

PETER HENNER

Attorney and Counselor at Law

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Litigation practice emphasizing environmental law, labor law and civil rights.

ENVIRONMENTAL LAW

1. **Article 78 proceedings under SEQRA (mandamus) (1985-present).** Proceedings challenging major projects for non-compliance with State Environmental Review Act and other statutes including: A) massive development in violation of Town Comprehensive Plan (2007-present), B) Preservation of endangered species (2006-present), C) wind turbine siting (2007), D) landfills (2007-present, City of Amsterdam) (2006, City of Albany) and (1985, Fulton County), E) Water Quality certificates for hydroelectric facilities (2006-2007), F) privatization of Indian Point nuclear power plant (2001), G) City of Albany redevelopment plan (1998-1999), H) Public Service Commission plan for deregulation of electric utility (1998), I) a resource recovery incinerator (1989, Broome County), and J) Albany Municipal Golf Course (1988).
2. **Citizen's suits (1985-present).** Have brought over 75 citizen's suits in federal court to enforce provisions of Clean Water Act, including lawsuits against: A) Onondaga County Metro plant (Syracuse, N.Y.), B) Metropolitan District Commission (Hartford, Connecticut), C) tanneries in Fulton County, New York, D) a municipal power plant in Jamestown, N.Y., and E) JFK International Airport.
3. **Special Counsel, Town of Amsterdam (2003-present).** Represent Town in efforts to oppose construction and demolition landfill in neighboring city, including administrative and judicial proceedings. Act as energy counsel to Town with respect to alternative electric suppliers.
4. **Save the Pine Bush (2004-present).** Represent environmental organization in legal efforts to preserve unique Pine Bush habitat in historic "Lake Albany". Citizen Suit against mega mall Pyramid Crossgates, lawsuits against City of Albany's planned landfill expansion, to preserve endangered species habitat and other matters.
5. **Special Counsel, Town of Somerset (2004-present).** Assist Town Attorney and Energy Counsel with respect to environmental issues in litigation of proposed amendment of Article VIII Siting Board Certificate for 900 MW power plant, and in litigation against Niagara County IDA.
6. **Special Counsel, Eastern Niagara Power Project Alliance (2006-2007)** Litigate challenge to state Water Quality Certificate for Niagara Falls hydroelectric facility on behalf of an alliance of municipalities in Niagara Falls.
7. **Special Counsel, Green Island Power Authority (2005-2006).** Represent public authority in administrative hearings pertaining to development of major hydroelectric facility at Cohoes Falls, advise authority with respect to compliance with State Environmental Quality Review Act.
8. **Attorney for Wethersfield Cove, Connecticut residents (1998-2004).** Lead attorney in state and federal lawsuits against the Metropolitan District Commission (Hartford, Conn.) in efforts to clean up Cove in Connecticut River. Obtained commitments from Town of Wethersfield and MDC for remedial action and \$750,000 settlement for clients after six year battle.
9. **Special Counsel, New York Metro Postal Workers Union (2001-2002).** Designed environmental lawsuit under citizen suit provision of RCRA to seek closure of New York City central mail facility contaminated by anthrax.

