Opening Remarks & Workshop Overview

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

Opening Address

Setting the Stage: Current EPA & DOJ Perspectives on the State of Clean Water Enforcement

Central to any negotiation – whether dealing with a new consent decree or modification of an existing one – is understanding the perspective of the “other side.” The U.S. Environmental Protection Agency (EPA) and Department of Justice (DOJ) set the agenda for municipal clean water enforcement actions nationwide, so knowing what their priorities are is critical. Senior officials from EPA and DOJ will outline their views on the enforcement process, their current enforcement priorities, and what clean water utilities should expect in wet weather enforcement discussions.

Mark Pollins
Director, Water Enforcement Division - Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Washington, DC
Ellen Mahan  
Deputy Chief  
Environmental Enforcement Section, Environment & Natural Resources Division  
U.S. Department of Justice  
Washington, DC

9:30 – 9:45  Break

9:45 – 11:00  Understanding the Process: The State of Play, the Players and How to Play  
Renaissance  
Ballroom A-C  
The first step in successful enforcement negotiation is to understand the controlling regulatory and legal requirements, what roles various entities and individuals will play in the process, and how to assemble the best team to achieve desired outcomes. Speakers on this panel will provide valuable insights on the policies, guidance, and frameworks that will set key parameters for negotiations; the various roles of the utility, regulators, third parties, the court, and the public in the process; and how to choose the right people and the right strategy to give a utility maximum leverage and the best chance for an optimum outcome.

John Lazzaretti  
Associate  
Squire Sanders  
Cleveland, OH

John Sheehan  
Member  
Clark Hill PLC  
Washington, DC

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

11:00 - 12:15  Thinking Outside the Box: Going Beyond the Standard Language  
Renaissance  
Ballroom A-C  
While there may be common elements to many consent decrees and enforcement orders, some utilities assume that they must accept standard “boilerplate” language from other decrees. But the reality is that each utility has the opportunity to pursue new and innovative language that works to its benefit for any consent decree provision. Utilities have flexibility to negotiate procedural issues such as dispute resolution or modification/reopener clauses, and can also work with their regulators on innovative ways to address more complex issues such as design storm/level of service, basement backups, and penalties. This panel will explore ways
utilities negotiating new decrees or seeking changes to existing ones can craft their own flexible language and push back on the standard boilerplate approach.

Lou McMahon  
Partner  
McMahon DeGulis LLP  
Cleveland, OH

Mike Witt  
Special Counsel  
Passaic Valley Sewerage Commission  
Newark, NJ

Andy Lukas  
Vice President, Wet Weather Leader  
Brown & Caldwell  
Milwaukee, WI

Afternoon  
12:30 - 1:45  
Luncheon  
Discover

Luncheon  
Opening Remarks  
Nathan Gardner-Andrews  
General Counsel  
NACWA  
Washington, DC

David St. Pierre  
NACWA Board Member  
Executive Director  
Metropolitan Water Reclamation District of Greater Chicago  
Chicago, IL

Luncheon Address  
A Case Study in Action: The Chicago Consent Decree  
Experience & Lessons for Other Utilities

Richard Davis  
Principal  
Beveridge & Diamond  
Washington, DC

2:00 - 3:45  
The New Enforcement Paradigm: Strategies and Tools to Maximize Economic Flexibility and Environmental Benefit

Renaissance  
Ballroom A-C

The last seven years have seen a dramatic shift in the legal and regulatory landscape impacting municipal wet weather enforcement. The acceptance
of green infrastructure, impacts of the economic downturn, greater sensitivity to affordability concerns, embrace of adaptive management, and emergence of integrated planning have all provided utilities with powerful tools and leverage when dealing with enforcement issues. This is true not only for utilities new to the consent decree world, but is also especially relevant for those already under decrees and seeking modification. Speakers on this panel will discuss strategies on how clean water agencies can take advantage of the new enforcement paradigm.

Erika Powers  
Partner  
Barnes & Thornburg LLP  
Chicago, IL

Eric Rothstein  
Principal  
Galardi Rothstein Group  
Chicago, IL

Jeff Eger  
Senior Management Consultant  
HDR Engineering, Inc.  
Cincinnati, OH

Kyle Dreyfuss-Wells  
Manager of Watershed Programs  
Northeast Ohio Regional Sewer District  
Cleveland, OH

3:45 - 4:00  Break

4:00 - 5:00  
Renaissance  
Ballroom A-C

Can’t Live With It, EPA Won’t Let You Live Without It: Finding Flexibility When Implementing Decrees and Opportunities for Modification

Successfully negotiating a wet weather consent decree is only the beginning of the process – now you actually have to implement it for years to come. Communities are finding implementation to be increasingly challenging as new issues such as nutrients, stormwater, rising economic burden, and third party pressure make living with a decree more difficult. But the good news is that some utilities are exploring creative ways to find new flexibilities within the language of their existing agreements. Additionally, efforts to reopen and modify existing decrees to adapt to new circumstances and take advantage of new flexibilities are becoming more common. This final panel of the day will explore how utilities are finding ways to make their decrees work better for their communities.
Stories From the Front Lines: Tips and Advice on What Works (And What Doesn’t) in Enforcement Negotiations

Every enforcement negotiation is different and can be influenced by a variety of factors including the parties involved, the facts on the ground, the relief sought, and the strategies employed. Still, there are a number of basic elements and approaches that are common to all consent decree negotiations – both for new decrees and existing ones – that can impact the outcome. Building on the conversation about particular tools and strategies from the previous day, this panel of veteran negotiators will share their general experiences and advice on what works and what doesn’t when it comes to enforcement discussions.

Fred Andes
Partner
Barnes & Thornburg LLP
Chicago, IL
9:45 – 10:00 Break

10:00 – 12:00 Roundtable Discussions – Key Consent Decree Issues

Renaissance

You’ve listened to all the presentations from the experts, now is a great chance to engage more directly in the discussion and share information with your peers! For this session, participants will take part in four different roundtable discussions addressing different key topics involving enforcement issues and consent decrees. Each discussion, led by expert discussion leaders, will last 30 minutes. Participants will then rotate to the next table, with an opportunity to participate in each discussion topic. Use this opportunity to roll up your sleeves, exchange ideas with your colleagues, share experiences and thoughts, network, and learn something new!


Discussion Leaders:
Jessica DeMonte
Squire Sanders

Susan Myers
Metropolitan St. Louis Sewer District

Lou McMahon
McMahon DeGulis LLP

Roundtable Two: Achieving Maximum Benefit at Lowest Cost with a Sustainable Schedule – Making the Affordability Case

Discussion Leaders:
Jeff Theereman
Brown and Caldwell

Jeff Eger
HDR Engineering, Inc.
MaryLynn Loder
Metropolitan Sewer District of Greater Cincinnati

Roundtable Three: New Flexibilities – How to Take Advantage of Integrated Planning and Green Infrastructure

Discussion Leaders:
Fred Andes
Barnes & Thornburg
John Newsome
Department of Public Utilities
City of Columbus, OH

Roundtable Four: Living With Your Consent Decree – Implementation and Modification

Discussion Leaders:
Karen Hansen
Beveridge & Diamond LLP
Jamie Heisig-Mitchell
Hampton Roads Sanitation District
Virginia Beach, VA

Carrie Noteboom
NYC Department of Law
New York City, NY

12:00
Closing Remarks/Adjourn
Hilary Meltzer
Vice Chair, NACWA Legal Affairs Committee