

## David A. Crass

### Industry Group Chair, Agribusiness, Food & Beverage

David's practice sits squarely at the intersection of the food-water-energy nexus. His work in the areas of environmental, regulatory, agricultural production, manufacturing and distribution, and energy projects gives him the depth of experience necessary to counsel clients who will be feeding and powering a projected global population of nine billion people by 2050—at a time when resource scarcity and consumer confidence require an ongoing commitment to stewardship and sustainability.

David grew up on a dairy farm in Wisconsin and maintains a presence in Michael Best's Madison, WI office, as well as in Washington, D.C., allowing him to serve the agricultural, dairy, and food processing industries both locally and at a national policy level. Besides providing environmental, regulatory, project development, and legislative counsel, David's work for agribusiness includes enforcement defense, compliance counseling, project development structure and permitting, litigation support, and interest-based negotiation.

David also represents clients to resolve regulatory issues across industry sectors. For industrial clients, he has led a number of multi-party environmental remediation sites including:

- State and federal-lead hazardous waste sites
- Manufactured gas plant waste sites
- Chlorinated solvent sites
- Defense of vapor intrusion class actions
- Impacted sediment cleanups
- Emergency spill response
- Removal actions

David has litigation experience in:

- Administrative contested case hearings
- Civil toxic tort defense
- Contribution actions
- Government enforcement defense
- Professional engineering malpractice
- Environmental insurance coverage litigation



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On the transactional side, David has assisted both buyers and sellers in assessing environmental issues in real estate and corporate transactions, brownfield redevelopments and insurance-backed liability transfers, and has also counseled lenders on various environmental issues involving lender liability and collateral protection. David has secured and negotiated federal, state, and local permits and approvals for a number of projects, including industrial facilities, renewable energy plants, and livestock operations.

## **Experience**

### **Environmental due diligence**

David coordinated and directed the environmental due diligence of more than 70 operating facilities and also led the negotiations on environmental risk allocation matters in the context of a \$400 million transaction. David also coordinated the environmental due diligence and led the negotiations in a multi-state transaction where our client acquired five food processing plants and related facilities, and in another transaction where our client sold more than 50 operating facilities. David has negotiated numerous redevelopment agreements involving former landfills, manufacturing facilities and other former industrial uses.

### **Vapor intrusion issues**

David led the defense of a federal and state court class action lawsuit brought against a manufacturing client alleging community-wide vapor intrusion from historic solvent handling practices. This case was ultimately resolved through a settlement of both the federal class action and state class action lawsuits involving the client's insurers as part of the settlement. David worked with the client's insurers to maximize a positive resolution for the client resulting in a settlement of the underlying class action lawsuits as well as the insurers' claim that arose out of the suits.

David has also defended a dry cleaning client involved in a vapor intrusion case alleged to be impacting a neighborhood school and led the prompt response including the design, permitting and construction of a vapor mitigation system in the school.

### **Administrative contested cases**

David represented a private party denied reimbursement pursuant to a state program in an appeal of the administrative agency's decision to deny such reimbursement. David helped his client prevail in the administrative contested case hearing where the client was determined to be eligible for nearly \$1.0 million of additional reimbursement proceeds. David has settled favorably dozens more such administrative appeals. David has represented permittees in the context of administrative challenges to issued permits, both defensively and offensively.

### **Sediment sites**

David has assisted clients with respect to three of the largest contaminated sediment sites in Wisconsin, the Northern States Power/Ashland Lakefront Site, the Lower Fox River Polychlorinated Biphenyls (PCB) Site and the Hayton Area Remediation Project. David has

provided clients with strategic direction concerning these sites, assisted in directing historical investigations, represented clients in regulatory agency negotiations, including the negotiations of Administrative Orders on Consent and Consent Decrees, and provided day-to-day project management services for one or more of these sites.

### **Renewable energy projects**

David has provided strategic counsel to numerous existing and start-up operations in the nation's burgeoning biofuels, biogas and biomass industries, assisting clients in all phases of project development from feasibility analysis, to state and local land use to contracting for biofuel project development and more.

David has also assisted numerous ethanol plants, providing turnkey services from the corporate organizational side to construction, debt and equity financing and fundraising, contracting, permitting and construction, to ultimate operation of the facilities.

### **Biogas projects**

David has assisted a number of livestock operations and food processors in the permitting, construction, operation and power purchase agreements for anaerobic digestion biogas facilities. Once again, the key here is the turnkey service provided by David's team — representing the host of the anaerobic digestion facilities, negotiating agreements with the facility developers, obtaining permits, and negotiating the power purchase agreement as the facilities generate power for use at the facilities as well excess power for sale on the grid.

