



National Clean Water Law Seminar:
A Seminar for Public Agency Attorneys & Managers

November 14 - 16, 2017

Hyatt Regency Savannah
Savannah, GA

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

Agenda

Tuesday, November 14

Morning

8:30 – 12:00 Registration

Registration Booth

9:00 – 10:30 Clean Water Act Primer

Regency Ballroom CDEF 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 clean water practitioners, 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

10:30 - 10:45 Networking Break

10:45 – 12:00 Stormwater Primer

Regency Ballroom CDEF Take a deeper dive into the regulatory and legal landscape surrounding municipal stormwater management. Stormwater is widely viewed as one of the largest remaining contributors to water quality impairment, and therefore is a significant regulatory priority for the US Environmental Protection Agency (EPA) and the states. Municipal Separate Storm Sewer Systems (MS4s) are obligated to develop and implement sophisticated programs for managing stormwater – a perennial challenge, since municipalities don't control most of the land uses that affect pollutants in stormwater runoff, nor can they control when it rains. Yet, MS4s are being

increasingly targeted for audits, information requests and administrative orders related to stormwater programs. In addition, stormwater issues and requirements continue to be a focus of environmental activist groups. Learn the basics of CWA stormwater requirements, along with an update on current legal developments across the country affecting municipal stormwater management.

Chris Pomeroy
President
AquaLaw PLC
Richmond, VA

Justin Curtis
Attorney
AquaLaw PLC
Richmond, VA

Afternoon

12:15 – 1:15

*Harborside East,
River Street Level*

Luncheon Address

Adam Krantz
Chief Executive Officer
NACWA
Washington, DC

The State of the States: How Cooperative is EPA's Federalism?

EPA Administrator Scott Pruitt has clearly conveyed that cooperative federalism will be a guiding principle of his tenure, saying that he will be “stepping up our work alongside the states in assisting stakeholders with compliance to ensure fewer violations” and committing to return more authority to the states. Cooperative federalism—the idea that state and federal governments share responsibility in implementing the law—is fundamental to how most environmental statutes work. Will the administration’s recalibration of state and federal roles provide more flexibility and respect for state decision making and lead to more effective, lower cost environmental management? Will potential funding cuts to EPA staff and EPA funding for state programs affect states’ ability to regulate? Can or should the umbrella of cooperative federalism extend to local governments and what would that look like? The Luncheon Address will focus on these questions and discuss the importance of preserving the appropriate balance of cooperative federalism.

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

1:15 – 4:00
Registration Booth

Registration

1:30 – 5:00
Regency Ballroom CDEF

PLENARY SESSION I

Opening Remarks

Cathy Gerali

NACWA President

District Manager

Metro Wastewater Reclamation District

Denver, CO

Welcoming Remarks & 2017 Seminar Overview

Hilary Meltzer

Co-Chair, NACWA Legal Affairs Committee

Deputy Chief, Environmental Law Division

New York City Law Department

New York, NY

The Water Quantity-Water Quality Nexus: Two Sides of the Same Coin or Zero-Sum Game?

The challenges facing clean water utilities vary considerably among arid states, flood-prone regions, and everything in between. Water quantity concerns in dry areas of the west and southeast can inject an additional layer of complexity into common issues like meeting water quality standards and whole effluent toxicity requirements where effluent dominates receiving waters. Unique challenges involving water rights, reuse and temperature also come into play as do impacts from a changing climate.

This panel will address many of the legal and regulatory issues involved in the water quality and quantity nexus including current litigation that could affect water reuse and stormwater control measures. It will also analyze the interplay between the CWA and other statutes, and particularly whether wastewater recycling and/or replenishment of aquifers projects completed in accordance with the CWA and state water law be can be prevented by a conflicting requirement in another statute (e.g., National Environmental Policy Act, Endangered Species Act).

Moderator

Karen Hansen

Principal

Beveridge & Diamond, P.C.

Austin, TX

Panelists

Michelle Bushman
Legal Counsel
Western States Water Council
Murray, UT

Nicole E. Granquist
Partner/Chair, Natural Resources Group
Downey Brand LLP
Sacramento, CA

3:15 – 3:30 Networking Break

3:30 – 5:00 “Develop the Number, We’ll Figure Out Implementation
Regency Ballroom CDEF Later”

The technology-based requirements of the CWA have been instrumental in accomplishing significant water quality improvements, but now that they have, for the most part, been implemented, EPA is focusing increasingly on the water quality provisions of the Act. This has led to efforts to reduce discharges of pollutants from point sources to lower and lower levels; at times, these efforts seem to reflect little or no consideration of cost impacts, technical achievability or whether the new limits will actually improve water quality. This panel will explore the various legal issues surrounding opportunities in the Clean Water Act – both explicit and implicit – for flexibility and sustainability in implementing water quality goals, including invaluable tools such as variances and trading. The panel will address how we can best shape these tools to withstand environmental and judicial scrutiny, and consider how broader change may be needed as target pollutant levels get lower and lower.

