

Hazardous Materials and Safety

Kaplan Kirsch & Rockwell helps clients maintain safe communities and operate public transportation systems safely. We work with local governments to ensure that the construction of infrastructure projects and the operation of transportation in their communities conform to requirements to protect public health and safety as well as the broader environment. We also assist our public transportation clients in complying with requirements to maintain and operate safe rail transit systems.

Hazardous Materials. We advise local governments regarding railroads that transport hazardous materials through their communities. Towns and cities across the country are directly affected by the movement and handling of hazardous materials, but federal regulation often preempts actions by state and local governments that attempt to control the movement of hazardous commodities through their communities. We fully assist clients in developing strategies to secure assistance from the federal government and in managing the risks associated with this transportation.

Environmental Protection. States and local public entities also have an interest—and frequently the obligation—to enforce environmental laws in a variety of contexts. We represent state and local governments in connection with the complex regulatory issues governing hazardous materials transportation and the general enforcement of environmental laws.

Many aspects of the control of hazardous materials and environmental protection are governed solely by federal law, but identifying the points at which federal and state jurisdiction meet or overlap requires precise analysis. Our attorneys provide skilled counsel to help state and municipal clients aggressively defend their interests, circumscribe areas of federal and local jurisdiction, and move forward with legal, policy, and legislative strategies.

Kaplan Kirsch & Rockwell has the specialized knowledge of—and experience practicing before—the Surface Transportation Board, Federal Railroad Administration, and other state and federal administrative agencies needed to succeed in this highly specialized legal field.

Passenger Rail Safety. The law governing passenger and freight rail operators' safety and security obligations is continually developing. We advocate for our clients as new rules and requirements are developed and provide expert counsel on how to comply with the latest federal and state safety mandates.

Representative Experience

- Advised municipal client in commenting on federal rulemaking to establish updated standards for hazardous materials tank cars.
- Assisted regional commuter rail and transit clients in obtaining waivers of otherwise applicable federal safety regulations in situations where alternative practices and procedures secure the same levels of safety as would be accomplished by compliance with the federal regulations.
- Advised industry group on compliance with new transit system safety and state of good repair requirements under MAP-21.
- Counseled regional public transportation provider in connection with proposal by freight railroad to increase shipment of Bakken crude oil over track shared by passenger and freight trains.
- Conducted successful representation of state and county governments in numerous parallel proceedings before the Surface Transportation Board and in state court on issues relating to the scope of federal preemption of state environmental law.
- Represented a municipal government in simultaneous agency and federal court litigation of issues relating to the transport and handling of ethanol.

