



## Harvey M. Sheldon

### Partner

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Harvey M. Sheldon has extensive experience in the field of environmental law, including counseling, litigation, mediation and other dispute resolution and facilitation services. He has handled issues and litigation involving the Clean Air Act, Resource Conservation and Recovery Act, Clean Water Act, Superfund, and other important environmental laws and regulations. He is also regularly engaged in related business, transactional and liability questions for clients. Harvey has represented private clients ranging from individuals and entrepreneurial companies to Fortune 100 corporations and major financial institutions. He has appeared in both federal and state trial courts and in courts of appeals in environmental and other matters civil and criminal.

In addition to his hands-on experience helping clients resolve specific environmental issues and dealing with environmental protection agencies on specific problems, Harvey has represented major companies and public agencies in high-profile cases and important negotiations and public meetings. His range of assignments for clients includes testimony before Congress, negotiations of legislation and rules, appellate briefs and arguments, public spokesperson, catastrophic event response, environmental management program and audit development, community outreach, multimedia criminal and civil enforcement defense, and negotiations on sensitive issues in various business, litigation and policy contexts.

Harvey is on the panel of approved Law Division and Chancery Division mediators for the Circuit Court of Cook County. He offers mediation and other dispute resolution and facilitation services for environmental, toxic tort and other public policy problems and issues, as well as for business relationships, land use, real estate and energy matters.

## Professional Background

Harvey was the Chief of the Illinois Attorney General's Environmental Enforcement Division in the early 1970s, supervising 20 lawyers and a staff of investigators in the representation of the state and the Illinois EPA. His work in environmental enforcement began in January 1972, before several of the major federal laws governing the subject were even enacted. He supervised a docket of hundreds of proceedings that involved air, water and land pollution cases.

## Practices

Environmental  
Government  
Sustainability & ESG

## Education

Certificate, Mediation, DePaul University, 2001

J.D., Harvard Law School, 1968

B.A., Amherst College, 1965

## Admissions

Florida

Illinois

U.S. Supreme Court

U.S. Court of Appeals for the District of Columbia Circuit

U.S. Court of Appeals for the Seventh Circuit

U.S. District Court for the Northern District of Illinois Trial Bar

U.S. District Court for the Northern District of Illinois



His division was responsible for the establishment of precedent on the federal common law of water pollution in interstate waters, in cases such as *Illinois v. Milwaukee*. Harvey filed the state's *amicus curiae* brief that urged the Supreme Court to require rules on prevention of significant deterioration as part of the Clean Air Act regulatory scheme (*Sierra Club et al v. Ruckelshaus*). In addition to supervising and directing the attorneys of the division, he tried environmental enforcement matters in court and in administrative proceedings. Harvey also argued a number of cases on appeal in both state and federal court.

In the mid-1970s, Harvey was named the Regional Counsel of the U.S. Environmental Protection Agency (EPA) Region 5 (Midwest Region) office in Chicago. He was the principal EPA attorney for six Midwest states: Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin. Harvey worked with state legislatures on the adoption of state water laws and helped the EPA establish state programs under the Clean Water Act. He assisted enforcement attorneys and United States' attorneys in important enforcement actions. Harvey also recommended improvements in the legislative criteria for federal grants to upgrade public water treatment plants, and otherwise advised the Regional Administrator on numerous issues.

Harvey's public counsel continued even after he entered private practice. He served for a time as Special Counsel to the Illinois Department of Mines & Minerals, helping the department develop the state's surface coal mining regulation program. Harvey's public service experience also includes work as an Assistant Attorney General in the Special Prosecutions Unit of the Illinois Attorney General's Office. He participated in investigations and sought civil remedies against official corruption and organized crime.

## Professional Affiliations

- American Bar Association
  - Association for Conflict Resolution and Alternative Dispute Resolution Committee
  - Section on Environment, Energy and Resources
    - Water Quality and Wetlands Committee, Vice-Chairman
- Chemical Industry Council, Board of Directors, Past Member
- Chicagoland Chamber of Commerce's Environmental Regulation Committee, Past Chair

## Honors & Awards

- Selected in a poll conducted by American Research Corporation as Leading Attorney in the field of Land Use and Environmental Law
- Holds the AV® Peer Review Rating from Martindale-Hubbell, its highest rating for ethics and legal ability
- Recognized on the Super Lawyers list by *Illinois Super Lawyers* magazine, 2005 – 2009, 2013 – 2020
- Recognized by his peers as a "Leading Lawyer" in the areas of : Environmental Law; and Alternative Dispute Resolution (ADR) Law: Commercial Real Estate, Environmental & Construction Law