10. **Special Counsel, Town of Cortlandt (2000-2002).** Represented Town in opposing plans of New York Power Authority and Con Edison to sell nuclear power plants to private company. Filed Article 78 proceeding and won standing for hearing before NRC (52 NRC 266 (2000)). Town reached favorable settlement of disputes with new owner of Indian Point 3 in 2000 and of Indian Point 2 in 2001.
11. **Pine Hill Water District Coalition (2000-2001).** Represented community group in proceedings before NYPSC and NYDEC in efforts to maintain water supply and to oppose mega-development in Catskills.
12. **Special Counsel, City of Oswego (1998-2000).** Advised municipality with respect to environmental issues associated with deregulation of electric power, and condemnation of hydroelectric facility. Litigated case against New York State Public Service Commission challenging failure to consider environmental impacts of deregulation.
13. **Special Counsel, New York State Public Employees Federation (1998-1999).** Represented 53,000 member union in challenge to City of Albany's plan for downtown redevelopment on grounds that City failed to comply with State Environmental Quality Review Act.
14. **Special Counsel, City of Cohoes (1991-1996).** A) Led negotiations with developer and NYSOPRHP and NYDEC resulting in siting and building of major housing development (Riverwalk), B) negotiated agreement for hazardous waste facility to pay city over \$50,000 per year for environmental monitoring and fire safety, C) represented city as intervenor before FERC and DEC with respect to the 40 MW School Street hydroelectric plant, and D) advised city with respect to general environmental matters.
15. **Superfund Litigation (1989-1996).** Represent potentially responsible parties in Superfund and oil spill litigation: A) acted as liaison counsel for municipal third-party defendants and make motion for summary judgment in State v. Gloversville, B) represented Freihofer Baking Co. in Waite Road case, and C) of counsel to Patton, Boggs and Blow, counsel for City of Denver, Colorado, in Lowry landfill case.
16. **Project Attorney (1990-1991).** Represented developer of gas-fired co-generation facility in successful efforts to obtain DEC approval of 79.9 MW facility.
17. **Oppose Air Permit to Coal Facility (1987-1988).** Represented Sierra Club in successful efforts to force Salt City Energy Venture to comply with New Source Performance Standards for air emissions from 79.9 MW coal facility including three week DEC administrative proceeding and extensive litigation before PSC.
18. **Landfill Hearing (1985-1987).** Represented Village of Canajoharie and other intervenors in opposing Fulton County's Mud Road Landfill, able to force County to make significant improvements to state-of-the-art landfill.

LABOR LAW

1. **First Amendment retaliation.** Represent former Rensselaer County Director of Real Property Services in lawsuit alleging non-reappointment in retaliation for exercise of right to free speech; County settled case on eve of trial for \$180,000 in August 2007.
Jackson v. Jimino 2007 U.S. Dist. LEXIS 4373 (N.D.N.Y. 2007) (Denial of post-Garcetti motion for summary judgment in First Amendment retaliation case), reconsideration denied, 506 F.Supp.2d 105, (N.D.N.Y., 2007)
2. **Federal Litigation.** Prosecute lawsuits against employers pursuant to Title VII (including sexual harassment cases), 42 U.S.C. § 1983, and other statutes.
Finn-Verburg v. New York State Dept. of Labor, 165 F.Supp.2d 223 (N.D.N.Y. 2001) (Grant of new trial, on grounds that verdict was against the weight of the evidence: jury had found that hostile work environment had been created, but was not gender-based).
Fitzgerald v. Henderson, 251 F.3d 345 (2d Cir.2001), cert. den. Potter v. Fitzgerald, 536 U.S. 922 (2002) (Won reversal of summary judgment for defendant in hostile work environment sexual harassment case).
Finn-Verburg v. New York State Dept. of Labor, 122 F.Supp.2d 329 (N.D.N.Y. 2000) (Successful defense of motion for summary judgment in Title VII case asserting "Equal Opportunity Harasser" defense).
3. **Miscellaneous Litigation** for public employee unions and employees, including: A) a nine-day jury trial

resulting in a verdict in favor of state employee terminated after whistle-blowing (Vasbinder v. Hartnett), B) a successful challenge to a determination of the State Civil Service Commission placing 40 jobs in the exempt classification, C) challenges to disciplinary determinations, D) duty of fair representation lawsuits, E) litigation pertaining to interpretation of §59 of Civil Service Law placing deputy sheriffs in classified civil service, F) miscellaneous litigation pertaining to arbitration proceedings, and G) representation of New York State Public Employees Federation in litigation challenging site plan review of proposed state office building on environmental grounds.

Strauss v. New York State Department of Education, 26 A.D.3d 67 (3d Dept. 2005) (Represented high-level individual employee of New York State Department of Labor with respect to sexual harassment allegations).

Shafer v. Regan, 171 A.D.2d 311 (2d Dept. 1991), aff'd, 80 NY 2d 1006 (Civil Service Department improperly classified State Comptroller's employees as "exempt" employees).

Graduate Student Employee Union v. SUNYA, 30 PERB ¶4583 (1997) (Tuition waivers for graduate students at public university are mandatory subject of bargaining).

McCall v. State, 640 N.Y.S. 2d 347, (Amicus Brief for Retired Public Employees' Association in case involving raid on state employees' retirement funds).

