



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.

Speaker/Moderator:

Lori A. Terry
Partner
Foster Pepper & Shefelman
Seattle, WA

Panelists:

Tom Dupuis
Principal Water Resources Engineer
CH2M Hill
Boise, ID

Barbara Biggs
Governmental Officer
Metro Wastewater Reclamation District
Denver, CO

3:15 - 3:30

Break

3:30 - 5:00

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.

Speaker/Moderator:

Gerald P. Linder
General Counsel
Clean Water Services
Hillsboro, OR

Panelists:

Fredic Andes
Barnes & Thornburg
Chicago, IL

Margaret Nellor
Nellor Consulting
Austin, TX

John A. Sheehan
AquaLaw, PLC
Richmond, VA

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

10:15 – 12:00

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