## Representative Matters

Harvey has been engaged in the private practice of law, concentrating in environmental law, for more than 25 years, primarily on behalf of business clients. Harvey's environmental litigation experience includes the following:

### **CERCLA**

- Established national precedent that CERCLA Section 107 cost recovery rights are available to potentially responsible parties for voluntary cleanup efforts. (*Metropolitan Water Reclamation District v. North American Galvanizing and Coatings, Inc.*, 473 F.3d 824 (7th Cir. 2007)).
- Defending local Port District against CERCLA allegations of Waukegan Harbor pollution.



- Defended FMC Naval Armaments facility in two major Superfund actions in Minnesota. The FMC foundry was allegedly the largest PRP and was allegedly responsible for a share reaching into tens of millions of dollars. Harvey obtained a 90 percent allocation reduction in contested proceedings over the toxicity of FMC's foundry sands.
- Defended Standard T Chemical Company, a former Montgomery Ward paint making subsidiary, from Superfund liability at the Midco sites (*U.S. v Midwest Solvent Recovery*, USDC Hammond). Harvey served as the lead negotiator on the steering committee, and successfully defended the client against alleged violation of Section 106 Orders.
- Defended Outboard Marine Corporation against a multimillion-dollar state CERCLA claim concerning a landfill in Galesburg, Illinois, with alleged PCB and other waste. The matter was settled successfully.
- Defended Sara Lee Corporation against contract and CERCLA claims by a major corporation that purchased certain assets in Georgia and elsewhere nationally. Related claims included private landlord CERCLA claims in Indianapolis and Atlanta.
- Defended Continental Can in the Acme Solvents Superfund case (Rockford) against cost recovery sought by the settling PRPs.

### **CLEAN AIR ACT**

- Defended Caterpillar Inc. against alleged Clean Air Act violations with six-figure penalty demands at one of its key Peoria, Illinois, manufacturing plants. The case was successfully settled short of trial before the Pollution Control Board, with variance granted to Caterpillar and an acceptable five-figure penalty.
- Defended Continental Can Company (then the largest can company worldwide) in State of Illinois proceedings before the Pollution Control Board and EPA administrative proceedings. The proceedings all involved various enforcement violations alleged at seven different Continental Can facilities in Illinois and Indiana.
- Defended Fort Howard Corporation against alleged New Source Review violations at its main manufacturing facility in Green Bay, Wisconsin. Harvey achieved an acceptable settlement in the low-six figure range in face of a \$3 million demand by the U.S. Department of Justice (DOJ).
- Defended a Coachman Industries subsidiary against an EPA enforcement case (W.D. Mich.), alleging violations of Michigan permit rules and EPA approved rules involving volatile compound emissions. Harvey successfully settled the case after initial litigation.
- Defending Allied Asphalt Paving Company against alleged nuisance and major source permit violations in a high-profile case brought by the Illinois Attorney General, Cook County States' Attorney, and Village of Hillside, Illinois.

### **RCRA**

- Defended electroplating client against a state criminal complaint of illegal transport and disposal.
- Defended Morton Chemical Company against EPA multimedia (RCRA, Air Water, Deep well) multiple, multimillion-dollar claims against a Mississippi organic chemical plant, which included both civil and criminal actions of the EPA and DOJ.
- Defended a private Illinois chemical manufacturer against state court RCRA claims. Harvey achieved an acceptable settlement after filing motions attacking the complaint.
- Assisted in defending a chemical company against state administrative board RCRA claims.
- Pursuing RCRA claims on behalf of the Metropolitan Water Reclamation District of Greater Chicago against a former tenant.
- Defended printed circuit board manufacturer in Minnesota against EPA Notice of Violation.

### **CLEAN WATER ACT**

- Defended the Kohler Company against a Wisconsin citizen's suit under the Clean Water Act regarding alleged NPDES violations.
- Defended numerous clients regarding alleged pre-treatment violations and unlawful discharges to publicly owned treatment works.



- Defended engineering firm against a Clean Water Act citizen's suit alleging its responsibility for sewage backups in the City of Chicago (N.D. Ill.).
- Assisted in the defense of a fish kill case in Indiana.

### ***EPCRA/SARA TITLE III***

- Defended against and settled EPA citations of alleged failures to report releases by various chemical companies, a food processing firm and other clients.