4. **Represent Bricklayers Local 2** in organizing-related efforts, including NLRB charges, First Amendment rights of inflatable rodents, and environmental compliance issues for non-union employers.
5. **Represent United Union Employees** (Civil Service Employees Association staff union) in negotiating new contract, grievance arbitrations and miscellaneous matters.
6. **Qui Tam Cases** including successful litigation (1988) against "Private Industry Council" under Federal False Claims Act ("Qui Tam" statute) for using federal funds to oppose union organizing.
7. **Defense of State Employee (1995-1997)**. Won dismissal of lawsuit brought pursuant to Americans with Disabilities Act, on behalf of retired New York State Affirmative Action Officer.
Frank v. State of New York, 972 F.Supp. 130 (N.D.N.Y. 1997) (granting Daubert motion to exclude testimony pertaining to Multiple Chemical Sensitivity).
Frank v. State of New York, 1996 WL 312182 (State employee entitled to attorney's fees on motion to disqualify New York State Attorney General).
8. **Oppose Police Corruption (1991-1993)**. Represented dissident police officers in 20 member department who objected to \$25.00 per week dues to PBA, and who alleged that PBA President, with connivance of Police Chief and Mayor, was involved in numerous improper activities. Filed improper practices, grievances, demanded investigations by state and federal grand juries, and other related activities. State Grand Jury, after 11-month investigation, handed down 7 count felony indictment against PBA President, and issued report critical of Village Administration. Police Chief immediately resigned, PBA lowered dues to \$5.00 per week, Mayor was trounced in re-election bid, and one of my clients was elected PBA President.
9. **Disciplinary Grievance Arbitrations and Improper Practice Charges**. Handle cases for miscellaneous union and individual clients, including New York State Public Employees Federation and New York State Correction Officers and Police Benevolent Association. First successful defense of state employee accused of sexual harassment (1981-1982). Successful defense of state employee who was allegedly videotaped having sex on a desktop in locally famous case (1990).
10. **Arbitrator**. Accredited as an arbitrator on the American Arbitration Association's Labor Panel, the National association of Securities Dealers Panel, and to hear cases as a Hearing Officer pursuant to §72 of Civil Service Law.

CIVIL RIGHTS

1. Represented Catskill Mountain homeowner who maintains second residence in voting rights case against Delaware County Board of Elections. Court ordered resident reinstated as voter, appeal pending (2008).
2. Represented citizen plaintiff in federal civil rights case successfully challenging reapportionment of Greene County Legislature (1984).

3. Litigate cases pursuant to 42 U.S.C. 1983 and 1985, including extensive experience in defending state correction officers accused of utilizing excessive force, police misconduct cases, terminations for exercise of First Amendment rights, search and seizure cases, and successful defense of Town Justice accused of exceeding jurisdiction.

COMMUNITY SERVICE ACTIVITIES

1. New York Civil Liberties Union: Cooperating Attorney (1995-present) and Board member of Capital District Chapter (2005-2007)
 - A) Local counsel in Schwab v. Town of Essex, First Amendment case challenging sign ordinance in federal court.
 - B) Won dismissal of criminal charges against member of “Billionaires for Bush” arrested during demonstration in Saratoga Springs.
 - C) Review prospective cases as member of Legal Committee.
 - D) Represent NYCLU at miscellaneous public forums involving FBI surveillance of Muslim community.
2. Mediator and Early Neutral Evaluator, United States District Court, Northern District of New York (1998-present).
3. Volunteer attorney for Kerry-Edwards campaign in Palm Beach County, Florida during 2004 election.
4. Alliance for Environmental Renewal: General Counsel for organization dedicated to litigating citizen suits under environmental statutes.
5. Lawyers Without Borders (2002-2003): Volunteer Attorney, provided assistance to NGOs in developing countries.
6. Wrote amicus brief for National Employment Lawyers Association in Burns v. City of Detroit, 660 N.W. 2d 85 (Mich.App. 2002), involving “First Amendment” defense to hostile work environment claims.
7. Local counsel for Government Accountability Project in Bordell v. General Electric, 732 F.Supp. 327, aff’d 922 F.2d 1057, lawsuit challenging General Electric policy on classified information.
8. Onesquethaw Volunteer Fire Company: Provide miscellaneous legal services including incorporation, real estate closing and review of contracts for local volunteer fire company.
9. Bethlehem Neighbors for Peace: Incorporate local organization and provide legal advice as needed.
10. Nipponzan Myohoji, Grafton Sangha: Handle legal matters for local Peace Pagoda.

