



National Clean Water Law & Enforcement Seminar: *A Seminar for Public Agency Attorneys & Managers Cutting Edge Legal & Enforcement Developments*

November 14 - 16, 2018

The US Grant Hotel
San Diego, CA

As of October 12, 2018

Wednesday, November 14

Morning

8:00 – 12:00 Registration

Presidential Foyer

8:30 – 9:45

Presidential B/C

Clean Water Act: POTWs Primer

Start your day with one of the *Law Seminar's* most popular sessions: NACWA's Clean Water Act Primer. This presentation will provide an overview of the environmental law most relevant to publicly owned treatment works (POTWs), covering Clean Water Act (CWA) statutory provisions and regulations related to the key topics and issues that will be discussed during *Seminar* presentations. Whether you are a newcomer to the clean water legal world, a non-attorney looking to better understand the CWA or a seasoned veteran needing a refresher, this opening presentation is not to be missed.

Erika Powers

Partner

Barnes & Thornburg LLP

Chicago, IL

9:45 – 10:00

Networking Break

10:00- 11:15

Presidential B/C

Clean Water Act: Stormwater Primer

Take a deeper dive into the regulatory and legal landscape surrounding municipal stormwater management. Learn the basics of CWA stormwater requirements for Municipal Separate Storm Sewer Systems (MS4s), along with an update on current legal developments across the country affecting municipal stormwater management. The trend nationwide has been for the requirements set for MS4s to increase with each reissued permit, sometimes pushing the bounds of what is practicable to achieve within a five-year permit term. Of particular concern is the apparent shift by regulatory agencies to replace maximum extent practicable (MEP) with water quality standards attainment as the overarching standard for MS4 permit compliance.

Chris Pomeroy

President
AquaLaw PLC
Richmond, VA

Justin Curtis

Attorney
AquaLaw PLC
Richmond, VA

11:15- 12:15

Presidential B/C

CSO Policy: The Best Laid Plans

When the Combined Sewer Overflow (CSO) policy was drafted 25 years ago, the US Environmental Protection Agency (EPA), Office of Water (OW) worked with a diverse group of leaders from POTWs, not-for-profits and states to reach consensus on an innovative approach to a complex conundrum: How to move CSO communities to tackle wet weather discharges in a reasoned, cost-effective way, improve the environment and provide POTWs with a degree of regulatory certainty.

Then-existing permitting regulations did not accommodate risks AND costs. The Policy was developed to solve that problem. What happened? How did the Policy morph into a federal formula for payment of predetermined percentages of household income to address CSOs? Go behind the scenes with the former OW officials who spearheaded the development of the Policy and leaders of the consensus group that drafted it to understand its development and intent, and look at the need to implement the Policy as intended during post-construction permitting.

LaJuana Wilcher

Partner
English Lucas Priest & Owsley, LLP
Bowling Green, KY

Robert W. Adler

Jefferson B. and Rita E. Fordham Presidential Dean
University of Utah, S. J. Quinney College of Law
Salt Lake City, UT

Michael B. Cook

Former Director, Office of Wastewater Management
U.S. Environmental Protection Agency
Washington, DC

Afternoon

12:30 – 1:30

Palm Court

Luncheon Address

Opening Remarks

Adam Krantz

Chief Executive Officer
National Association of Clean Water Agencies
Washington, DC

City of Imperial Beach v. International Boundary & Water Commission – U.S. Section: Do Local Governments Have Recourse when Federal Infrastructure Diverts Foreign Pollution to Waters of the U.S.?

Matt Edling
Partner
Sher Edling LLP
San Francisco, CA

1:30 – 4:00
Presidential Foyer

Registration

2:00 – 5:00
Presidential B/C

PLENARY SESSION I
Welcoming Remarks & 2018 Seminar Overview

Hilary Meltzer
Co-Chair, NACWA Legal Affairs Committee
Deputy Chief, Environmental Law Division
New York City Law Department
New York, NY

2:15-3:30
Presidential B/C

Panel Discussion
Better Together: Opportunities for Holistic Clean Water and Drinking Water Regulation

The CWA and Safe Drinking Water Act (SDWA) serve two important but distinct purposes and goals that are accomplished through very different means. The CWA focuses on protecting the quality of navigable waters by ensuring they are fishable and swimmable, while the SDWA focuses on public health and source water protection. While these goals are not at odds, the two statutes do not always work in harmony. In fact, they have been in conflict more and more in recent years, with issues like which statute should govern discharges to groundwater that ultimately reach navigable waters, water reuse, and corrosion control and lead in drinking water impacting downstream POTWs coming to the forefront in recent years.