## **Presentations**

Harvey has frequently lectured on environmental law topics, and has taught the subject of environmental law at The John Marshall Law School and at Loyola University School of Law. His presentations include:

- "Clean Air Act: Current Program Status and Key Issues in Air Regulation and Enforcement," webinar, August 17, 2016
- "Illinois Wetlands Law and Compliance," HalfMoon Education, Inc. Lisle, Illinois, June 2, 2016
- "Environmental, Health and Safety Due Diligence in Real Estate Transactions . . . Insights Into How to Serve a Buying or Selling Client; and Environmental Issues in Business Sales and Acquisitions," Lake County Bar Association, Waukegan, Illinois, November 2015
- "Vapor Intrusion," Hinshaw and Weaver Boos Consultants seminar, Chicago, April 2009
- "The Changing Climate for Litigation of Climate Change," University of Florida Levin College of Law's 14th Annual Public Interest Environmental Conference (PIEC), Gainesville, Florida, February 2008
- "U.S. Supreme Court Decrees in Favor of Cost of Cleanup Rights for Responsible Parties," American Bar Association 2007 Annual Meeting, San Francisco, August 2007
- "Air-Related Issues Including Mercury, PM and Ozone SIPS," Illinois State Bar Association's 2006 Environmental Law Seminar, Chicago, October 2006
- "What Changes in Superfund Mean for the Real Estate Industry," at "Major Phase I ESA Changes," a seminar sponsored by the LEED Council, Gabriel Environmental Services and Hinshaw, Chicago, May 2006

## **Publications**

Harvey is a member of the Board of Advisors of *The Environmental Counselor*, as well as a Contributing Editor of *Eastern Water Law & Policy Reporter*, both of which are national periodicals.

He is the author of "Common Law Remedies," a chapter in the American Bar Association's 2012 edition of "Environmental Issues in Business Transactions," and the "Common Law Approaches to Environmental Damage Claims," a chapter in the 2011 edition.

Harvey has also written extensively on environmental law topics. His publications include:

- "[Ninth Circuit Finds Pollution from Wells to the Pacific Ocean Constituted Point Sources under the Clean Water Act—the Stage May Be Set for U.S. Supreme Court Determination](#)," *Eastern Water Law & Policy Reporter*, Volume 13, Number 2, March 2018
- "[Unanimous Supreme Court Rules 'Waters of the United States' Challenges are Jurisdictional with the U.S. Districts Courts](#)," *Eastern Water Law & Policy Reporter*, Volume 13, Number 1, February 2018
- "[District Court Finds Mississippi Numerical Water Quality Standards are not Compelled by the Clean Water Act.](#)," *Eastern Water Law & Policy Reporter*, Volume 12, Number 1, February 2017
- "West Virginia and Maryland Agree on the Riparian use of the Potomac River," *Eastern Water Law & Policy Reporter*, Volume 11, Number 11, January 2017
- *Eastern Water Law & Policy Reporter*, Volume 11, Number 9, November 2016



