Developments in Clean Water Law
A Seminar for Public Agency Attorneys & Managers

Agenda

November 9 -11, 2005
Inn at Loretto
Santa Fe, NM

Wednesday, November 9
Morning
7:30 – 4:30   Registration & Continental Breakfast

7:15 - 8:45

Continental Breakfast
Clean Water Act Overview
For new practitioners & those who would like a refresher, this early session will provide an overview of key statutory provisions that will be discussed and referenced during the Seminar.

Featured Speaker:
Erika K. Powers
Of Counsel
Barnes & Thornburg
Chicago, IL

9:00 - 12:00

2005 Seminar Overview
Lisa E. Hollander
Chair, NACWA Legal Affairs Committee
Assistant General Counsel
Northeast Ohio Regional Sewer District
Cleveland, OH

Piercing the Satellite Veil:
Collection System Permitting & Regulatory Issues
Without question, collection systems are essential to achieving our nation’s goal of reducing, and ultimately eliminating, sanitary sewer overflows (SSOs). Without a national policy or regulation on SSOs, many states are seeking to gain access to – and authority over – collection systems through a variety of legal theories. Among others, these include: “reaching through” the treatment service agreement between publicly owned treatment works (POTWs) and the independent collection systems they serve; holding up POTW permits until the POTW collects desired information from the collection systems; asserting that
collection system performance requirements are embodied in standard National Pollutant Discharge Elimination System (NPDES) terms and conditions; and regulating collection systems based upon their “potential” to discharge. This panel will delve into these, and other, approaches to regulating collection systems, and assess the legal weaknesses and strengths of the various approaches.

**Speaker/Moderator:**
David W. Burchmore  
Partner  
Squire, Sanders & Dempsey L.L.P.  
Cleveland, OH

**Speakers:**
Roberta Larson  
Counsel, California Association of Sanitation Agencies  
Somach, Simmons & Dunn, PC  
Sacramento, CA

Elston H. Johnson  
Water Section Manager, Field Operations Division  
Office of Compliance and Enforcement  
Texas Commission on Environmental Quality  
Austin, TX

Stephen Sweeney  
Attorney  
U.S. Environmental Protection Agency  
Washington, DC

10:30 - 10:45  
*Break*

**Roundtable Discussion**  
**Creative Lawyering:**  
**Maximizing Success Via Innovative Litigation Strategies**
Over time, any lawyer can end up employing a similar pattern of litigation tools to accomplish their goals. However, a number of innovative tools are available to the daring attorney. These include: declaratory judgment actions, mandamus, petitions for rulemaking, interventions, and even bringing citizen suits. During this panel, attendees will hear from some of the nation’s top lawyers about the tools they have employed to get results for their clean water agencies and clients. The panelists also will discuss the pitfalls and promise of these various options.

**Roundtable Moderator:**
James Colston  
Legal and Regulatory Affairs Liaison  
Orange County Sanitation District  
Fountain Valley, CA
Roundtable Participants:
Terry J. Satterlee
Vice Chair, NACWA Legal Affairs Committee
General Counsel
Little Blue Valley Sewer District
Kansas City, MO

James J. Dragna
Bingham McCutchen
Los Angeles, CA

Laurie Horridge
General Counsel
Narragansett Bay Commission
Providence, RI

Afternoon
12:15 - 1:45
Luncheon
Introductory Remarks
Ken Kirk
NACWA Executive Director
Washington, DC

Keynote Address—Protecting our Nation’s Water Resources: American Indian Legal Efforts
Philip S. (Sam) Deloria
Director, American Indian Law Center
Albuquerque, NM

The American Indian Law Center is the oldest existing Indian-controlled and operated legal and public policy organization in the country, providing preparatory legal education to individuals, training and technical assistance to tribes and their courts, and policy analysis. Director Deloria will provide Seminar attendees with an overview of the efforts by our nation’s longest inhabitants to protect U.S. water resources.

2:00 - 5:00
GENERAL SESSION II
Panel Discussion — Use Attainability Analyses in the Real World
NACWA and the Water Environment Research Foundation (WERF) recently released Collaborative Water Quality Solutions: Exploring Use Attainability Analyses, to provide a current assessment of the use attainability analysis (UAA) process, and delve into the details of how UAAs can be used to help solve complex water quality challenges. This panel will focus on the legal issues associated with UAAs and explore on the ground approaches to successful UAAs.
Panel Discussion — Sharing the Load: Ensuring Equitable TMDL Allocations
The total maximum daily load (TMDL) front has been deceptively quiet for some time. But, public agency attorneys and managers should not be lulled into a false sense of security. This panel will take a close up look at national trends in the TMDL arena, and specifically focus on a key issue for public agencies – ensuring an equitable allocation. During the discussion, the panelists also will touch on listing and de-listing issues, jurisdictional divides, stormwater and TMDLs, and new impairment categories. This discussion is certain to offer practical answers to tough TMDL questions.
Closing Remarks/Announcements
Lisa E. Hollander
Chair, NACWA Legal Affairs Committee

6:00 – 7:00

Welcoming Reception

Thursday, November 10
Morning
8:00 - 4:30
Registration

8:00 - 8:30
Continental Breakfast

8:30 - 12:00
GENERAL SESSION III
Opening Remarks
Terry J. Satterlee
Vice Chair, NACWA Legal Affairs Committee

8:45 - 9:45
Featured Presentation: From Aviall to Kelo: Recent Legal Precedents Impact Clean Water Lawyers
This presentation will highlight recent Supreme Court and federal court decisions that could impact today’s clean water practitioner. Time will be reserved for questions and answers.