Moderator

Chris Hornback
Chief Technical Officer
NACWA
Washington, DC

Panelists

Allan Gates
Attorney
Mitchell Williams
Little Rock, AR

Jon Mueller
Vice President for Litigation
Chesapeake Bay Foundation
Baltimore, MD

Richard Davis
Partner
Beveridge & Diamond, P.C.
Washington, DC

Closing Remarks/ Announcements

Hilary Meltzer
Co-Chair, NACWA Legal Affairs Committee

Evening

6:00 – 7:00

*Belford's Savannah
315 W. St Julian St.
Savannah, GA 31401*

Reception

Enjoy a roaring 20s-themed reception just a short 10 minute walk from the hotel. With a prohibition era feel and period actors, feel free to come in costume, or we will help you dress the part!

Wednesday, November 15

Morning

6:30 – 8:00

Hotel Lobby

Scenic Savannah Sunrise Saunter

Join NACWA staff for a morning run/walk around scenic Savannah. You can choose your own adventure and pace with the option of either a 3.5 or 4 mile route. More information including route maps will be available at the *Seminar* Registration Desk.

8:30 – 12:00

Registration Booth

Registration

9:00 – 12:00

Regency Ballroom CDEF

PLENARY SESSION II

Opening Remarks

Mickey Conway
Co-Chair, NACWA Legal Affairs Committee
General Counsel
Metro Wastewater Reclamation District
Denver, CO

Keynote Address

EPA and Clean Water Legal Issues

Our nation's water systems face many challenges, particularly in the face of limited resources and the potential impacts of recent weather patterns. Hear from EPA about the Agency's priorities relevant to those challenges, including those relating to infrastructure financing, improving industry transparency, and adaptation planning.

Dennis Lee Forsgren, Jr.
Deputy Assistant Administrator
Office of Water
US Environmental Protection Agency
Washington, DC

9:45 – 10:45

The Challenges of an Open Relationship: Compliance & Survival Tips for Open Records Laws

Ask a public clean water agency about open records issues and chances are they will have a few war stories to share. While our sector champions transparency, most clean water agencies have experienced the burden of excessive open records requests. All states, the District of Columbia, and the federal government have open records or “freedom of information” laws that allow members of the public to obtain documents and other public records from federal, state, and local government bodies. This panel will address the common elements and requirements of these laws and provide insights on how to proactively avoid disputes through records retention policies and practices, including electronic records. It will also offer strategies on how to handle requests in a manner that will minimize burden and cost.

Moderator

Jonathan Rak
Partner
McGuireWoods, LLP
McLean, VA

Panelists

Jennifer Harrington
Chief Legal Counsel
Narragansett Bay Commission
Providence, RI

Dan McLawhorn
Associate City Attorney
City of Raleigh
Raleigh, NC

Susan Myers
General Counsel
Metropolitan St. Louis Sewer District
St. Louis, MO

10:45 – 11:00

Networking Break

11:00 – 12:00

Avoiding the Legal ‘Third Rail’ of Energy Generation

Our sector is increasingly recognizing the value of its inputs and end products as valuable resources. As such, utilities of all sizes are planning, implementing or examining ways to separate, extract, reuse or convert

valuable water, energy, and commodities from wastewater while using utility assets in innovative ways to reduce costs, increase revenues, and strengthen the local economy. Such programs and initiatives often require contracts with the public sector including power companies and waste providers. This panel will address legal considerations associated with a broad spectrum of energy generation issues including Food-to-Energy programs, anaerobic digestion biogas production, Renewable Identification Numbers (RINs) generation, selling electricity back to the grid and public-private partnerships.

