As of October 24, 2016
(All meeting spaces are on the B Level unless otherwise noted.)

Agenda

Tuesday, November 1
Morning
8:30 – 4:00 Registration
Ballroom Foyer

9:00 – 10:15 Clean Water Act Primer
Salon 1A & 1B
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

10:15 - 10:30 Break

10:30 – 11:15 Stormwater Primer
Salon 1A & 1B
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 main 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

11:15 – 12:00  
**Key Principles of Administrative Law**  
*Salon 1A & 1B*

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,” and prescribe procedures for agency rulemaking, and set standards for judicial review of agency actions. This panel will cover the nuts and bolts of the APA’s requirements, discuss how rules are made and challenged, and talk about several recent cases involving the APA. In recent years, EPA has been criticized for trying to avoid the APA’s requirements and making major policy decisions through informal communications from regulatory agencies. Oftentimes referred to as “rulemaking by guidance,” this approach can include outlining new requirements through guidance documents, memos, or other “non-binding” communications, but can also occur when EPA pressures states behind the scenes to take certain actions that are actually driven by EPA’s regulatory preferences. This primer will provide an overview of the APA as it relates to matters of greatest relevance to NACWA members including rulemaking by guidance and how APA challenges have helped define “final agency action” for purposes of judicial review.

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

**Allan Gates**  
Member  
Mitchell Williams  
Little Rock, AR
NPDES Permit Issues, Part I: EPA’s Expanding Role and the CWA’s Expanding Jurisdiction

Whether in the context of a draft National Pollutant Discharge Elimination System (NPDES) Applications and Program Updates Rule, a draft EPA-US Geological Survey Technical Report, a Department of Justice amicus curiae brief filed on behalf of EPA, or behind-the-scenes pressure asserted by EPA on state regulatory agencies, many argue that EPA is attempting to expand its permitting role in delegated states. These developments have occurred in parallel with EPA’s rulemaking to define “waters of the US,” which many see as an effort to expand the scope of jurisdiction under the CWA. This panel will cover a number of recent EPA proposals and initiatives, what they mean for permittees, and what actions are being taken to address this.

Moderator:

Amanda Waters
General Counsel
NACWA
Washington, DC

Panelists:

Patrick Wong
Corporation Counsel
Maui County, Department of Environmental Management
Wailuku, HI
3:15 – 3:30 Break

3:30 – 5:00 To Infinity and Beyond: Innovating for the 21st Century
Salon 1A & 1B

Municipal clean water agencies are increasingly innovating beyond the four corners of the CWA to enhance their environmental performance, provide greater benefit to their communities, and improve their financial picture. Many of these innovations are focused on new, cutting-edge practices and market-based approaches such as energy production, resource recovery, water reuse, and water quality trading. This panel will discuss recent developments, challenges, opportunities, and legal considerations associated with these rapidly evolving Utility of the Future concepts.

Moderator:
Nathan Gardner-Andrews
Chief Advocacy Officer
NACWA
Washington, DC

Panelists:
Heath Ward
Executive Director
Springdale Water Utilities
Springdale, AR

Jennifer Harrington
Chief Legal Counsel
Narragansett Bay Commission
Providence, RI

Brendan Dailey
Senior Attorney
Metropolitan Water Reclamation District of Greater Chicago
Chicago, IL

Pamela Saindon
Senior Attorney
Metropolitan Water Reclamation District of Greater Chicago
Chicago, IL
Closing Remarks/ Announcements
Hilary Meltzer
Chair, NACWA Legal Affairs Committee

Evening
6:00 – 7:00 Reception
Rooftop Ballroom
R Level

Wednesday, November 2
Morning
8:30 – 4:00 Registration
Ballroom Foyer

9:00 – 12:00 PLENARY SESSION II
Salon 1A & 1B Opening Remarks
Susan Myers
Vice Chair, NACWA Legal Affairs Committee
General Counsel
Metropolitan St. Louis Sewer District
St. Louis, MO

Keynote Address
EPA and Clean Water Legal Issues: Today and Tomorrow
Avi Garbow
General Counsel
U.S. Environmental Protection Agency
Washington, DC

9:45 – 10:45 Can the King do Wrong? The State of Sovereign Immunity and Municipal Tort Liability
Salon 1A & 1B
In most states, sovereign immunity protects municipalities from liability for overflows and sewer backups because their activities fall within the definition of a governmental function. But there are several exceptions that may allow plaintiffs to recover damages for a municipality’s negligence. This panel will discuss the state of play across the country, provide an update on the latest developments in state sovereign immunity, and offer recommendations on reducing liability.