Featured Speaker:
Lee A. DeHihns, III
Alston & Bird, LLP
Atlanta, GA

9:45 – 12:00
Hot Topics Breakout Sessions –
During this dynamic series of breakouts, attendees will have the chance to select two one-hour discussions that complement their work back home. The breakouts are designed to provide an opportunity to discuss important issues in a small group setting. Breakout sessions will be led by national experts on the topics selected.

9:45 – 10:45
WET Permitting
Richard Sedgley
AquaLaw, PLC
Richmond, VA

Residuals
James B. Slaughter
Beveridge & Diamond, PC
Washington, DC

10:45 - 11:00
Break
11:00 – 12:00  

**Safe Drinking Water Act**  
Avis Marie Russell  
General Counsel  
DC Water and Sewer Authority  
Washington, DC  

**Construction Law**  
Neal J. Sweeney  
Kilpatrick Stockton  
Atlanta, GA  

12:15 - 1:45  

**Luncheon**  

*Introductory Remarks*  
Christopher M. Westhoff  
NACWA Treasurer  
Assistant City Attorney & Public Works General Counsel  
City of Los Angeles, CA  

**Luncheon Address – Endangered Species: Thoughts for the Urban Practitioner**  
John C. Horning  
Executive Director  
Forest Guardians  
Santa Fe, NM  

John Horning will speak on Forest Guardians’ unique use of litigation and advocacy tools to protect and restore the native biological diversity and watersheds of the American Southwest. In particular, Mr. Horning will discuss how endangered species developments are affecting urban land management decisions, and how strong laws and aggressive enforcement can help protect precious natural resources.

*Afternoon*  
2:00 - 5:00  

**GENERAL SESSION IV**  

**Workshop: Communication Essentials for Agency Attorneys & Managers**  
This workshop, designed especially for Seminar attendees, will dynamically present take home techniques for effectively describing and discussing – in a variety of public forums – the role clean water agencies play in protecting water quality. Workshop topics will include: how a public communications strategy can enhance your legal strategy (and vice versa), message development, listening techniques, writing tips, and speaking strategies. The workshop also will delve into case studies and application of the presented techniques in the real world.
Facilitator/Presenter:
   Jodi Perras
   Perras & Associates
   Indianapolis, IN

Closing Remarks/Announcements
   Lisa E. Hollander
   Chair, NACWA Legal Affairs Committee

5:30 - 6:30  
Meet and Greet Reception

Friday, November 11  
Morning  
8:00 - 10:00  
Registration

8:00 - 8:30  
Continental Breakfast

8:30 - 12:00  
GENERAL SESSION V  
Opening Remarks
   Alexandra Dapolito Dunn
   General Counsel
   NACWA
   Washington, DC

8:45 – 10:15  
Panel Discussion –  
Blending, Sewer Overflows, and More  
This panel will review the latest developments in the sewer overflow arena from a regulatory and policy standpoint. Topics to be covered include: CSO long-term control plan implementation issues, the status of blending permits, SSO policy, and collection system capacity, management, operations and maintenance (C-MOM) programs.

   Moderator:
   Keith J. Jones
   Deputy City Solicitor
   Philadelphia Water Department
   Philadelphia, PA

   Speakers:
   Robert C. Weaver
   Kelly & Weaver
   Washington, DC

   Lisa E. Hollander
   Chair, NACWA Legal Affairs Committee

   John C. Hall
   Hall & Associates
   Washington, DC
Roundtable Discussion – Enforcement Developments

EPA’s FY 2006 budget experienced many cuts – but the enforcement and compliance assurance line item increased. With wet weather an EPA enforcement priority through 2007, the Law Seminar would not be complete without a focused discussion of recent developments in municipal clean water enforcement. This roundtable will address both civil and criminal trends in this arena.

Roundtable Moderator:
Susan M. Myers
Attorney
Metropolitan St. Louis Sewer District
St Louis, MO

Roundtable Participants:
Thomas M. DiBiagio
Former U.S. Attorney, Maryland
Principal
Beveridge & Diamond, PC
Washington, DC

Don F. Hamilton
General Counsel
City of Little Rock Wastewater Utility
Little Rock, AR

James R. Arnold
The Arnold Law Practice
San Francisco, CA

Closing Remarks/Adjourn
Lisa E. Hollander
Chair, NACWA Legal Affairs Committee