- "Likely Ninth Circuit Case on Appeal Over the Clean Water Act and 'Significant Nexus' Applicability May Portend the Fate of the Scope of the Act Nationwide," *Eastern Water Law & Policy Reporter*, Volume 11, Number 8, October 2016
- "Flint Michigan Drinking Water Crisis Continues to Spawn Legal Activity," *Eastern Water Law & Policy Reporter*, Volume 11, Number 7, August/September 2016
- "District Court Will Hold Trial of Water Quality Violation Allegations Against Water Treatment District in Chicago—Finds 'Permit Shield' Defense Does Not Apply to Violations of State Water Quality Standards Incorporated into NPDES Permit," *Eastern Water Law & Policy Reporter*, Volume 11, Number 5, June 2016
- "Michigan Attorney General Files Criminal Charges Against Public Officials in Flint Water Supply Calamity," *Eastern Water Law & Policy Reporter*, Volume 11, Number 4, May 2016
- "U.S. Supreme Court Will Rule on Reviewability of U.S. Army Corps of Engineers' Jurisdictional Wetlands Determinations to Resolve a Split in the Circuit Courts of Appeals," *Eastern Water Law & Policy Reporter*, Volume 10, Number 11, January 2016
- "'WOTUS': A Summary of the Multiple Legal Challenges Opposing the Federal Scope of Authority Under the Clean Water Act," *Eastern Water Law & Policy Reporter*, Volume 10, Number 8, October 2015
- "U.S. EPA's Mississippi River Water Quality Rule Discretion—With a Reasonable Explanation—Is Reinforced by Fifth Circuit Court of Appeals," *Eastern Water Law & Policy Reporter*, Volume 10, Number 5, June 2015
- "Circuit Courts of Appeals Now in Conflict on the Reviewability of Army Corps Jurisdictional Wetlands Determination With Eighth Circuit's Decision in *Hawkes*," *Eastern Water Law & Policy Reporter*, Volume 10, Number 4, May 2015
- "District Court Addresses State Implementation of its NPDES Program—Ignores State Opinion on Water Quality Standards—Instead Relying on Independent Expert Opinion," *Eastern Water Law & Policy Reporter*, Volume 9, Number 7, July 2014
- "District Court Case in Indiana Is a Primer for Suits against Subdivision Developers Who Cause Flooding from Jurisdictional Waters," *Eastern Water Law & Policy Reporter*, Volume 9, Number 4, April 2014
- "District Court Opens the Door for Another Court to Require EPA to Promulgate Rules on the Gulf of Mexico's 'Dead Zone,'" *Eastern Water Law & Policy Reporter*, Volume 8, Number 10, November 2013
- "EPA Proposes Several Rule Changes on How it Makes Formal Water Quality Determinations and Otherwise Enforces State Water Quality Program Requirements," *Eastern Water Law & Policy Reporter*, Volume 8, Number 9, October 2013
- "Ninth Circuit Decides That Water Quality Measurements Establish NPDES Stormwater Permit Violations in Los Angeles — Could Other Circuits Adopt a Similar Interpretation?" *Eastern Water Law & Policy Reporter*, Volume 8, Number 8, August/September 2013
- "Sixth Circuit Finds *Kentucky Riverkeeper* Defeats U.S. Army Corps of Engineers' Limited Impacts Analysis for Coal Mining," *Eastern Water Law & Policy Reporter*, Volume 8, Number 7, July 2013
- "Eighth Circuit's Decision in *Iowa League of Cities* Will Put Some EPA Letters Under Appellate Review Scrutiny," *Eastern Water Law & Policy Reporter*, Volume 8, Number 5, May 2013
- "Kentucky Coal Mining Decision by the District Court Upholds Permit Shield for General Permits, and Clarifies Surface Mined Land Regulatory Scope," *Eastern Water Law & Policy Reporter*, Volume 7, Number 10, November 2012
- "The Asian Carp Saga Continues – With the U.S. Army Corps at the Center of the Battle, The U.S. Supreme Court Denies a Second Application to Close the Chicago Area Waterways System," *Eastern Water Law & Policy Reporter*, Volume 5, Number 4, April 2010
- "Michigan and Other States Sue Illinois in the U.S. Supreme Court to Stop Asian Carp," *Eastern Water Law & Policy Reporter*, Volume 5, Number 2, February 2010
- "As Asian Carp Threaten Great Lakes Fishing and Cause Economic Disruption the USEPA and Others Propose Urgent Action," *Eastern Water Law & Policy Reporter*, Volume 5, Number 1, January 2010
- "City of Akron Settles Lawsuit – Agrees to Sewer Overflow Reduction and Major Treatment Upgrades to Help the Cuyahoga River," *Eastern Water Law & Policy Reporter*, Volume 4, Number 11, December 2009
- "U.S. Environmental Protection Agency Will Ramp Up water and Wetlands Enforcement," *Eastern Water Law & Policy Reporter*, Volume 4, Number 10, November 2009



- "Eighth Circuit Adopts First Circuit's Views Regarding Application of the Rapanos Decision," *Eastern Water Law & Policy Reporter*, Volume 4, Number 8, August/September 2009
- "The Challenge of Carbon Dioxide Regulation and Limitation – Some Advice on Complying with Regulations," *IndustryWeek*, June 2009
- "Great Lakes – St. Lawrence River Basin Water Resources Compact Gets Approval of all Needed States," *Eastern Water Law & Policy Reporter*, Volume 3, Number 8, August/September 2008
- "New Liability Exposure for Contiguous Property Owners and Purchasers", *Environmental Compliance and Litigation Strategy*, February 2002
- "Alternative Dispute Resolution of Environmental Cases," *The Environmental Counselor*, June 2001
- "Air Pollution," Illinois Institute for CLE Handbook, 2001 and 1993
- Co-Author, "Environmental Concerns in Real Estate Transactions," *The Environmental Counselor*, September 1992
- "Attorneys Guide to Environmental Liability," ABA General Practice Section, 1991