Louis McMahon
Partner
McMahon DeGulis LLP
Cleveland, OH
**Devon Goodrich**  
Senior Counsel  
New York City Department of Law  
New York, NY

**Brian Ellerman**  
General Counsel  
Northern Kentucky Sanitation District No. 1  
Ft. Wright, KY

10:45 – 11:00  
Break

**NPDES Permit Issues, Part II: Trouble on the Homefront?**  
State Permitting Issues

A successful relationship with your state regulator can make or break your NPDES permitting and compliance. Even with the best intentions, however, this can be a difficult relationship to navigate because states with CWA delegated authority have the choice to be more stringent than federal laws dictate. This panel will discuss two sides of the NPDES permitting coin: some states are toughening up on anti-degradation and anti-backsliding requirements in NPDES permitting, while other state legislatures are prohibiting state agencies from adopting rules and regulations that are more stringent than federal law requires. Panelists will share their experiences with these opposing forces, and will provide strategies for overcoming unreasonable state agency demands in NPDES permitting.

**Richard Lewis**  
Member  
Steptoe & Johnson PLLC  
Charleston, WV

**Tiffany Hedgpeth**  
Attorney  
Edgcomb Law Group, LLP  
Burbank, CA

**Dan McLawhorn**  
Associate City Attorney  
City of Raleigh  
Raleigh, NC
Afternoon
12:15 – 1:45
Luncheon Address
Rooftop Ballroom
R Level

Amanda Waters
NACWA

E-Enterprise for the Environment and Clean Water 4.0: Modernizing the Business of Environmental Protection
A combination of successful cooperation in exchanging environmental information, zeal for streamlining processes, ability to leverage the latest technologies, and enduring institutional structures for collaborative leadership are the basis of E-Enterprise for the Environment. This Address will discuss this transformative business model for environmental protection, Clean Water 4.0, and anticipated benefits to clean water agencies and their leaders.

Alexandra Dapolito Dunn
Executive Director and General Counsel
Environmental Council of the States
Washington, DC

2:00 – 5:00
PLENARY SESSION III
Salon 1A & 1B

Roundtable Discussion
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
Chair, NACWA Legal Affairs Committee

Panelists:
Paul Calamita
Chairman
AquaLaw PLC
Richmond, VA

Sam Brown
Senior Attorney
Hunton & Williams, LLP
San Francisco, CA
Nutrient impairment presents possibly the most challenging legal and regulatory issue facing clean water agencies today. More and more utility permits include nutrient limits, and there are ongoing federal lawsuits involving nutrients in major watersheds throughout the country. This panel will explore a variety of issues and strategies for utilities to consider when responding to the nutrient challenge, including a discussion of state and federal roles over nutrient criteria and EPA’s planned use of CWA § 308 to assess nutrient removal by secondary treatment plants nationwide. The panel will also discuss national nutrient litigation, such as a challenge to EPA’s approval of Montana’s Numeric Nutrient Criteria General Variance and a potentially groundbreaking lawsuit brought by Des Moines Water Works, a regional drinking water utility, to address agricultural discharges of nitrates into a waterbody that provides drinking water to half a million people.

Moderator:
Chris Hornback
Chief Technical Officer
NACWA
Washington, DC

Panelists:
William Stowe
Chief Executive Officer and General Manager
Des Moines Water Works
Des Moines, IA

Fred Andes
Partner
Barnes & Thornburg LLP
Chicago, IL

Albert Ettinger
Attorney
Chicago, IL

Craig Woolard
Director, Public Works
City of Bozeman
Bozeman, MT
Thursday, November 3

Morning
8:30 - 11:00  Registration
Ballroom Foyer

9:00 – 12:00  PLENARY SESSION IV
Salon 1A & 1B  Opening Remarks

Ethics: You be the Judge!
No extensive 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 feature a game-show style format, with live audience polling followed by discussion of the issues by a panel of experts. You will have the opportunity to “Be the Judge” on ethical issues, guess the answer, and share your opinion, before our experts weigh in!

Moderator:
Erica Spitzig
Deputy General Counsel
NACWA
Washington, DC

Panelists:
Professor Irma S. Russell
Edward A. Smith/Missouri Chair in Law, the Constitution, and Society
University of Missouri-Kansas City School of Law
Kansas City, MO

Jean Block
Chief Legal Officer
City of Little Rock Wastewater Utility
Little Rock, AR

Mark Iba
Partner
Stinson Leonard Street LLP
Kansas City, MO

10:30 – 10:45  Break
**Roundtable Discussion**

**A Good Offense is the Best Defense: Strategies to Avoid & Defend Citizen Suits**

Do your NPDES permit terms adequately protect you against citizen enforcement? Does your state require you to incorporate narrative water quality standards in your permit? Will you be able to rely on compliance with your permit terms to shield you from a citizen suit? Citizen groups are increasingly looking for opportunities to collaterally attack permits and to impose stringent requirements for nutrients and other pollutants. This roundtable discussion, which will be closed to press, regulators, and NGOs, will discuss strategies for meeting this threat both at the permitting stage and in response to litigation.

*Moderator:*

**Hilary Meltzer**  
Chair, NACWA Legal Affairs Committee

*Panelists:*

**Karen Bennett**  
Member  
Clark Hill  
Washington, DC

**Richard Davis**  
Principal  
Beveridge & Diamond P.C.  
Washington, DC

*Closing Remarks*

**Hilary Meltzer**  
Chair, NACWA Legal Affairs Committee