This panel will cover these emerging intersections between clean water and drinking water regulation, while discussing opportunities for better collaboration and more holistic regulation of water as a single resource.

Moderator

Shawn Hagerty
Partner
Best, Best & Krieger LLP
San Diego, CA

Panelists

Emily Jackson

General Counsel
Metro Wastewater Reclamation District
Denver, CO

Richelle Thomson

Deputy Corporation Counsel
Department of the Corporation Counsel
County of Maui
Wailuku, HI

Christine Leone

Deputy City Attorney
City of San Diego
San Diego, CA

3:30 – 3:45 Networking Break

3:45 – 5:00

Presidential B/C

Regulatory Roundtable

What do EPA, state regulators, and environmental groups view as the most important clean water legal and regulatory issues? How do those compare to the clean water sector's priorities? Where do we align? What do each see as the appropriate balance between compliance assistance and enforcement? This discussion is a must for any clean water attorney or utility manager wanting to better understand the perspectives and priorities – both competing and complimentary - of those who regulate and enforce.

Panelist

Bruce Reznik

Executive Director
Los Angeles WaterKeeper
Santa Monica, CA

Closing Remarks/ Announcements

Hilary Meltzer

Co-Chair, NACWA Legal Affairs Committee

Evening

6:00 – 7:00

Reception

Thursday, November 15

Morning

8:30 – 12:00

Registration

Presidential Foyer

9:00 – 12:00
Presidential B/C

PLENARY SESSION II

Opening Remarks

Emily Jackson

Co-Chair, NACWA Legal Affairs Committee

Keynote Address

Water Law in the Supreme Court in the Wake of Justice Kennedy's Retirement

As legal issues surrounding access to water and control of water pollution have increased in importance in recent years, the U.S. Supreme Court has played a greater role in shaping the contours of water law. During his 30 years of service on the Court, Justice Anthony Kennedy cast the decisive vote in more cases than any other Justice. Shortly before his retirement in July 2018, the Court exhibited a new pragmatism in its approach to interstate water disputes by rejecting the recommendations of special masters in two important cases. The Court's docket of water cases is likely to increase in the future as multiple parties press it to review cases concerning the scope of federal jurisdiction under the Clean Water Act and the Act's application to discharges to groundwater hydrologically connected to surface water. This presentation will review the Supreme Court's recent water law jurisprudence and the cases it may agree to hear in the future. It will analyze the impact of Justice Kennedy's retirement and the prospects for the Court jettisoning the long-standing *Chevron* doctrine of deference to reasonable agency interpretations of ambiguous statutory terms.

Robert Percival

Robert F. Stanton Professor of Law

Director, Environmental Law Program

University of Maryland Francis King Carey School of Law

Baltimore, MD

9:45 – 10:45
Presidential B/C

Not in My Backyard... Unless You're Fixing My Pipes and That Green Infrastructure Sounds Nice

This panel will share strategies for common legal issues involving private landowners. Speakers will address lead service line challenges in the wake of Flint, private lateral programs, green infrastructure on private property, drainage issues, inspection rights of utilities on private land and best practices to keep employees safe during inspections and water shutoffs for non-payment of bills.

Moderator

Bethany Card

Director, Environmental and Regulatory Affairs

Massachusetts Water Resources Authority

Boston, MA

Panelists

Devon Goodrich

Senior Counsel

New York City Department of Law

New York, NY

Dan McLawhorn
Associate City Attorney
City of Raleigh Public Utilities Department
Raleigh, NC

10:45 – 11:00 Networking Break

11:00 – 12:00 **Water Quality: Challenges Associated with Human Health
Criteria for Toxins**
Presidential B/C

Clean water utilities will increasingly face permit limits for pollutants at lower and lower levels as past efforts to improve water quality have revealed the remaining, more intractable issues impairing our nation's waters. A current controversial example involves the federal promulgation of human health criteria for certain toxics in Washington State, where the Obama Administration overrode the state's approach based in part on an interpretation of tribal treaty rights. Oregon's human health criteria – which mirror what EPA wanted to impose in Washington – are based on higher fish consumption rates designed to better protect Native Americans who eat more fish than the general population. A POTW in Oregon is now facing stringent permit limits that are unachievable with any available technology, with the promise of a potential variance at some point in the future – in a state that has never issued a variance. Potential battles are brewing in Idaho on this issue and it has already reached the courts in Maine. There are signs that the Trump Administration may be reconsidering the federal promulgation in Washington and backing off of its position in Maine. On top of the criteria development, this issue involves complex assessments of risk, the proper role of cooperative federalism, EPA regional tactics, the use of guidance/policy as regulation, and the availability and appropriateness of variances.

