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Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | [www.law360.com](http://www.law360.com)  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | [customerservice@law360.com](mailto:customerservice@law360.com)

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## Q&A With Day Pitney's Beth Barton

Law360, New York (April 08, 2013, 1:42 PM ET) -- At Day Pitney LLP, Beth Barton counsels clients on environmental, sustainability and related land use considerations in business operations, transactions and project design and development. She represents clients in environmental administrative proceedings, enforcement actions and third-party litigation.

Barton is a member of multiple industry associations with an environmental and energy focus.

### **Q: What is the most challenging case you have worked on and what made it challenging?**

A: Contested administrative proceeding involving renewal of a nuclear facility's National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act and its state analog. The permit authorizes withdrawal and discharge of cooling waters integral to the plant's safe operation. Challenges were multifold and shifting.

In addition to complex technical matters characteristic of such a permit, there were multiple intervenors and also the need to address the reality of the evolution of regulatory provisions and related policy and guidance on the implementation of Section 316(b) of the Clean Water Act as the permit proceeding and associated contemporaneous litigation progressed.

### **Q: What aspects of your practice area are in need of reform and why?**

A:

1. Need for predictability and finality when it comes to liability for environmental conditions, especially where conditions are historical in nature. This need spills over into related practice areas, including, for example, real estate, corporate, bankruptcy and energy. Particularly absent a significant hazard, environmental conditions should not be the gift that keeps giving!
2. Assure adequate opportunity for meaningful public participation, while being clear and fair to all involved when it comes to the processes and procedures that apply.
3. Clarification of deadlines, including, for example, statutes of limitations, applicable to environmental matters.

### **Q: What is an important issue or case relevant to your practice area and why?**

A: A key issue front and center in the environmental field (and elsewhere) is climate change. How will we deal with positions on matters of climate change and related regulatory proposals and policies, with their attendant impact in multiple arenas, including

the economy, energy independence, permitting, disclosure obligations, due diligence, enforcement, public health and third-party actions? This issue is bringing the concepts of a need for balance among arguably competing interests and also good science squarely to the fore.

**Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.**

A: Paul Wallach of WilmerHale, formerly Hale & Dorr. Paul sadly died an untimely death in 2001 at the age of only 54. He was well recognized and highly regarded, both nationally and regionally. Paul was among those who early on encouraged corporate responsibility, contributing to the business sector's development and incorporation of sound environmental management principles.

Paul was a strong advocate for his clients and one who never shied away from a battle or setting the record straight, while always professional and respectful of all involved, regardless of where they sat around the table.

**Q: What is a mistake you made early in your career and what did you learn from it?**

A: Assuming the law is what the law is. While there are "black letter" exceptions, when identifying your client's options, these options should always include consideration of whether there is a way to look at the facts or apply the law that is other than what seems obvious or established.

And ask if included among those options, short term or long term, is to perhaps change the law or at least affirmatively influence how it is applied. To afford the best representation in the environmental field, you need to be creative and flexible and to think in terms of alternatives.

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