David has also provided legal service to clients involved in either piloting or producing the technology applications for turning wastes, biomass, biogas and cellulosic feedstock into fuels.

### **Regulatory permitting**

In an era when siting large livestock operations is more difficult than ever, David assisted clients in obtaining regulatory permits (both local land use and state operating permits) for operations representing more than 300,000 dairy cows in the nation, as well as significant poultry operations. David has led the negotiations on behalf of one of the nation's largest turkey producers converting multiple permits into one master operating permit regulating dozens of facilities, represented trade associations in the development of general permits and the food industry in the negotiations of standardized regulatory permit terms for wastewater discharge.

### **Government relations**

David is a registered lobbyist and has represented industry trade groups, chemical manufacturers, and food producers/processors in matters before Congress, the Wisconsin Legislature and myriad of state and federal administrative agencies.

David represented both the Dairy Business Association of Wisconsin and the Wisconsin Farm Bureau Federation in the conceptualization, drafting, negotiation and lobbying involved with the passage of Wisconsin's landmark livestock siting legislation. This legislation is the first statute in the nation to provide for a statewide process for the siting and permitting of large livestock

operations. Whereas permitting was previously performed at the local level, Wisconsin has now adopted a streamlined statewide permitting approach with all facilities held to the same standards.

## Honors & Recognitions

- Leading Natural Resources and Environmental Lawyer, *Chambers USA*, 2011-2012
- *The Best Lawyers in America*, Environmental Law, 2003-present
- Leaders in the Law, *Wisconsin Law Journal*, 2009
- Outstanding Service to Industry Award, Wisconsin Fertilizer and Chemical Association/Wisconsin Crop Production Association, 2006
- Madison's "Who's Who of Professionals," 2005-2006
- "40 under 40" executives, *In Business Magazine*, 2002
- Best Lawyers: Environmental Law, *Corporate Counsel*, 2003-2005
- VIP of Madison area civic-minded executives, *In Business Magazine Annual Executive Register*, 2002, 2005-2011
- Best Lawyers for Environmental Law, *Madison Magazine*, 2001-2005

## Professional Activities

- Member, Michael Best Management Committee
- Chair, Michael Best Agribusiness, Food & Beverage Group, 2012-present
- Michael Best Madison Office Managing Partner, 2005-2008
- Chair, Michael Best Land & Resources Practice Group, 2003- 2005
- Chair, Lex Mundi Agribusiness Practice Group, 2006-2008
- Board of Directors, Wisconsin Biodiesel Association, 2006-2009
- Advisory Board Member, Wisconsin Agribusiness Association, 2006-current
- Member, Board of Visitors of the College of Agriculture and Life Sciences, University of Wisconsin-Madison, 2007-2011
- Member, Steering Committee, Wisconsin Bioenergy Initiative (WBI)
- Member, Industry Work Group of Governor's Task Force on Global Warming, 2007
- Member, Technical Advisory Committee on Revisions to WDNR Nonpoint Pollution Rules, NR 151 and NR 153, 2007-2008
- Member, Wisconsin Agribusiness Council Legislative Committee
- Member, Renewable Fuels Association (RFA), Environment Committee
- Member, Environmental Task Force, National Milk Producers' Federation, 2005-2007
- Board of Directors, Dairy Business Association of Wisconsin, 2002- 2008
- Public Member, Joint Legislative Council Special Committee on Recodification of Town Highway Statutes, 2002-2003

- Member, Wisconsin Department of Natural Resources Technical Advisory Committee for Rewrite of Concentrated Animal Feeding Operation Rule, 2003-2006
- Member, NRCS 590 Technical Standard Revision Work Team, 2004-2006
- Member, Wisconsin Department of Agriculture's Model Ordinance Advisory Committee for Livestock Operations, 2001-2002
- Member, State Bar of Wisconsin (Environmental Law Section)
- Program Chair, Federation of Environmental Technologists - Madison Chapter, 1996-1998
- Past Member, Rule Advisory Committee, Wisconsin Agricultural Chemical Clean-up Program

## Education

- University of Wisconsin Law School, Juris Doctor (J.D.), *cum laude*, 1991; Order of the Coif
- University of Wisconsin-Madison, Bachelor of Arts (B.A.), with honors, 1988

## Admissions

- Wisconsin
- United States District Court, Eastern District of Wisconsin
- United States District Court, Western District of Wisconsin

## Community Involvement

- Member, Leadership Greater Madison V, Madison Chamber of Commerce
- Board of Directors, Goodwill Industries of South Central Wisconsin (2008-2011)
- Board of Directors, Dane County Humane Society (1997-2000)