Moderator

Paul Freeman

Counsel

Eversheds Sutherland (US) LLP

New York City, NY

Panelists

Liam Cavanaugh

Director of Operations

Metro Wastewater Reclamation District

Denver, CO

Patrick Serfass

Executive Director

American Biogas Council

Washington, DC

Closing Remarks/ Announcements

Mickey Conway

Co-Chair, NACWA Legal Affairs Committee

Afternoon

12:00 – 2:00

Lunch on Your Own

1:45 – 4:00

Registration

Registration Booth

2:00 – 5:00

PLENARY SESSION III

Regency Ballroom CDEF

2:00 – 3:30

Top CWA Legal Developments of the Year

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

Mickey Conway

Co-Chair, NACWA Legal Affairs Committee

Brooks Smith

Partner

Troutman Sanders LLP

Washington, DC

Roberta Larson

Executive Director

California Association of Sanitation Agencies

Sacramento, CA

Sam Brown

Senior Attorney

Hunton & Williams, LLP

San Francisco, CA

3:30 - 3:45

Networking Break

3:45 - 5:00

Regency Ballroom CDEF

Admin Law in its Golden Age: Why It's Currently All the Rage

Administrative law applies to all executive branch agencies and is a bedrock for CWA practitioners. The Administrative Procedure Act (APA) and its state counterparts define what constitutes a "rule," prescribe procedures for agency rulemaking, and set standards for judicial review of agency actions. This panel will provide a brief overview of the APA and talk about several recent cases involving CWA issues, such as whether a TMDL is a rule, when an agency action is "final" and therefore subject to judicial review, and whether CWA jurisdiction should be reviewed by Circuit Courts under the CWA or by District Courts under the APA. The panel will also address developments in judicial deference to Administrative Agency Actions under *Chevron*.

Finally, the panel will discuss the respective roles of EPA, state regulators, advocacy organizations, and the courts in determining what water quality standards should apply to utilities in connection with a case pending in the Southern District of New York.

Moderator

Louis McMahon
Partner
McMahon DeGulis LLP
Cleveland, OH

Panelists

Devon Goodrich
Senior Counsel
New York City Department of Law
New York, NY

Catherine Sharkey
Crystal Eastman Professor of Law
New York University School of Law
New York, NY

Andrew Etter
Senior Associate
Squire Patton Boggs (US) LLP
Columbus, OH

Closing Remarks/ Announcements

Mickey Conway
Co-Chair, NACWA Legal Affairs Committee

Thursday, November 16

Morning

8:30 - 11:00 Registration

Registration Booth

9:00 – 12:00

PLENARY SESSION IV

Regency Ballroom CDEF **Opening Remarks**

Erica Spitzig
Deputy General Counsel
NACWA
Washington, DC

Who Wants to Be an Ethicist?

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. Using recent ethics decisions as examples, this session will mirror a familiar game show format, with multiple choice questions that allow panelists to request help from “lifelines” like “phone a friend” and “ask the audience.” The winner will be crowned “Master of Ethics,” while the audience will leave with a sound understanding of the ethical issues facing clean water attorneys.

Moderator

Erica Spitzig
NACWA

Contestants

Kellyn McGee
Associate Professor
Savannah Law School
Savannah, GA

Michael Witt
Special Counsel
Passaic Valley Sewerage Commission
Seacaucus, NJ

Amanda Waters
General Counsel
NACWA
Washington, DC

10:30 – 10:45

Networking Break

10:45 – 12:00

Direct Hydrologic Connection: WOTUS and Point Sources and Groundwater, Oh My!

Does the CWA regulate discharges of pollutants to hydrologically connected groundwater? In the last few years, there has been a groundswell of litigation focused on this question. Federal court decisions to date are inconsistent. The fate of this critical issue now lies in the hands of the four Circuit Courts in three very different factual cases.

A diverse group of stakeholders will address a key CWA liability threshold question: when does a “direct hydrologic connection” matter and when does it not. While the outcome of these cases may have profound ramifications for NACWA members – such as expansion of the universe of sources subject to NPDES permit requirements (collection systems, pipes, cesspools, septic systems) - the public clean water sector was not the impetus for the direct hydrologic connection theory (a.k.a. Groundwater Conduit Theory). Cases have largely targeted disposal of coal ash in unlined lagoons.

The panel will also address the status of litigation surrounding the 2015 Clean Water Rule, and the Trump Administration’s two-step approach to repealing and replacing the rule.

Moderator

Joel Beauvais
Partner
Latham & Watkins LLP
Washington, DC

Panelists

J.G. Andre Monette
Partner
Best, Best & Krieger LLP
San Diego, CA

Geoff Gisler
Senior Attorney and Leader of Clean Water Program
Southern Environmental Law Center
Chapel Hill, NC

Amanda Aspatore
Vice President, Water Law & Policy
National Mining Association
Washington, DC

Sam Brown
Hunton & Williams, LLP

Closing Remarks/Adjourn

Amanda Waters
NACWA