Byron Kirkpatrick

Partner

Atlanta

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D 404.885.3387



OVERVIEW

Byron advises industrial and commercial clients, developers, associations, and local and state governments on environmental policy, permitting, and compliance matters.

He maintains a national Clean Water Act and National Environmental Policy Act practice and focuses on assisting clients with assessing and developing practical legal strategies to address emerging environmental rules, policies, and trends. His work includes developing public comment strategies for proposed rules, as well as pragmatic compliance planning and assurance strategies, and he has successfully challenged final EPA rules in the U.S. Court of Appeals for the D.C. Circuit. Byron provides counsel and defense to industrial and municipal clients facing state, federal, and citizen enforcement actions, under the federal Clean Water Act. He also advises industrial clients on siting and permitting strategies for new infrastructure projects; developments and environmental risk assessment; and risk management for client projects and transactions.

Byron has a broad range of experience, particularly with respect to the Clean Water Act, the National Environmental Policy Act, the Endangered Species Act, the Migratory Bird Treaty Act, and Superfund.

REPRESENTATIVE MATTERS

Regulatory and Auditing Experience

- Advised a state environmental agency on the development of a stream and wetlands permitting program and a strategy for obtaining federal approval for the state to take over permitting from the U.S. Army Corps of Engineers.
- Advised several industrial, agricultural, and municipal clients on issues related to facility wastewater discharge permits, including strategies to avoid regulatory overreach and to ensure compliance.
- Counseled clients on new wetlands, stormwater, water quality, and air quality regulations and assisted individual clients and industry associations with preparing and filing comments in regulatory rulemakings.
- Advised a major electric utility hydroelectric division regarding riparian and other property rights issues with respect to lakefront land owners.
- Represented several clients on tideland ownership issues associated with coastal restoration and Clean Water Act mitigation projects.

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- Advised a client on property ownership rights in a high quality underground water supply.
- Advised a financial institution on Clean Water Act, Erosion and Sedimentation Act, nuisance and trespass liability with respect to foreclosure on stalled residential development.

Litigation and Enforcement Experience

- Represented a large municipal client in federal and state enforcement action seeking to impose more than $3 billion in injunctive relief to address sanitary sewer overflows.
- Represented a residential developer and homebuilder in a joint federal and state enforcement action concerning unpermitted stormwater detention structures. Successfully negotiated an after-the-fact permit from the Corps of Engineers, with no federal penalty and a significantly reduced state penalty.
- Represented a developer and homebuilder in a Clean Water Act citizen suit in federal court. The representation included advising the client with respect to dam removal and stream restoration under a negotiated settlement.
- Represent an industry association in appeal of EPA greenhouse gas regulations in the U.S. Court of Appeals for the District of Columbia Circuit.
- Represented an industry association in a rulemaking and litigation regarding Georgia's inclusion in a major interstate air quality rulemaking. The representation included presenting successful arguments to the U.S. Court of Appeals for the D.C. Circuit that the state petitioner lacked standing for its appeal.

Siting and Permitting Experience

- Advised several industrial and electric utility clients on the applicability of the Clean Water Act's waste treatment system exemption with respect to various and unique wastewater treatment and ash management facilities at numerous industrial sites, as well as on state-specific issues related to this exemption.
- Advised several energy and finance clients on siting and permitting issues and risk assessment/management for wind, solar, biomass, and traditional electric generating facilities and associated transmission projects, including issues under the National Environmental Policy Act (and state equivalents, *e.g.*, the California Environmental Quality Act), the Clean Water Act, the Endangered Species Act, and the Migratory Bird Treaty Act.
- Advised client on Clean Water Act, National Environmental Policy Act, Endangered Species Act, and National Historic Preservation Act challenges associated with the expansion of a major infrastructure project.
- Counseled electric utility client on National Environmental Policy Act and Endangered Species Act issues associated with offshore wind energy projects.
- Represented one of the nation's largest banks in the financing of several utility-scale solar facilities, including a 55 MW facility (valued at approximately $250 million) in New Mexico, two 20 MW facilities in California, and a 50 MW portfolio in North Carolina.
- Advised client in obtaining a Clean Water Act permit from the Corps of Engineers and a State Buffer Variance from Georgia EPD, in the face of organized citizen opposition, for a 155-acre industrial by-product storage facility.
- Represented a developer in obtaining an after-the-fact Corps of Engineers' permit for two unpermitted lakes, totaling 25 acres.
- Advised a transportation client on federal and state water quality and wetland permitting for large infrastructure projects in several eastern states.
- Represented a client in obtaining permit under the Migratory Bird Treaty Act that was critical to client's construction schedule for multibillion dollar project.

Reported Decisions

- *EPA v. EME Homer City*, 134 S. Ct. 1,584 (April 29, 2014).

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- *Utility Air Regulatory Group v. EPA*, 132 S. Ct. 2,427 (June 23, 2014).
- *EME Homer City v. EPA*, 696 F.3d 7 (DC Cir Aug. 21, 2012).
- *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102 (DC Cir June 26, 2012).
- *North Carolina v. EPA*, 587 F.3d 422 (DC Cir Nov. 24, 2009).