Moderator

Nathan Gardner-Andrews
Chief Advocacy Officer
National Association of Clean Water Agencies
Washington, DC

Panelists

Jerry Schwartz
Director, Water Quality Programs
American Forest & Paper Association
Washington, DC

Ken Williamson
Director, Regulatory Affairs
Clean Water Services
Hillsboro, OR

Closing Remarks/Announcements

Emily Jackson
Co-Chair, NACWA Legal Affairs Committee

Afternoon

12:00 – 2:00

Lunch on Your Own

1:45 – 4:00

Presidential Foyer

Registration

2:00 – 5:00

Presidential B/C

PLENARY SESSION III

Opening Remarks

Hilary Meltzer

Co-Chair, NACWA Legal Affairs Committee

2:00 – 3:30

Presidential B/C

Top CWA Legal Developments of the Year

(Closed to Press & Regulators)

Central to your job as a clean water attorney is understanding the impact that court decisions from around the country will have on the obligations of your clients. But how can you keep track of all the various court cases and figure out which ones are truly important? Not to worry, NACWA has you covered! This roundtable of top clean water lawyers will review the most important court decisions and CWA legal developments of the past year and provide critical insights for both clean water attorneys and managers on how these issues could affect your utility.

Moderator

Hilary Meltzer

Co-Chair, NACWA Legal Affairs Committee

Panelists

Sam Brown

Senior Attorney

Hunton Andrews Kurth, LLP

San Francisco, CA

Allan Gates

Member

Mitchell Williams

Little Rock, AR

Roberta Larson

Executive Director

California Association of Sanitation Agencies

Sacramento, CA

3:30 - 3:40

Networking Break

3:45 - 5:00

Presidential B/C

Top CWA Enforcement Developments of the Year

(Closed to Press & Regulators)

As we near the two-year mark of the Trump Administration, many questions remain for the clean water sector. Is EPA's change in philosophy on environmental regulation and enforcement translating into concrete relief and flexibility for the

clean water sector? What has a “return to Cooperative Federalism” meant for regulated entities? Has third party litigation increased in response to real or perceived changes in federal priorities? For utilities approaching the end of their consent decrees, what can be expected? This roundtable discussion will evaluate the latest trends in enforcement and consent decrees and provide insight into the many questions facing clean water utilities.

Moderator

Paul Calamita
Chairman
AquaLaw PLC
Richmond, VA

Panelists

Jonathan Salmon
Attorney, Office of General Counsel
East Bay Municipal Utility District
Oakland, CA

Nathan Vassar
Attorney
Lloyd Gosselink Rochelle & Townsend, P.C.
Austin, TX

J. Tom Boer
Partner
Hunton Andrews Kurth, LLP
San Francisco, CA

Closing Remarks/Announcements

Emily Jackson
Co-Chair, NACWA Legal Affairs Committee

Evening

6:00 – 7:00

Crystal Ballroom

Reception

Friday, November 16

Morning

6:30 – 8:00

Voluntary Run

8:30 - 11:00

Registration

Presidential Foyer

9:00 – 12:00

Presidential B/C

PLENARY SESSION IV

Opening Remarks

Erica Spitzig
Deputy General Counsel
National Association of Clean Water Agencies
Washington, DC

A Rising Tide Lifts All...Lawsuits? Climate Change Adaptation/Mitigation and Potential Municipal Liability

This panel will focus on discussion of potential liability arising from impacts from climate change and developing solutions to this new area of risk and responsibility.

Moderator

Jennifer Harrington

Chief Legal Counsel
Narragansett Bay Commission
Providence, RI

Panelists

Elizabeth Armistead Andrews

Director
William & Mary Law School's Virginia Coastal Policy Center
Williamsburg, VA

Richard Davis

Principal
Beveridge & Diamond, P.C.
Washington, DC

Sarah Deslauriers

Climate Change Program Manager
California Association of Sanitation Agencies
Sacramento, CA

10:15 – 10:30 Networking Break

10:30 – 12:00 **Stay Ethical, San Diego**
Presidential B/C This presentation will explore common ethics issues for in-house attorneys.

Thomas Spahn

Partner
McGuireWoods, LLP
Tysons, VA

Closing Remarks/Adjourn

Amanda Waters

General Counsel
National Association of Clean Water Agencies
Washington, DC