PRIOR EMPLOYMENT

GENERAL COUNSEL, SECURITY AND LAW ENFORCEMENT EMPLOYEES COUNCIL 82, AFSCME, JULY 1981 - AUGUST 1984

Chief in-house counsel for public employee union of 20,000 members. Extensive experience with contract and disciplinary arbitrations, improper practice cases, and advice to union negotiators during collective bargaining. Handled litigation and represented members before state and federal grand juries.

ASSISTANT COUNSEL - ASSOCIATE POLICY ANALYST NEW YORK STATE ASSEMBLY, FEBRUARY 1980 - JULY 1981

Served as in-house counsel to Assembly majority. analyzed public policy issues and drafted proposed legislation, especially in area of real property valuation and school finance reform.

COLLEGE TEACHING

Adjunct Professor, Rensselaer Polytechnic Institute, Lally School of Management. Teach graduate courses.
Spring 2005 –*Environmental Law*
Spring 2002, 2003 - *Managing Energy Issues* (deregulation of electricity)

Adjunct Instructor, Cornell University School of Industrial and Labor Relations
Spring 1996 - Occupational Safety and Health Law
Fall 1989 - Spring 1990 - Public Sector Labor Law
Program for Members of Public Employees Federation
Fall 1984 - Spring 1986 - Labor Law Certificate Program

Adjunct Instructor, Bloomfield College, Bloomfield, New Jersey (Extension Program at Fort Dix, N.J.)
Fall 1979 - Logic of Social Inquiry (Social Science Research Methods)
Summer 1979 - Criminal Law

EDUCATIONAL PROGRAMS

Judge, Pace Law School National Environmental Law Moot Court Competition, 1994 - present

Speaker, New York State Bar Association program “Labor and Employment Law for the Corporate Counselor and General Practitioner”, November 1996.

Faculty, New York State Bar Association, Employment Law Litigation Institute, May 1996. Conducted pleadings workshop at educational program for attorneys.

Guest Lecturer, New York State Deputy Sheriffs Association “Civil Service Law for Deputy Sheriffs,” February 1994. Presented day-long program on New York State Civil Service Law.

Workshop Leader, New York Environmental Congress, September 1992. Presented workshops on New York State Environmental Quality Review Act at major environmental conference.

PUBLICATIONS

Work in progress to be published by
American Bar Association Books
Fall 2008
“Alien Tort Claims Act Handbook”

Albany Law School Environmental Outlook
Fall 2007
“Rapanos and Warren - a tale of two cases: the Supreme Court bats .500”

New York Environmental Lawyer
Spring 2002
“The Alarm Clock Didn’t Ring: The Failure to Consider the Environmental Impacts of the "Deregulation" of the Electric Industry in New York.”

Fall 2001
“Great Future in Plastics? The Judicial Repeal of Standing for Environmental Organizations in SEQRA Cases”

Editor, The Sunshine Newsletter
January 1996 - November 1998
Wrote, edited and produced monthly newsletter covering recent developments pertaining to New York State open access laws (Freedom of Information Law, Open Meetings Law, Personal Privacy Protection Law).

Journal of Environmental Permitting

Spring 1995

“Increased Authority of States to Impose Conditions on Hydroelectric Projects under Jefferson Co. PUD”.

Labor and Employment Law Section Newsletter, New York State Bar Association

December 1988

“Defense and Indemnification under Section 17 of the Public Officers Law”.

BAR ADMISSIONS

New York – June 1980

New Jersey – June 1980

Connecticut, *pro hac vice*, 2002-2004

Michigan, *pro hac vice*, 2002

Federal Courts:

United States Supreme Court – October 2001

Circuit Courts:

Federal Circuit Court of Appeals – October 1997

Second Circuit Court of Appeals – July 1990

District Courts:

District of New Jersey – June 1980

Southern District of New York – May 1982

Northern District of New York – January 1984

Western District of New York – February 1986

Eastern District of New York – July 1990

District of Connecticut, *pro hac vice* - 1998-2001

Central District of California, *pro hac vice* - 2004

United States Tax Court – December 2004

EDUCATION

Rutgers Law School, Newark, New Jersey

Juris Doctor, January 1980

Rutgers Graduate School, New Brunswick, New Jersey

Master of City and Regional Planning, October 1979

Livingston College, Rutgers University

Bachelor of Arts, October 1972