AWARDS

- *Best Lawyers in America*®: "Lawyer of the Year" in Environmental Law (2022)
- *Best Lawyers in America*®: Environmental Law (2019-2027) and Litigation – Environmental (2021-2027)
- *Legal 500 United States*: Environment: Environment: Litigation (2026); Environment: Environment: Regulatory (2025); Environment: Environment: Transactional (2025)
- "Top Lawyer in Environmental Law," *GaBiz Magazine* (2026)
- Pro Bono Attorney of the Year Award, *Tapestri, Inc.* (2016)
- Selected as a Rising Star in Environmental by *Law & Politics* and *Atlanta Magazine* (2011-2016)

TOP AREAS OF FOCUS

- Ecosystem Markets
- Environmental Litigation + Enforcement Defense
- Renewable Energy
- Water Quality + Water Resources

ALL AREAS OF FOCUS

- Contaminated Sites + Waste Management
- Ecosystem Markets
- Environmental + Natural Resources
- Environmental Due Diligence
- Environmental Justice
- Environmental Litigation + Enforcement Defense
- Environmental, Social + Governance (ESG)
- Litigation + Trial
- Natural Resources
- Renewable Energy
- Water Quality + Water Resources

PROFESSIONAL/COMMUNITY INVOLVEMENT

- State Bar of Georgia, Member, Environmental Law Section
- The Georgia Conservancy, Board of Directors and Executive Committee (2018-present)
- Georgia Environmental Conference, Steering Committee (2015-present)
- Georgia Institute for Environmental Leadership (IGEL), Graduate (2016)
- Georgia Asylum and Immigration Network (GAIN), Board of Directors (2009-2016), chair (2015-2016), and Advisory Board (2019-present)

PROFESSIONAL EXPERIENCE

- Judicial intern to Honorable Chief Justice Paul Reiber, Supreme Court of Vermont, 2006

EDUCATION AND CERTIFICATIONS

EDUCATION

- Vermont Law School, J.D., *cum laude*, 2006
- Centre College, B.S., 1998

BAR ADMISSIONS

- Georgia

COURT ADMISSIONS

- Supreme Court of the United States
- U.S. Court of Appeals, District of Columbia Circuit
- U.S. Court of Appeals, Eleventh Circuit
- U.S. District Court, Northern District of Georgia
- U.S. District Court, Middle District of Georgia
- Supreme Court of Georgia
- Court of Appeals of Georgia
- Superior Court of Fulton County

SPEAKING ENGAGEMENTS

- Speaker, "Powering Through the Environmental Challenges of EV Development," *Energy Law Insights*, April 17, 2024.
- Speaker, "Water Law Update: *Sackett vs. Environmental Protection Agency*," 16th Annual Georgia Environmental Conference, August 24, 2023.
- Moderator, "Annual Review of Clean Water Act Case Law," Annual Georgia Environmental Conference, (2014-2019).
- Speaker, "Mitigation Banking through Public-Private Partnerships to Protect Wetlands, Sensitive Stream Beds and Listed Species," Annual Georgia Environmental Conference, (2014, 2016, 2017).
- Moderator, "Redefining 'Waters of the U.S.:' What Are the Implications?," 14th Annual Georgia Water Law and Regulation, February 27, 2015.
- Speaker, "Clouded Judgments?: Life After the Supreme Court's Recent Air Decisions," ICLE Environmental Law Summer Seminar, August 2, 2014.
- Speaker, "Water Issues Confronting Local Governments," The Seminar Group 13th Annual Georgia Water Law and Regulation, March 19, 2014.
- Speaker, "Key Compliance Issues under Georgia's Industrial Stormwater Permit," The Seminar Group Stormwater Law & Regulation in Georgia, September 6, 2012.

PUBLICATIONS

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Co-author, “Navigating a New WOTUS Definition: Agencies Redefine the Line,” *Troutman Pepper Locke*, November 21, 2025.

- Co-author, “Driving Change: Scaling Up EVs in the U.S.,” *Troutman Pepper*, April 8, 2024.
- Co-author, “California Adopts Landmark GHG Emissions and Climate Risk Reporting Laws, Eclipsing Anticipated Federal Requirements,” *Troutman Pepper*, October 13, 2023.
- Co-author, “The Cross State Rule and EPA’s Rush to Regulate,” *Trends Newsletter*, ABA Section of Environment, Energy and Resources, January/February 2012.
- Co-author, “Regulating GHGs Under the Clean Air Act,” *Law360*, Portfolio Media, Inc., March 2009.
- Author, “*Presidential Prerogative Under the Endangered Species Act*,” *Natural Resources & Environment*, American Bar Association, Summer 2008.
- Co-author, “Global Warming Solutions: Regulatory Challenges and Common Law Liabilities Associated With the Geologic Sequestration of Carbon Dioxide,” *6 Geo. J. L. & Pub. Pol’y 429*, 2008.
- Co-author, “Concentrated Animal Feeding Operations After the Waterkeeper Decision,” *Environmental Law Newsletter*, Fall 2007.

MEDIA COMMENTARY

- Quoted, “Keystone XL Pipeline Ruling Throws Projects Into Chaos,” *Law360*, April 16, 2020.
- Quoted, “Enforcement Hole Created by 5th Circ. Migratory Bird Ruling,” *Law360*, September 11, 2015.