary of Trump's next moves
Argus Air Daily, 04.28.2025

Headline risk from potential federal legal action to stymie US compliance markets

Carbon Pulse, 04.17.2025

Signal Over Noise: Separating Headline Risk from Real Risk in Carbon and Clean Fuel Markets

cCarbon, 04.17.2025

Decoding California Climate Laws

ESG Decoded Podcast, 11.28.2023

California's new climate disclosure laws set foundation for advanced emissions reductions in private sector - experts

Carbon Pulse, 11.14.2023

FEATURE – Carbon Climax: Crusade to extend California cap-and-trade coming to a head

Carbon Pulse, 04.26.2017

Sheppard Mullin Snags Enviro Partner From Beveridge

Law360, 03.21.2017

Speaking Engagements

UNFCCC COP29 in Baku, Azerbaijan

"North America Carbon Market & Cooperation Round-Up,"

IETA Business Hub, November 14, 2024

"Determining Materiality for Financial Reporting," EPRI Technical Workshop re GHG Emissions Accounting, November 7, 2024

"North America Carbon Market & Cooperation Leadership Dialogue," IETA Business Hub, UNFCCC COP28 in Dubai, United Arab Emirates, November 30, 2023

"Lawyers' Roundtable on Carbon Markets & Claims: EPA Power Plant Proposal, Green Claims, Commodity Futures Trading Commission (CFTC)," IETA North America Climate Summit 2023, New York City, NY, September 20, 2023

"Greenwashing, Causation and Collusion – Climate Change and Litigation in the Spotlight," paper prepared for panel at The Foundation for Natural Resources and Energy Law (FNREL) Institute on International Mining and Energy Law, Development, and Investment, Mexico City, April 21, 2023

"Digital Trends: What Are They and What Role Can They Play in the Climate Crisis?," 2023 North American Carbon World, Anaheim, CA, March 23, 2023

"New Standards for Environmental Diligence: What they Mean for Prospective Owners, Operators & Investors," Webinar presented by Sheppard Mullin, February 7, 2023

"PFAS & Real Property Transactions: The Essentials of Diligence and Compliance," Webinar presented by Sheppard Mullin and SLR, June 9, 2022

"IETA Business Hub," UNFCCC COP26 in Glasgow, United Kingdom, November 2021

"IETA Business Hub," UNFCCC COP25 in Madrid, Spain, December 2019

"Surviving Allocation - Tips & Sanity Maintenance Approaches for Superfund Counsel," ABA Section of Environment, Energy, and Resources Webinar, February 14, 2018

"IETA Business Hub," UNFCCC COP16 in Cancun, Mexico, December 2010

Events

North America Climate Summit - NACS 2025

Carbon at the Crossroads: Subnational Markets, Law, and What to Watch

Convene 360 Madison Avenue, Midtown East, New York, 09.24.2025

US Carbon and Clean Fuel Markets in the Context of Presidential EO and Macroeconomic Uncertainties

Analyzing US Carbon and Clean Fuel Markets Amid Policy and Economic Shifts

Webinar, 04.15.2025

North American Carbon World Program

California Legislative Action and Carbon Markets

03.26.2025

IETA North America Climate Summit 2024

Driving Net Zero Through Legal Frameworks: Help or Hindrance for Carbon Markets? Climate Neutrality Claims in the Courts and in Regulation

New York City, NY, 09.24.2024

2024 North American Carbon World

Full Steam Ahead: California Legislative Action

San Francisco, CA, 03.20.2024

Deep Dive 5 – Lawyers' Roundtable on Carbon Markets & Claims: EPA Power Plant Proposal, Green Claims, Commodity Futures Trading Commission (CFTC)

North America Climate Summit 2023: Harnessing the Power of Collaboration

The Westin New York at Times Square, New York City, USA, 09.20.2023

New Standards for Environmental Diligence: What They Mean for Prospective Owners, Operators and Investors Webinar

02.07.2023

PFAS & Real Property Transactions: The Essentials of Diligence and Compliance

Presented by Sheppard Mullin and SLR

Webinar, 06.09.2022

Memberships

ABA (Section of Environment, Energy and Resources (SEER))

Bar Association of San Francisco

Podcasts & Webinars

New Environmental Diligence Standards: What They Mean for Prospective Owners, Operators and Investors
02.07.2023

PFAS & Real Property Transactions: The Essentials of Diligence and Compliance
06.09.2022

Nota Bene Episode 101: Catching up with Global Climate Regulation with Nico van Aelstyn
10.14.2020

Nota Bene Episode 50: Who is Filling the International Divergence in Climate Change Regulation? with Nico van Aelstyn
09.18.2019

Practices

Environmental

Environmental Litigation

ESG and Sustainability

Litigation

Real Estate, Energy, Land Use & Environmental

Industries

Education

ESG and Sustainability

Transportation

Education

J.D., University of Oregon, 1990, *Order of the Coif*, Associate Editor, *Journal of Environmental Law & Litigation*

B.A., Williams College, 1986

Admissions

California

Washington, D.C.

California Supreme Court

U.S. District Court, Northern District of California

U.S. District Court, Central District of California

U.S. District Court, Eastern District of California

U.S. Court of Appeals for the Ninth Circuit

Supreme Court of the United States

Circuit Court for Jefferson County, Alabama

U.S. District Court, Northern District of Alabama

U.S. District Court, District of Utah