



**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 November 6, 2018

All Meeting Rooms are located on the 2nd Floor unless otherwise indicated.

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

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 Adler

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

Michael Cook

Former Director, Office of Wastewater Management
US Environmental Protection Agency
Washington, DC

Afternoon

12:30 – 1:30

Palm Court

Lobby Level

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 – US Section: Do Local Governments Have Recourse when Federal Infrastructure Diverts Foreign Pollution to Waters of the US?

[Movie Trailer Voice] Imagine a world in which the US government transports untreated sewage and other waste from Mexico and discharges it into the Pacific Ocean along the sunny beaches of San Diego, and then refuses to do anything to fix the problem. Now imagine that San Diego and other Southern California cities have to close those beaches for more than 160 days a year due to the pollution. This presentation will discuss the reality of this situation and discuss the lawsuit the impacted cities have filed to attempt to address the situation.

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

Co-Chair, NACWA Legal Affairs Committee
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.

Moderator

Erika Powers

Partner
Barnes & Thornburg LLP
Chicago, IL

Panelists

Sarah Gonzalez

Attorney-Advisor, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
US Environmental Protection Agency
Washington, DC

Julia Anastasio

Executive Director
Association of Clean Water Administrators
Washington, DC

Jonathan Bishop

Chief Deputy Director
California State Water Resources Control Board
Sacramento, CA

Bruce Reznik

Executive Director
Los Angeles WaterKeeper
Santa Monica, CA

Joe Theis

Associate Director, Water Enforcement Division
Office of Enforcement and Compliance Assurance
US Environmental Protection Agency
Washington, DC

Doug Benevento

Regional Administrator
US Environmental Protection Agency, Region 8
Denver, CO

Closing Remarks/ Announcements

Hilary Meltzer

Co-Chair, NACWA Legal Affairs Committee

Evening

6:00 – 7:00

Tipsy Crow

770 5th Ave.

Welcome Reception: It's Kind of a Big Deal!

Stay classy San Diego and enjoy a night surrounded by leather-bound books and the rich smell of mahogany! Join us for an Anchorman-themed reception featuring scotchy scotch scotch, a photobooth and more!

Thursday, November 15

Morning

8:00 – 12:00

Presidential Foyer

Registration

8:30 – 9:00

Presidential B/C

Managing Today's Workforce: Automating the Discipline/Grievance Processes to Improve Efficiencies and Reduce Risk and Exposure to Litigation

Join the Albuquerque Bernalillo County Water Utility Authority for a demonstration of a unique application that delivers a consistent proactive automated approach for addressing employee relations and identifying emerging issues before they become an organizational drain and liability. This process uses existing policies and procedures to initiate and route actions electronically within

the organization and provide real-time information on all incidents, thereby reducing exposure to disparate treatment as well as decreasing legal time/costs.

Peter Auh

General Counsel
Albuquerque Bernalillo County Water Utility Authority
Albuquerque, NM

Judy Montoya

Chief Executive Officer
HR Efficient, LLC
Albuquerque, NM

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

This. Is. NIMBY! Questions and Answers About What Infrastructure Has Done for Me Lately... and What Utilities Must Do to Satisfy Private Landowners

This panel will provide an overview of common legal issues involving private landowners. Speakers will address administrative searches, takings, easements, green infrastructure on private property, and drainage issues. Using a favorite question and answer format, participants will learn about the legal

underpinnings associated with various strategies related to managing water and wastewater infrastructure when it impacts private property.

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

Presidential B/C

Water Quality: Challenges Associated with Human Health Criteria for Toxins

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

Senior Director, Energy and Environmental Policy
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

Registration

Presidential Foyer

2:00 – 5:00

PLENARY SESSION III

Opening Remarks

Hilary Meltzer

Co-Chair, NACWA Legal Affairs Committee

Presidential B/C

2:00 – 3:30

Top CWA Legal Developments of the Year

Presidential B/C

(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

Partner
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 - 3:45 Networking Break

3:45 - 5:00 **Top CWA Enforcement Developments of the Year**
Presidential B/C ***(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
Principal
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

Lower Level

Reception

Friday, November 16

Morning

6:30 – 8:00

Lobby Level

Scenic San Diego Sunrise Run

Join NACWA staff for a morning run/walk around scenic San Diego. You can choose your own adventure and pace with the option of either a 3 or 5 mile route. More information including route maps will be available at the Law Seminar Registration Desk on Wednesday and Thursday. Please meet in the Lobby.

8:30 - 10:30

Presidential Foyer

Registration

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

(Closed to Press & Regulators)

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

Professor of the Practice and Director

Virginia Coastal Policy Center

William & Mary Law School

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
Presidential B/C

That's All the News for Now. Stay Ethical, San Diego

No CLE program is complete without providing some ethics credits, and NACWA has you covered with an interactive and informative session focused on essential ethics issues encountered by clean water practitioners. This session will use hypothetical scenarios to explore common ethics issues for in-house attorneys, such as employee misconduct, negotiations, electronic communications, and more. Join us to learn the latest on essential ethics questions and learn how to avoid common pitfalls.

Thomas Spahn
Partner
McGuireWoods, LLP
Tysons, VA

Closing Remarks/Adjourn

Amanda Waters
General Counsel
National Association of Clean Water Agencies
Washington, DC